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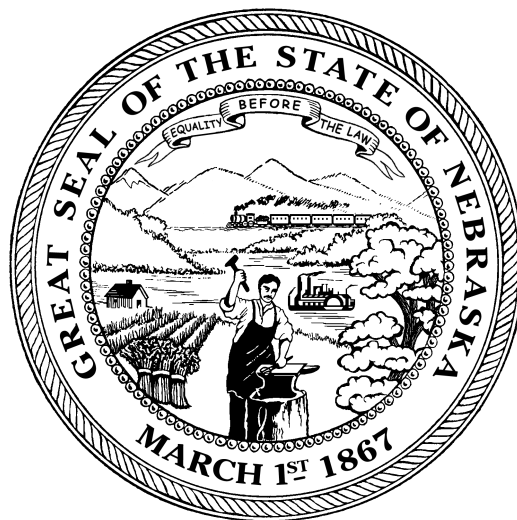
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REVISED STATUTES OF NEBRASKA

REISSUE OF VOLUME 5B

2024

COMPRISING ALL THE STATUTORY LAWS OF A
GENERAL NATURE IN FORCE AT DATE OF
PUBLICATION ON THE SUBJECTS ASSIGNED
TO CHAPTERS 82 TO 90, INCLUSIVE



Published by the Revisor of Statutes

CERTIFICATE OF AUTHENTICATION

I, Marcia M. McClurg, Revisor of Statutes, do hereby certify that the Reissue of Volume 5B of the Revised Statutes of Nebraska, 2024, contains all of the laws set forth in Chapters 82 to 90, appearing in Volume 5A, Revised Statutes of Nebraska, 2014, as amended and supplemented by the One Hundred Fourth Legislature, First Session, 2015, through the One Hundred Eighth Legislature, First Special Session, 2024, of the Nebraska Legislature, in force at the time of publication hereof.

Marcia M. McClurg
Revisor of Statutes

Lincoln, Nebraska
November 1, 2024

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REISSUE REVISED STATUTES
OF NEBRASKA, 2024

(in full)

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(abbreviated)

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STATE CULTURE AND HISTORY

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82-101 Nebraska State Historical Society; state agency; Director of the Nebraska State Historical Society; appointment; board of trustees; membership in society; purpose; acceptance of gifts; operation of historical sites and museums.

The Nebraska State Historical Society, operated in the public interest since 1878, is hereby declared to be and does hereby consent to be a state agency on and after July 16, 1994. The society shall hold, in trust for the people of the State of Nebraska, all of the society's present and future collections of property. The Governor shall appoint the Director of the Nebraska State Historical Society subject to approval by the Legislature. The Director of the Nebraska State Historical Society shall serve at the pleasure of the Governor. The agency shall be under the direction of such director. A board of trustees, who shall be elected in part by the members of the society and in part appointed by the Governor as provided in section 82-101.01, shall advise the director and perform other duties specified in statute. Membership in the society shall be open to all persons interested in the accomplishment of the purposes of the society. In addition to all other objects and purposes provided by law, the object of the society shall be to promote historical knowledge and research, awaken public interest, and popularize historical study throughout the state in a nonpolitical manner. The society's headquarters and museum in Lincoln shall be used by the society for the preservation, care, research, and exhibition of and research into documents, books, newspapers, weapons, tools, pictures, relics, scientific specimens, farm and factory products, and all other collections pertaining to the history of the world, particularly to that of Nebraska and the West. The society shall have the power to accept gifts and to own, control, and dispose of property, real and personal. It shall, either alone or in cooperation with other agencies, operate historical sites and museums as agreed to with appropriate state agencies or as directed by the Governor and the Legislature.

Source: Laws 1883, c. 95, § 1, p. 340; Laws 1907, c. 146, § 1, p. 458; R.S.1913, § 7166; C.S.1922, § 6817; C.S.1929, § 82-101; R.S. 1943, § 82-101; Laws 1961, c. 438, § 1, p. 1356; Laws 1994, LB 1236, § 1; Laws 2024, LB1169, § 2.
Effective date July 19, 2024.

82-101.01 Nebraska State Historical Society; board of trustees; membership; terms; nominating committee; election; expenses.

(1) The initial board of trustees shall be comprised of the members of the society's board of directors at the time the society became an agency. As their terms expire under the society's bylaws at the time the society became an agency, their successors shall be selected. Those outgoing board members who were elected shall be replaced by trustees elected by the society's membership as provided in this section. Those outgoing board members who were gubernatorial appointments shall be replaced by trustees appointed by the Governor. The trustees who are elected shall be elected for three-year terms from the same congressional district as the trustees whose terms have expired. The

trustees selected by the Governor shall be appointed for three-year terms from the same congressional district as the trustees whose terms have expired.

(2) A nominating committee comprised of society members, one from each of the congressional districts, shall be appointed each year by the president of the board of trustees with the approval of the board of trustees. Such appointments shall be made at least one hundred twenty days prior to the date of the annual meeting of the members. The nominating committee shall file, in writing, its slate of nominees for trustee with the Director of the Nebraska State Historical Society not later than ninety days prior to the date of the annual meeting. Thereafter, additional nominations may be made for trustee by written petition filed by not less than twenty-five active members of the society, which petition shall be filed with the Director of the Nebraska State Historical Society not later than sixty days prior to the annual meeting. Candidates nominated by the nominating committee shall file a similar petition. Not later than thirty days prior to the date of the annual meeting, the Director of the Nebraska State Historical Society shall deliver a ballot listing the names of the nominees to the active members of the society eligible to vote, to be marked by the members and returned to the Director of the Nebraska State Historical Society. The ballot shall be mailed or sent electronically. All returned ballots, whether sent electronically or by mail, must be received by the Director of the Nebraska State Historical Society at least ten days prior to the date of the annual meeting in order to be counted. The board of trustees shall adopt a system of ballot certification insuring a secret ballot and that the person submitting the ballot is a society member entitled to vote. The returned ballots shall be counted by the Director of the Nebraska State Historical Society, and the names of the successful candidates shall be announced at the annual meeting. The ballots and other records of the election shall be retained for one year following the election and shall be available for inspection. All members of the nominating committee, all members signing a nominating petition, and all members who are entitled to cast a ballot must be active members of the society who are in good standing. A member shall be considered in good standing when the member has fulfilled all requirements for membership. All general and other specified classes of members shall be eligible to vote for election or to be chosen as an officer or trustee or to serve as a member of the nominating committee. Only nominees named on the ballot shall be eligible for election. The candidate for a particular trustee post receiving the highest number of votes shall be declared elected even though such votes do not constitute a majority of the votes cast for such post. When two trustees are elected from a congressional district for a certain term, those declared elected shall be the two receiving the highest number of votes cast for such term, even though one or both fail to receive a majority of the votes cast for such term.

(3) The term of each trustee shall begin on January 1 of the year following the year of his or her election or appointment and shall end on December 31 of the final year of the term to which the member was elected or appointed.

(4) No trustee shall be eligible to serve for more than two full consecutive three-year terms but may be eligible for election or appointment to the board of trustees after having not served for at least a period of three years.

(5) In the event a vacancy occurs on the board of trustees, the board of trustees shall fill the position of an elected trustee for the remainder of the unexpired term and the Governor shall fill the position of an appointed trustee for the remainder of the unexpired term.

(6) In the event the boundaries of the congressional districts are altered or increase or decrease in number, the trustees shall continue to serve the term for which they were elected or appointed. Thereafter, the board of trustees shall be adjusted so as to be in accordance with the boundaries and number of congressional districts.

(7) Members of the board of trustees shall serve without pay. The trustees shall receive remuneration for travel and expenses incurred while engaged in the business of the society.

Source: Laws 1994, LB 1236, § 2; Laws 2019, LB447, § 2; Laws 2024, LB1169, § 3.
Effective date July 19, 2024.

82-101.02 Nebraska State Historical Society; board of trustees; powers and duties.

In accordance with applicable law, the powers and duties of the board of trustees shall be as follows:

(1) To elect annually from among their number a president, a first vice president, and a second vice president;

(2) To operate in the interests of preserving the rich heritage of this state and its people as required by any statute or as prescribed by any rule or regulation adopted and promulgated by the Director of the Nebraska State Historical Society;

(3) To create a general membership class which shall be open to all persons interested in the accomplishment of the purposes of the society, and the active members of such class shall be eligible to vote and shall not be required to pay membership dues;

(4) To create other classes of membership in the society as the board deems desirable and to determine the qualifications for such classes of membership;

(5) To create committees to aid in the efficient administration of the affairs of the society; and

(6) To advise the Director of the Nebraska State Historical Society regarding the administration of the society.

Source: Laws 1994, LB 1236, § 3; Laws 2024, LB1169, § 4.
Effective date July 19, 2024.

82-101.03 Director of the Nebraska State Historical Society; powers and duties.

The Director of the Nebraska State Historical Society:

(1) Shall establish a date, time, and location for an annual meeting of the society and promulgate such information;

(2) Shall set the fee for each class of membership in the society other than the general membership class;

(3) Shall collect, assemble, preserve, classify, and exhibit the following when appropriate and according to museum and archival standards: Any book; pamphlet; map; manuscript; newspaper; photograph; business record; personal paper; diary; architectural record; work of art; film; videotape; machine-readable record; museum, archaeological, or ethnographic specimens; and

object regardless of physical form that serves to illustrate the history of Nebraska, the Great Plains, or western America;

(4) Shall ensure that the collections and properties of the society are maintained in good order and repair;

(5) Shall oversee gifts made to the society in the following manner:

(a) Any gift that is accepted by the Director of the Nebraska State Historical Society shall be accepted, received, and administered in the name of the society. For purposes of this subdivision (5), gift includes any donation, property, security, bequest, or legacy;

(b) The Director of the Nebraska State Historical Society may accept, receive, and administer any gift made to the society without the prior approval of the Governor if such gift:

(i) Has a monetary value of less than ten thousand dollars; and

(ii) Is not real property;

(c) The Director of the Nebraska State Historical Society shall not accept, receive, or administer any gift made to the society without the prior approval of the Governor if such gift:

(i) Has a monetary value of ten thousand dollars or more; or

(ii) Is real property; and

(d) The Director of the Nebraska State Historical Society shall electronically submit a report to the Governor and the Clerk of the Legislature on or before January 15 of each year. Such report shall include:

(i) For each gift described in subdivision (5)(b) of this section that was made to the society, a description of the gift, if the gift was accepted by the director, and the monetary value of the gift; and

(ii) For each gift described in subdivision (5)(c) of this section that was made to the society, a description of the gift, if the Governor approved the acceptance of the gift, if the gift was accepted by the director, and the monetary value of the gift;

(6) May enter into any contract necessary to effectuate any purpose of the society;

(7) May sell, exchange, or otherwise dispose of books, museum objects, or other property in the society's collections that are surplus, duplicate, or outside the scope of the society's mission or that lack research, educational, or exhibit value on account of damage or insufficient documentation. Any money received pursuant to this subdivision shall be remitted to the State Treasurer for credit to the Nebraska State Historical Society Collections Trust Fund;

(8) Shall interpret and disseminate the results of any research conducted by the society. Such dissemination methods may include any method that will promote the study, understanding, and appreciation of Nebraska history;

(9) Shall adopt and promulgate rules and regulations to carry out the purposes of the society;

(10) May employ any personnel necessary to aid the Director of the Nebraska State Historical Society in carrying out the purposes of the society; and

(11) Shall ensure that the study, assemblage, maintenance, and presentation of exhibits, objects, manuscripts, and other items of historical materials are performed in such a manner that stimulates, encourages, and protects the

freedom of expression and academic freedom essential for the appreciation and understanding of the history of Nebraska.

Source: Laws 2024, LB1169, § 10.
Effective date July 19, 2024.

82-101.04 Director of the Nebraska State Historical Society; restriction on other service.

The Director of the Nebraska State Historical Society shall not be a board member of or serve in an advisory capacity for any charitable organization that provides money or other support to the Nebraska State Historical Society.

Source: Laws 2024, LB1169, § 11.
Effective date July 19, 2024.

82-102 Director of the Nebraska State Historical Society; report; contents.

The Director of the Nebraska State Historical Society shall deliver a biennial report to the Governor. Each such report shall include the transactions and expenditures of the society, together with all historical addresses that have been read before the society during the preceding two years or that furnish historical matter on data of the state.

Source: Laws 1883, c. 95, § 2, p. 340; R.S.1913, § 7167; C.S.1922, § 6818; C.S.1929, § 82-102; R.S.1943, § 82-102; Laws 1955, c. 231, § 21, p. 728; Laws 1981, LB 545, § 38; Laws 2024, LB1169, § 5.
Effective date July 19, 2024.

82-103 Nebraska State Historical Society; publications.

The reports, addresses and papers mentioned in section 82-102 shall be published at the expense of the state and distributed as other similar official reports are distributed. The state and society shall decide upon a reasonable number of the published reports, which shall be furnished to the society for its use and distribution.

Source: Laws 1883, c. 95, § 3, p. 341; R.S.1913, § 7168; C.S.1922, § 6819; C.S.1929, § 82-103; R.S.1943, § 82-103.

82-104 Nebraska State Historical Society; public documents, records, relics; custodian.

The Nebraska State Historical Society shall be the custodian of all public records, documents, relics, and other material which the society may consider to be of historic value or interest, and which may be in any of the offices or vaults of the several departments of the state, in any of the institutions which receive appropriations of money from the Legislature of Nebraska, or in any of the county courthouses, city halls, or other public buildings within the State of Nebraska.

Source: Laws 1905, c. 157, § 1, p. 604; R.S.1913, § 7169; C.S.1922, § 6820; C.S.1929, § 82-104; R.S.1943, § 82-104.

82-105 Nebraska State Historical Society; public documents, records, relics; obtaining possession; procedure.

The Nebraska State Historical Society shall obtain possession of the historical material mentioned in section 82-104 whenever it is not in active use in any department, institution, or building, or whenever it is liable to damage and destruction because of a lack of proper means to care for or safe and adequate place to preserve it. The officer or board having the care and management of the department, institution, or building shall consent in writing to the custody of the documents, records, and materials by the society. The society shall prepare invoices and receipts in triplicate for the material turned over to the society and shall deliver one copy to the Secretary of State and one copy to the officer or board turning over the material, and one copy shall be retained by the Director of the Nebraska State Historical Society.

Source: Laws 1905, c. 157, § 2, p. 604; R.S.1913, § 7170; C.S.1922, § 6821; C.S.1929, § 82-105; R.S.1943, § 82-105; Laws 1969, c. 810, § 1, p. 3047; Laws 2024, LB1169, § 6.
Effective date July 19, 2024.

82-106 Director of the Nebraska State Historical Society; public documents, records, relics; notice to be given.

Every officer or board having control or management of any state department, institution, or building shall notify the Director of the Nebraska State Historical Society if any of the historical material mentioned in sections 82-104 and 82-105 needs to be in the possession of the society.

Source: Laws 1905, c. 157, § 3, p. 605; R.S.1913, § 7171; C.S.1922, § 6822; C.S.1929, § 82-106; R.S.1943, § 82-106; Laws 2024, LB1169, § 7.
Effective date July 19, 2024.

82-107 Director of the Nebraska State Historical Society; public documents, records, relics; procedure after notice.

Whenever the Director of the Nebraska State Historical Society receives notice as described in section 82-106, the society shall, by its officers or employees, examine the material and remove and receipt for whatever material the society may deem to be of historic value. The society shall transport the material at its own cost to its museum and shall catalog, arrange, and display the material for the free use of the public.

Source: Laws 1905, c. 157, § 4, p. 605; R.S.1913, § 7172; C.S.1922, § 6823; C.S.1929, § 82-107; R.S.1943, § 82-107; Laws 2024, LB1169, § 8.
Effective date July 19, 2024.

82-108 Director of the Nebraska State Historical Society; documents and records; certified copies; fees.

The Director of the Nebraska State Historical Society shall prepare certified copies of any record, document, or other material, of which the society is the custodian, whenever application shall be made to the society. Such certified copies shall be received in courts and elsewhere as being of the same legal validity as similar copies prepared by the original custodian of the record, document, or other material. The Director of the Nebraska State Historical

Society is entitled to the same fees as the original custodian for making such certified copies.

Source: Laws 1905, c. 157, § 5, p. 605; R.S.1913, § 7173; C.S.1922, § 6824; C.S.1929, § 82-108; R.S.1943, § 82-108; Laws 2024, LB1169, § 9.
Effective date July 19, 2024.

82-108.01 Repealed. Laws 1994, LB 1236, § 4.

82-108.02 Historical Society Fund; created; use; investment.

All funds received by the Nebraska State Historical Society for services rendered shall be remitted to the State Treasurer for credit to the Historical Society Fund which is hereby established. Funds to the credit of the fund shall only be expended, as and when appropriated by the Legislature, by the Nebraska State Historical Society for the general purposes of such society, including, but not limited to, preparation for historical events and educational projects, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Historical Society 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 1961, c. 439, § 1, p. 1357; Laws 1969, c. 584, § 110, p. 2416; Laws 1995, LB 7, § 138; Laws 2009, First Spec. Sess., LB3, § 88; Laws 2015, LB220, § 11.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

82-108.03 Nebraska State Historical Society Collections Trust Fund; created; use; investment.

The Nebraska State Historical Society Collections Trust Fund is created. The fund shall be administered by the Director of the Nebraska State Historical Society in accordance with appropriate museum and archival standards, exclusively for the acquisition, preservation, or restoration of the society collections. The fund may consist of money from the sale or other disposition of property owned by the society. Such money shall be remitted to the State Treasurer for credit to the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2024, LB1169, § 12.
Effective date July 19, 2024.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

82-109 Nebraska State Historical Society; documents relating to General Land Office; agreement with United States Land Office.

The Nebraska State Historical Society is authorized to enter into an agreement with the General Land Office at Washington, D.C., for the reception, preservation, organization and arrangement for public use of all documents

relating to the former United States Land Offices in Nebraska that may be transferred from the custody of the General Land Office at Washington, D.C., to the custody of the society.

Source: Laws 1937, c. 196, § 1, p. 818; C.S.Supp.,1941, § 82-114; R.S. 1943, § 82-109.

82-110 Documents relating to General Land Office; preservation and maintenance; federal authorities; free access.

All documents obtained from the General Land Office at Washington, D.C., shall be preserved and maintained as a part of the public records of Nebraska by the Nebraska State Historical Society, and by all other persons in such manner as shall secure the chief objects of their use and preservation, their care, custody and service, under proper library regulations. The authorities of the United States shall have free access to such documents.

Source: Laws 1937, c. 196, § 2, p. 819; C.S.Supp.,1941, § 82-115; R.S. 1943, § 82-110.

82-111 Historical monuments; defacing prohibited; penalty.

Any person who shall destroy, deface, remove or injure any of the monuments erected by the state to mark the Oregon Trail in Nebraska shall be deemed guilty of a Class III misdemeanor.

Source: Laws 1911, c. 134, § 4, p. 447; R.S.1913, § 7177; C.S.1922, § 6828; C.S.1929, § 82-112; R.S.1943, § 82-111; Laws 1977, LB 39, § 306.

82-112 Pioneers' Memorial Day.

The second Sunday in June in each year shall be Pioneers' Memorial Day, and shall be set apart for holding suitable exercises in the schools and churches of the state, and, when possible, in the cemeteries and over the graves of pioneers, in recognition of the men and women who served and sacrificed as pioneers in the settlement of Nebraska.

Source: Laws 1913, c. 171, § 1, p. 523; R.S.1913, § 7178; C.S.1922, § 6829; C.S.1929, § 82-113; R.S.1943, § 82-112.

82-113 Repealed. Laws 1957, c. 304, § 1.

82-114 Kennard home; Nebraska Statehood Memorial; designated.

The Thomas P. Kennard home, located at 1627 H Street in Lincoln, including lot 3, Block 153, of the original plat of Lincoln, is hereby designated as the Nebraska Statehood Memorial.

Source: Laws 1965, c. 556, § 1, p. 1839.

82-115 Nebraska Statehood Memorial; Nebraska State Historical Society; restoration.

The Nebraska State Historical Society shall be responsible for the restoration of the Nebraska Statehood Memorial. The exterior shall be restored as nearly as may be to its appearance in 1870. The interior shall be restored as nearly as may be to its original appearance and arrangement, and shall be refurnished

with authentic period furniture and other materials which relate to the establishment and development of Nebraska state government.

Source: Laws 1965, c. 556, § 2, p. 1839.

82-116 Repealed. Laws 1981, LB 497, § 1.

82-117 Nebraska Statehood Memorial; Nebraska State Historical Society; administration; maintenance; gifts, grants, bequests; accept.

The Nebraska State Historical Society shall be responsible for the administration and continued maintenance of the Nebraska Statehood Memorial and may accept gifts, grants, and bequests for such purposes.

Source: Laws 1965, c. 556, § 4, p. 1839.

82-118 Nebraska State Historical Society; statewide historic survey; acceptance of federal act.

The State of Nebraska hereby assents to the provisions of an Act of Congress entitled An Act to establish a program for the preservation of additional historic properties throughout the Nation, and for other purposes, approved October 15, 1966, Public Law 89-665, 89th Congress, as amended as of January 1, 1993. The Nebraska State Historical Society shall perform all such acts as may be necessary on behalf of the State of Nebraska to conduct, coordinate, and carry out the purposes and objectives of such Act of Congress, as amended as of January 1, 1993, for and within the State of Nebraska. The society shall carry out a comprehensive statewide historic survey in accordance with criteria established by the Secretary of the Interior for the preservation, acquisition, and development of such property as provided in the Act of Congress, as amended as of January 1, 1993, and may transfer funds made available to the state to other state agencies, local governments, other public bodies, private organizations, and individuals for the acquisition of title or interests in and for the development of any district, site, building, structure, or object that is significant in American history, architecture, archeology, and culture, or property used in connection therewith, and for its development in order to assure the preservation for public benefit of any such historic properties in compliance with such Act of Congress, as amended as of January 1, 1993, and with rules and regulations promulgated by the Secretary of the Interior for the administration of such Act of Congress, as amended as of January 1, 1993. For these purposes the society may inspect the projects and examine the records of those projects eligible for grants and establish such rules and regulations relating thereto as may be necessary.

Source: Laws 1967, c. 596, § 1, p. 2032; Laws 1978, LB 628, § 1; Laws 1981, LB 407, § 1; Laws 1993, LB 682, § 1.

82-119 Nebraska State Historical Society; powers and duties.

The Nebraska State Historical Society shall be charged with the duty of marking and preserving the historical landmarks of Nebraska. It may hold property and be a party to suits and contracts.

Source: Laws 1957, c. 384, § 1, p. 1339; Laws 1959, c. 441, § 1, p. 1482; Laws 1961, c. 440, § 1, p. 1358; Laws 1965, c. 557, § 1, p. 1840; R.R.S.1943, § 82-201; Laws 1969, c. 811, § 1, p. 3048.

82-120 Nebraska State Historical Society; selection of projects; procurement of Highway Historical Markers; purchase, gift, or eminent domain; erection and maintenance.

The Nebraska State Historical Society shall have authority to determine what historical events, personalities, sites, and traditions are of importance to the State of Nebraska and to justify the expenditure of public funds for the purchase of markers of uniform style, to be known as Highway Historical Markers; to procure such markers by expending any funds specifically appropriated by the Legislature for such purpose and to designate the approximate location of such markers; to preserve present markers; to accept gifts; and have power of eminent domain to be exercised as provided in sections 76-704 to 76-724. The Department of Transportation shall erect and maintain such markers and shall determine the exact location of such markers, having due regard for the safety and welfare of the motoring public.

Source: Laws 1957, c. 384, § 2, p. 1340; Laws 1959, c. 441, § 3, p. 1483; R.R.S.1943, § 82-202; Laws 1969, c. 811, § 2, p. 3048; Laws 2017, LB339, § 292.

82-121 Nebraska State Historical Society; Highway Historical Markers; powers; delegation to subcommittees.

The Nebraska State Historical Society shall have authority (1) to designate the approximate location of such markers, (2) to preserve present markers, (3) to accept gifts, and (4) to encourage local participation in and contribution to the erection of such markers through the use of gifts and matching-fund agreements. The society may appoint and delegate to a special committee the duty of research and investigation to assist in the determination of proper sites, events, personalities, and traditions to be designated.

Source: Laws 1957, c. 384, § 3, p. 1340; Laws 1959, c. 441, § 4, p. 1483; R.R.S.1943, § 82-203; Laws 1969, c. 811, § 3, p. 3049.

82-122 Nebraska State Historical Society; Highway Historical Markers; damaged or destroyed; replacement.

The Nebraska State Historical Society shall be empowered to use any legal means necessary to secure payment to the state for the actual replacement cost of any markers damaged or destroyed, accidentally or otherwise. Any fund so collected shall be placed in the treasury to the credit of the appropriate fund for the procurement of historical markers and may be expended as provided for by law.

Source: Laws 1957, c. 384, § 4, p. 1340; Laws 1959, c. 441, § 5, p. 1484; R.R.S.1943, § 82-204; Laws 1969, c. 811, § 4, p. 3049.

82-123 Highway Historical Markers; erection or maintenance; written consent of Nebraska State Historical Society required.

It shall be unlawful for any person, public or private corporation, association, or organization to post, erect, or maintain any historical marker, monument, sign or notice, on public property or any place in the state, upon any public street, road, or highway in the state bearing any legend, inscription, or notice which purports to record any historical event, incident, or fact or to maintain any such historical marker, monument, notice, or sign posted or erected after

September 20, 1957, unless a written certificate of approval has first been secured from the Historical Land Mark Council or, after December 25, 1969, from the Nebraska State Historical Society.

Source: Laws 1957, c. 384, § 5, p. 1340; Laws 1959, c. 441, § 6, p. 1484; R.R.S.1943, § 82-205; Laws 1969, c. 811, § 5, p. 3049.

82-124 Highway Historical Markers; violations; penalty; malicious damage; recovery of replacement costs.

Any person who shall violate any of the provisions of sections 82-119 to 82-124 shall be guilty of a Class V misdemeanor. Each day that a violation continues after notice shall constitute a separate offense. Where the markers are damaged maliciously, the court shall collect the replacement costs as part of the punishment.

Source: Laws 1957, c. 384, § 6, p. 1341; R.R.S.1943, § 82-206; Laws 1969, c. 811, § 6, p. 3049; Laws 1977, LB 39, § 307.

82-125 Nebraska State Historical Society; property known as Neligh Mills; acquire title; cost; limitation; maintenance.

The Nebraska State Historical Society is hereby authorized to acquire clear title in the name of the State of Nebraska, at a cost not to exceed five thousand dollars, of property known as the Neligh Mills and located in Antelope County. If the society is unable to acquire title to such property within one year after June 27, 1969, any money appropriated for such purpose shall revert to the General Fund, and any portion of such appropriation not required for the acquisition of such property shall revert to the General Fund. The society shall be responsible for the administration and continued maintenance of such property, if acquired, and may accept gifts, grants, and bequests for such purposes.

Source: Laws 1969, c. 809, § 1, p. 3046.

82-126 Nebraska State Historical Society; visitations to sites and monuments; restrict; signs; notices; violation; penalty.

The Nebraska State Historical Society or any other society whose duty it is to preserve historical sites and monuments may restrict visitation at such hours and times as in its judgment would be a detriment to the site or monument. The society responsible for such site or monument may erect appropriate signs or notices restricting any visitation which might subject the site or monument to hazards and defacing. Any person violating the provisions of such signs or notices shall be guilty of a Class V misdemeanor.

Source: Laws 1971, LB 417, § 1; Laws 1977, LB 39, § 308.

82-127 Historical Heritage Center; location; how designated; Nebraska State Historical Society; duties; powers.

The Nebraska State Historical Society shall be responsible for the development of plans for the construction of a Historical Heritage Center on block 152 of the original plat of Lincoln, including lots 1 to 12, for the purpose of preserving, restoring, and interpreting the history of the people of Nebraska and the Central Great Plains. Such block is hereby designated as the Nebraska

Historical Heritage Block. The society is hereby authorized to accept public and private funds for the purpose of constructing such building.

Source: Laws 1974, LB 704, § 1.

82-128 Nebraska State Historical Society; acquire property of John G. Neihardt; erect structure; agreement; administration.

The Nebraska State Historical Society is hereby authorized to acquire, without cost to the state, clear title in the name of the State of Nebraska to the real and personal property of the John G. Neihardt Foundation and to construct on such real property a structure to be known as the John G. Neihardt Center. There is hereby appropriated to the Nebraska State Historical Society, Agency No. 54, the sum of two hundred thousand dollars for the purpose of constructing the John G. Neihardt Center. The Nebraska State Historical Society may enter into agreements with the John G. Neihardt Foundation for the operation of the John G. Neihardt Center but the society shall be responsible for the general administration and continued maintenance of such property and may accept gifts, grants, and bequests for such purposes.

Source: Laws 1974, LB 855, § 1.

82-129 Nebraska State Historical Society; transfer property to Willa Cather Foundation.

(1) In 1978, the Nebraska State Historical Society acquired, without cost to the state, clear title in the name of the State of Nebraska to the real and personal property as described in section 82-130 of the Willa Cather Pioneer Memorial and Educational Foundation, now known as the Willa Cather Foundation, except the foundation's trust account and investments which are retained by the foundation. The Nebraska State Historical Society may enter into agreements with the foundation for the operation of the Willa Cather Center and for the real property owned by the State of Nebraska, but the society shall be responsible for the general administration and continued maintenance of such property and may accept gifts, grants, and bequests for such purposes.

(2) The Nebraska State Historical Society may enter into an agreement with the Willa Cather Foundation to transfer clear title of any properties described in section 82-130 from the State of Nebraska to the Willa Cather Foundation at no cost to either the society or foundation other than any property transfer transactional costs to be shared equally by the parties.

(3) In order to carry out any agreements made according to subsection (2) of this section, the Nebraska State Historical Society may dispose of these real properties using the vacant building and excess land process under sections 72-811 to 72-818.

Source: Laws 1978, LB 567, § 1; Laws 2018, LB379, § 4.

82-130 Willa Cather; real property; legal description.

The real property acquired pursuant to section 82-129 is more particularly described as follows:

(1) The Cather House described as lots 1, 2, and 3, block 24, original town of Red Cloud, Webster County, Nebraska;

(2) The Garber Bank described as lot 21, block 31, original town of Red Cloud, Webster County, Nebraska;

(3) The Grace Episcopal Church described as lots 19, 20, 21, 22, 23, and 24, block 6, original town, now the city of Red Cloud, Webster County, Nebraska;

(4) The St. Juliana Catholic Church described as lots 17, 18, 19, 20, 21, and 22, block 3, Railroad addition to the city of Red Cloud, Webster County, Nebraska;

(5) The Burlington Depot described as lots 10, 11, 12, and 13, block 19, Railroad addition to the city of Red Cloud, Webster County, Nebraska; and

(6) The Antonia Farmhouse described as follows: Commencing at the north-east corner of the southeast quarter of section 27, township 4 north, range 11 west of the sixth principal meridian, Webster County, Nebraska, thence south 895 feet; thence west 155 feet to the point of beginning; thence west a distance of 90 feet; thence south at a right angle a distance of 137 feet; thence east at a right angle a distance of 90 feet; thence north a distance of 137 feet to the point of beginning.

Source: Laws 1978, LB 567, § 2; Laws 2018, LB379, § 5.

82-131 George Norris House; designated.

The George Norris home, located at 706 Norris Avenue in McCook, owned by the Nebraska State Historical Society, and legally described as all of lot 4, and the north half of lot 5, block 10, McCook first addition to the City of McCook, Red Willow County, Nebraska, is hereby designated as the George Norris House.

Source: Laws 1986, LB 563, § 4.

82-132 George Norris House; Nebraska State Historical Society; powers and duties.

The Nebraska State Historical Society shall be responsible for the administration and continued maintenance of the George Norris House and may accept gifts, grants, and bequests for such purposes.

Source: Laws 1986, LB 563, § 5.

82-133 Repealed. Laws 1993, LB 321, § 5.

82-134 Transferred to section 72-1802.

82-135 Repealed. Laws 1993, LB 321, § 5.

82-136 Transferred to section 72-1801.

82-137 Willa Cather; legislative findings and declarations.

The Legislature finds and declares that:

- (1) Willa Cather is a significant historical and literary figure of Nebraska;
- (2) There exist many Cather-related properties in Webster County that provide irreplaceable historical value to the ongoing interpretation of the significance of Cather;
- (3) These properties also spur economic activity by means of national and international tourism and annual literary conferences; and

(4) It is the intent of the Legislature to preserve these properties for future generations.

Source: Laws 2018, LB379, § 1.

82-138 Willa Cather Historical Building Cash Fund; created; use; investment.

The Willa Cather Historical Building Cash Fund is created. The fund shall be administered by the Nebraska State Historical Society. The fund shall consist of any funds appropriated by the Legislature and money donated as gifts, bequests, or other contributions from public or private entities. The fund shall be used to preserve and restore the real property described in section 82-130. 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 2018, LB379, § 2.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

82-139 Support Nebraska History Cash Fund; created; use; investment.

The Support Nebraska History Cash Fund is created. The fund shall consist of money credited to the fund under section 60-3,256 and any other gifts, bequests, grants, or other contributions or donations to the fund from public or private entities. The Nebraska State Historical Society shall administer and distribute the Support Nebraska History Cash Fund. The fund shall be expended to promote the history of Nebraska on the Internet, to support history education for children in Nebraska, and for costs directly related to the administration of the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2021, LB317, § 9.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 2

HISTORICAL LAND MARK COUNCIL

Section

82-201.	Transferred to section 82-119.
82-201.01.	Repealed. Laws 1961, c. 440, § 2.
82-202.	Transferred to section 82-120.
82-203.	Transferred to section 82-121.
82-204.	Transferred to section 82-122.
82-205.	Transferred to section 82-123.
82-206.	Transferred to section 82-124.

82-201 Transferred to section 82-119.

82-201.01 Repealed. Laws 1961, c. 440, § 2.

82-202 Transferred to section 82-120.

82-203 Transferred to section 82-121.

82-204 Transferred to section 82-122.

82-205 Transferred to section 82-123.

82-206 Transferred to section 82-124.

ARTICLE 3

NEBRASKA ARTS COUNCIL

Section

- 82-301. Repealed. Laws 1973, LB 121, § 8.
- 82-302. Repealed. Laws 1973, LB 121, § 8.
- 82-303. Repealed. Laws 1973, LB 121, § 8.
- 82-304. Repealed. Laws 1973, LB 121, § 8.
- 82-305. Repealed. Laws 1973, LB 121, § 8.
- 82-306. Repealed. Laws 1973, LB 121, § 8.
- 82-307. Repealed. Laws 1973, LB 121, § 8.
- 82-308. Repealed. Laws 1973, LB 121, § 8.
- 82-309. Nebraska Arts Council; created; members; appointment.
- 82-310. Nebraska Arts Council; members; term of office; chairperson; vice-chairperson; vacancies; compensation; expenses.
- 82-311. Nebraska Arts Council; chairman; officers, experts, employees; employ; compensation.
- 82-312. Nebraska Arts Council; duties.
- 82-313. Nebraska Arts Council; powers.
- 82-314. Nebraska Arts Council; federal funds; receive; disburse.
- 82-315. Nebraska Arts Council Trust Fund; created; use.
- 82-316. Nebraska Arts Council Cash Fund; created; deposits; disbursements; investment.
- 82-317. Public buildings; artwork; declaration of policy.
- 82-318. Public buildings; artwork; terms, defined.
- 82-319. New state capital construction; appropriation; percentage used for works of art; when.
- 82-320. Nebraska Arts Council; duties.
- 82-321. Construction project; artwork; committee; created; members; duties.
- 82-322. Nebraska Arts Council; promulgate rules and regulations.
- 82-323. Nebraska Arts Council; artists; how chosen.
- 82-324. Nebraska Arts Council; insure compliance prior to payment; manner.
- 82-325. Public buildings; expenditures for works of art; contracted separately.
- 82-326. Public buildings; appropriation; works of art; administration and installation; art maintenance fund.
- 82-327. Public buildings; works of art; how displayed.
- 82-328. Public buildings; works of art; property of State of Nebraska; sale of reproductions.
- 82-329. Public buildings; works of art; Nebraska Arts Council; maintain inventory; inspect; recommend procedures.
- 82-330. Cultural preservation; legislative intent.
- 82-331. Nebraska Cultural Preservation Endowment Fund; created; use; investment.
- 82-332. Nebraska Arts and Humanities Cash Fund; created; use; investment.
- 82-333. Nebraska Arts and Humanities Cash Fund; report.
- 82-334. Support the Arts Cash Fund; created; use; investment.
- 82-335. Competitive grant program; eligibility for grant; priority; purpose; amount.

82-301 Repealed. Laws 1973, LB 121, § 8.

82-302 Repealed. Laws 1973, LB 121, § 8.

82-303 Repealed. Laws 1973, LB 121, § 8.

82-304 Repealed. Laws 1973, LB 121, § 8.

82-305 Repealed. Laws 1973, LB 121, § 8.

82-306 Repealed. Laws 1973, LB 121, § 8.

82-307 Repealed. Laws 1973, LB 121, § 8.

82-308 Repealed. Laws 1973, LB 121, § 8.

82-309 Nebraska Arts Council; created; members; appointment.

There is hereby created the Nebraska Arts Council to consist of fifteen members to be appointed by the Governor with the approval of the Legislature from among citizens of Nebraska who are known for their professional competence and experience in connection with the arts. In making such appointments, consideration shall be given to recommendations made by representative civic, educational, and professional associations and groups concerned with or engaged in the production or presentation of the arts generally.

Source: Laws 1973, LB 121, § 1.

82-310 Nebraska Arts Council; members; term of office; chairperson; vice-chairperson; vacancies; compensation; expenses.

The term of office of each member shall be three years with the terms of one-third of the members expiring every year. No member of the council who serves two consecutive three-year periods shall be eligible for reappointment during a one-year period following the expiration of his or her term. The Governor shall designate a chairperson and a vice-chairperson from the members of the council, to serve as such at the pleasure of the Governor. The chairperson shall be the chief executive officer of the council. All vacancies shall be filled for the balance of the unexpired term in the same manner as original appointments are made. The members of the council shall not receive any compensation for their services but shall be reimbursed for expenses incurred in the performance of their duties as provided in sections 81-1174 to 81-1177.

Source: Laws 1973, LB 121, § 2; Laws 1981, LB 204, § 200; Laws 2020, LB381, § 130.

82-311 Nebraska Arts Council; chairman; officers, experts, employees; employ; compensation.

The chairman may, with the approval of the council, employ such officers, experts, and other employees as may be needed and shall fix their compensation within the amounts made available for such purposes.

Source: Laws 1973, LB 121, § 3.

82-312 Nebraska Arts Council; duties.

The duties of the council shall be:

(1) To stimulate and encourage throughout the state the study and presentation of the performing and fine arts and public interest and participation therein;

(2) To make such surveys as may be deemed advisable of public and private institutions within the state engaged in artistic and cultural activities, including, but not limited to, music, theatre, dance, painting, sculpture, architecture, and

allied arts and crafts, and to make recommendations concerning appropriate methods to encourage participation in and appreciation of the arts to meet the legitimate needs and aspirations of persons in all parts of the state;

(3) To take such steps as may be necessary and appropriate to encourage public interest in the cultural heritage of our state and to expand the state's cultural resources;

(4) To encourage and assist freedom of artistic expression essential for the well-being of the arts; and

(5) To recommend to the Legislature a plan to divide the state into creative districts and certify them based on geographically contiguous area, artistic or cultural activities or facilities, promotion and preservation of artistic or cultural sites or events, educational uses of artistic or cultural activities or sites, and unique or niche areas, activities, events, facilities, or sites.

Source: Laws 1973, LB 121, § 4; Laws 2020, LB780, § 1.

82-313 Nebraska Arts Council; powers.

(1) The Nebraska Arts Council may:

(a) Hold public and private hearings;

(b) Enter into contracts, within the limit of funds available therefor, with individuals, organizations, and institutions for services furthering the educational objectives of the council's programs;

(c) Enter into contracts, within the limit of funds available therefor, with local and regional associations for cooperative endeavors furthering the educational objectives of the council's programs;

(d) Accept gifts, contributions, and bequests of unrestricted funds from individuals, foundations, corporations, and other organizations or institutions for the purpose of furthering the educational objectives of the council's programs;

(e) Distribute funds appropriated by the Legislature to any organization which has been designated as the state affiliate of the National Endowment for the Humanities for the period covered by the appropriation;

(f) Make and sign any agreements and do and perform any acts that may be necessary to carry out the purposes of sections 82-309 to 82-316;

(g) Enter into contracts, make and sign any agreements, and perform any acts that may be necessary to stabilize funding for the arts and humanities and to carry out the intent of sections 82-330 to 82-333;

(h) Prepare a plan that would permit, to the extent that funds are available, the establishment of a competitive grant program to award a grant to any creative district that is certified pursuant to the plan adopted by the Legislature under subdivision (5) of section 82-312 and that meets the criteria for the competitive grant, including eligibility criteria, application and appeal processes, conditions on receipt of a grant, and consequences of failure to meet the conditions; and

(i) Adopt and promulgate rules and regulations to carry out its powers and duties.

(2) The council may request from any department, division, board, bureau, commission, or agency of the state such assistance and data as will enable it properly to carry out its powers and duties.

Source: Laws 1973, LB 121, § 5; Laws 1993, LB 280, § 1; Laws 1998, LB 799, § 5; Laws 2020, LB780, § 2.

82-314 Nebraska Arts Council; federal funds; receive; disburse.

The council shall be the official agency of this state to receive and disburse any funds made available by the federal government for programs related to the performing and fine arts.

Source: Laws 1973, LB 121, § 6.

82-315 Nebraska Arts Council Trust Fund; created; use.

All funds received by the Nebraska Arts Council under sections 82-313 and 82-314 shall be remitted to the State Treasurer for credit to the Nebraska Arts Council Trust Fund which is hereby created and which, when appropriated by the Legislature, shall be expended strictly in accord with any conditions that may be attached at the time of their receipt. This section does not apply to funds received by the council under sections 82-330 to 82-333.

Source: Laws 1973, LB 121, § 7; Laws 1998, LB 799, § 6.

82-316 Nebraska Arts Council Cash Fund; created; deposits; disbursements; investment.

There is hereby created the Nebraska Arts Council Cash Fund. The fund shall contain all sums of money received from fees from any conference, performance, or exhibition held by the council or by groups who have contracted with the council for such events and all sums of money collected under section 82-326. The Nebraska Arts Council shall use the fund to pay the costs related to the administration and sponsoring of any conference, performance, or exhibition by the Nebraska Arts Council or by groups who have contracted with the council for such events or to pay the costs related to the repair, restoration, and maintenance of artwork installed under sections 82-317 to 82-329, 85-106 to 85-106.03, and 85-304 to 85-304.03. All disbursements shall be made upon warrants drawn by the Director of Administrative Services. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1977, LB 512, § 1; Laws 2016, LB957, § 10.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

82-317 Public buildings; artwork; declaration of policy.

The Legislature recognizes the responsibility of the state to foster culture and the arts and its interest in the viable development of its artists. The Legislature declares it to be the policy of this state that a portion of all appropriations made after January 1, 1979, for capital expenditures be set aside for the acquisition of artworks to be used in public buildings.

Source: Laws 1978, LB 664, § 1.

82-318 Public buildings; artwork; terms, defined.

As used in sections 82-317 to 82-329, 85-106 to 85-106.03, and 85-304 to 85-304.03, unless the context otherwise requires:

(1) Appropriation shall mean the amount of money set by the Legislature in excess of five hundred thousand dollars for new construction or in excess of two hundred fifty thousand dollars for remodeling for the particular project which is not limited by law, rule, or regulation less the amount of money spent for planning, land acquisition, and site work;

(2) Art shall mean the conscious use of skill, taste, and creative imagination in the production of aesthetic objects;

(3) Original construction shall mean the erection of a new building or facility and does not include remodeling if the cost is two hundred fifty thousand dollars or less or expansion of existing structures; and

(4) Public building shall mean buildings and facilities used by or open to the public as guests or business invitees and shall exclude repair shops, garages, warehouses, and buildings of a similar nature.

Source: Laws 1978, LB 664, § 2.

82-319 New state capital construction; appropriation; percentage used for works of art; when.

All boards, agencies, commissions, or departments of state government shall, after January 1, 1979, spend at least one percent of any appropriation for the original construction of any state building for the acquisition of works of art. The works of art may be an integral part of the structure, attached to the structure, detached within or outside of the structure, or may be exhibited by the board, agency, commission, or department in other public facilities.

Source: Laws 1978, LB 664, § 3.

82-320 Nebraska Arts Council; duties.

The Nebraska Arts Council shall determine the amount of money to be made available for the purchase of art for each project subject to section 82-319. The selection of, commissioning of artists for, reviewing of design, execution and placement of, and the acceptance of works of art for each project shall be the responsibility of the Nebraska Arts Council in consultation with the committee established pursuant to section 82-321.

Source: Laws 1978, LB 664, § 4.

82-321 Construction project; artwork; committee; created; members; duties.

A committee shall be established for each construction project which comes under sections 82-317 to 82-329, 85-106 to 85-106.03, and 85-304 to 85-304.03. The committee shall consist of the architect, three members from the board, agency, commission, or department for which the building is being constructed, and three members of the Nebraska Arts Council or three members chosen by the council. The committee shall consult with the Nebraska Arts Council in carrying out the provisions of sections 82-317 to 82-329, 85-106 to 85-106.03, and 85-304 to 85-304.03.

Source: Laws 1978, LB 664, § 5.

82-322 Nebraska Arts Council; promulgate rules and regulations.

The Nebraska Arts Council shall promulgate rules and regulations, as necessary, to carry out the provisions of sections 82-317 to 82-329, 85-106 to 85-106.03, and 85-304 to 85-304.03.

Source: Laws 1978, LB 664, § 6.

82-323 Nebraska Arts Council; artists; how chosen.

The Nebraska Arts Council shall give a preference to regional artists in its selection of and commissioning of artists for projects under sections 82-317 to 82-329, 85-106 to 85-106.03, and 85-304 to 85-304.03.

Source: Laws 1978, LB 664, § 7.

82-324 Nebraska Arts Council; insure compliance prior to payment; manner.

The Nebraska Arts Council shall inform the Director of Administrative Services that sections 82-317 to 82-329, 85-106 to 85-106.03, and 85-304 to 85-304.03 have been complied with for each project subject to section 82-319 before a warrant may be issued for payment.

Source: Laws 1978, LB 664, § 8.

82-325 Public buildings; expenditures for works of art; contracted separately.

Expenditures for works of art shall be contracted for separately from all other items in the original construction of any public building.

Source: Laws 1978, LB 664, § 17.

82-326 Public buildings; appropriation; works of art; administration and installation; art maintenance fund.

The amount of money made available from any appropriations under the provisions of sections 82-317 to 82-329, 85-106 to 85-106.03, and 85-304 to 85-304.03 shall be used, in addition to the cost of the works of art, to provide for the administration by the contracting agency, the architect, and the Nebraska Arts Council, and for costs of installation of the works of art as negotiated between the contracting agency and the contracted artist. The Nebraska Arts Council may designate a portion of the amount appropriated for administration for an art maintenance fund which shall be used to repair or restore all works of art acquired under such sections and which shall be credited to the Nebraska Arts Council Cash Fund.

Source: Laws 1978, LB 664, § 18; Laws 2010, LB1063, § 1; Laws 2016, LB957, § 11.

82-327 Public buildings; works of art; how displayed.

The works of art acquired pursuant to the provisions of sections 82-317 to 82-329, 85-106 to 85-106.03, and 85-304 to 85-304.03 shall be displayed in areas of the buildings open to the public.

Source: Laws 1978, LB 664, § 19.

82-328 Public buildings; works of art; property of State of Nebraska; sale of reproductions.

All works of art acquired under sections 82-317 to 82-329, 85-106 to 85-106.03, and 85-304 to 85-304.03 shall become the property of the State of Nebraska. The artist shall retain no ownership, control, or authority of any kind over the work of art or its future disposition. In the event the state makes a net profit through the sale of reproductions of the work of art it may pay a portion of that profit to the artist.

Source: Laws 1978, LB 664, § 20.

82-329 Public buildings; works of art; Nebraska Arts Council; maintain inventory; inspect; recommend procedures.

The Nebraska Arts Council shall maintain an inventory of all works of art purchased under sections 82-317 to 82-329, 85-106 to 85-106.03, and 85-304 to 85-304.03 and shall inspect each work of art on a regular schedule to determine its condition. The Nebraska Arts Council may recommend procedures for regular maintenance, preservation, and security and for the repair of any damaged work of art.

Source: Laws 1978, LB 664, § 21; Laws 2010, LB1063, § 2.

82-330 Cultural preservation; legislative intent.

The Legislature finds that the cultural climate of Nebraska is important to the state in many ways, including economically, politically, educationally, and socially. Further, the Legislature finds that federal funding for the arts and humanities has decreased dramatically and that there is no assurance of continuation of federal funding. In order to ensure there is a stable cultural climate in our state for future generations, the Nebraska Arts Council and the Nebraska Humanities Council have joined efforts to establish a financial partnership between the public and private sectors.

Source: Laws 1998, LB 799, § 1.

82-331 Nebraska Cultural Preservation Endowment Fund; created; use; investment.

(1) There is hereby established in the state treasury a trust fund to be known as the Nebraska Cultural Preservation Endowment Fund. The fund shall consist of funds appropriated or transferred by the Legislature, and only the earnings of the fund may be used as provided in this section.

(2) Except as provided in subsection (3) of this section, it is the intent of the Legislature that the State Treasurer shall transfer (a) an amount not to exceed one million dollars from the General Fund to the Nebraska Cultural Preservation Endowment Fund on December 31, 2013, (b) an amount not to exceed five hundred thousand dollars from the General Fund to the Nebraska Cultural Preservation Endowment Fund on December 31, 2014, (c) an amount not to exceed seven hundred fifty thousand dollars from the General Fund to the Nebraska Cultural Preservation Endowment Fund on December 31 of 2015 and 2016, (d) an amount not to exceed five hundred thousand dollars from the General Fund to the Nebraska Cultural Preservation Endowment Fund on December 31 of 2019 and 2020, and (e) an amount not to exceed one million dollars from the General Fund to the Nebraska Cultural Preservation Endowment Fund annually on December 31 beginning in 2021 and continuing through December 31, 2030.

(3) Prior to the transfer of funds from any state account into the Nebraska Cultural Preservation Endowment Fund, the Nebraska Arts Council shall provide documentation to the budget division of the Department of Administrative Services that qualified endowments have generated a dollar-for-dollar match of new money, up to the amount of state funds authorized by the Legislature to be transferred to the Nebraska Cultural Preservation Endowment Fund. For purposes of this section, new money means a contribution to a qualified endowment generated after July 1, 2011. Contributions not fully matched by state funds shall be carried forward to succeeding years and remain available to provide a dollar-for-dollar match for state funds. For an endowment to be a qualified endowment (a) the endowment must meet the standards set by the Nebraska Arts Council or Nebraska Humanities Council, (b) the endowment must be intended for long-term stabilization of the organization, and (c) the funds of the endowment must be endowed and only the earnings thereon expended. The budget division of the Department of Administrative Services shall notify the State Treasurer to execute a transfer of state funds up to the amount specified by the Legislature, but only to the extent that the Nebraska Arts Council has provided documentation of a dollar-for-dollar match. State funds not transferred shall be carried forward to the succeeding year and be added to the funds authorized for a dollar-for-dollar match during that year.

(4) The Legislature shall not appropriate or transfer money from the Nebraska Cultural Preservation Endowment Fund for any purpose other than the purposes stated in sections 82-330 to 82-333, except that the Legislature may appropriate or transfer money from the fund upon a finding that the purposes of such sections are not being accomplished by the fund.

(5) Any money in the Nebraska Cultural Preservation Endowment Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(6) All investment earnings from the Nebraska Cultural Preservation Endowment Fund shall be credited to the Nebraska Arts and Humanities Cash Fund.

Source: Laws 1998, LB 799, § 2; Laws 2008, LB1165, § 1; Laws 2009, LB316, § 23; Laws 2010, LB1063, § 3; Laws 2011, LB378, § 30; Laws 2012, LB969, § 11; Laws 2013, LB199, § 39; Laws 2016, LB957, § 12; Laws 2017, LB331, § 55; Laws 2021, LB384, § 15; Laws 2021, LB509, § 20; Laws 2022, LB1012, § 27.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

82-332 Nebraska Arts and Humanities Cash Fund; created; use; investment.

(1) The Nebraska Arts and Humanities Cash Fund is created. The fund shall consist of all funds credited from the Nebraska Cultural Preservation Endowment Fund pursuant to section 82-331. The Nebraska Arts Council shall administer and distribute the Nebraska Arts and Humanities Cash Fund. The Nebraska Arts Council may, through the end of fiscal year 2019-20, use up to thirty thousand dollars annually to defray costs directly related to the administration of sections 82-330 to 82-333. Beginning in fiscal year 2020-21 and each fiscal year thereafter, the Nebraska Arts Council may use from the Nebraska Arts and Humanities Cash Fund an amount equivalent to one-half of one

percent of the balance of the Nebraska Cultural Preservation Endowment Fund to defray costs directly related to the administration of sections 82-330 to 82-333. The annual calculation of the administrative-costs limit shall be carried out in conjunction with the budget division of the Department of Administrative Services. The calculation shall be carried out no later than September 10 of each fiscal year and shall be based upon the balance of the Nebraska Cultural Preservation Endowment Fund as it existed on June 30 of the previous year. Expenditures designated as administrative costs shall not be subject to the private matching fund requirements set forth in subsection (2) of this section.

(2) All disbursements from the Nebraska Arts and Humanities Cash Fund that are to support arts and humanities projects, endowments, or programs shall be matched dollar-for-dollar by sources other than state funds. The match funds shall be new money generated for endowments established by the Nebraska Arts Council or Nebraska Humanities Council or qualified endowments of their constituent organizations, new money generated as a result of seed grants to recipients, or new money generated by the Nebraska Arts Council or Nebraska Humanities Council for arts or humanities education. Matching funds shall also include earnings generated by qualified private endowments formed in accordance with this section. For purposes of this section, new money means a contribution to a qualified endowment generated after July 1, 2011. Contributions not fully matched by state funds shall be carried forward to succeeding years and remain available to provide a dollar-for-dollar match for state funds. For an endowment to be a qualified endowment (a) the endowment must meet the standards set by the Nebraska Arts Council or Nebraska Humanities Council, (b) the endowment must be intended for long-term stabilization of the organization, and (c) the funds of the endowment must be endowed and only the earnings thereon expended. An organization is a constituent organization if it receives funding from the Nebraska Arts Council or Nebraska Humanities Council and is tax exempt under section 501 of the Internal Revenue Code. The match funds required by this section shall not include in-kind contributions. The budget division of the Department of Administrative Services shall approve allotment and disbursement of funds from the Nebraska Arts and Humanities Cash Fund that are governed by this subsection only to the extent the Nebraska Arts Council has provided documentation of the dollar-for-dollar match required by this section. Funds from the Nebraska Arts and Humanities Cash Fund may be used for the purpose of obtaining challenge grants from the National Endowment for the Humanities or the National Endowment for the Arts.

(3) Rules and regulations of the Nebraska Arts Council shall provide that the ultimate use of disbursements from the Nebraska Arts and Humanities Cash Fund authorized under subsection (2) of this section shall be in a ratio of seventy percent to projects, endowments, or programs designated by the Nebraska Arts Council and thirty percent to projects, endowments, or programs designated by the Nebraska Humanities Council.

(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 1998, LB 799, § 3; Laws 2009, LB316, § 24; Laws 2012, LB969, § 12; Laws 2013, LB199, § 40; Laws 2020, LB780, § 3.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

82-333 Nebraska Arts and Humanities Cash Fund; report.

The Nebraska Arts Council shall report to the Clerk of the Legislature and Director of Administrative Services annually regarding disbursements from the Nebraska Arts and Humanities Cash Fund. The report submitted to the Clerk of the Legislature shall be submitted electronically. The report shall include a complete listing of the uses of the fund, the sources of funding used to match state funds, the amount of investment earnings credited to the Nebraska Arts and Humanities Cash Fund, and the balance of the Nebraska Arts and Humanities Cash Fund. The report shall cover the period July 1 through June 30 and shall be submitted no later than November 1 of each year.

Source: Laws 1998, LB 799, § 4; Laws 2012, LB782, § 216.

82-334 Support the Arts Cash Fund; created; use; investment.

(1) The Support the Arts Cash Fund is created. The fund shall consist of all money credited to the fund pursuant to section 60-3,252 and all money transferred to the fund pursuant to section 13-3108.

(2) The Nebraska Arts Council shall administer and distribute the Support the Arts Cash Fund. The fund shall be expended by the Nebraska Arts Council (a) to provide aid to communities that designate a focus area of the city or village for arts and cultural development, (b) to provide money for a competitive grant program that awards a grant to any creative district that meets the criteria for the competitive grant, if such program exists, (c) to provide money for the competitive grant program for cities of the first class, cities of the second class, and villages described in section 82-335, and (d) to defray costs directly related to the administration of the fund.

(3) All money transferred to the fund pursuant to section 13-3108 shall be used for the competitive grant program for cities of the first class, cities of the second class, and villages described in section 82-335.

(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 2020, LB944, § 90; Laws 2021, LB39, § 9; Laws 2023, LB727, § 104.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

82-335 Competitive grant program; eligibility for grant; priority; purpose; amount.

(1) The Nebraska Arts Council shall establish a competitive grant program to award grants to cities of the first class, cities of the second class, and villages as provided in this section. The grants shall be awarded from funds transferred to the Support the Arts Cash Fund pursuant to subdivision (9)(a) of section 13-3108.

(2) A city of the first class, city of the second class, or village is eligible for a grant under this section if:

(a) The city or village has a creative district within its boundaries that has a ten-year plan for integration of the arts intended to catalyze economic and workforce development initiatives in such city or village; and

(b) The city or village is not receiving state assistance under the Sports Arena Facility Financing Assistance Act.

(3) Priority in grant funding shall go to any city of the first class, city of the second class, or village described in subsection (2) of this section whose project includes the partnership of a city or village convention and visitors bureau or county convention and visitors bureau.

(4) Grants under this section may fund capital assets, video projection mapping, intangible video or audio artistic expression presentations, planning expenses, architectural expenses, engineering expenses, live performances, and promotional or marketing efforts of the creative district. Grants shall not fund ongoing operational and personnel expenses of a political subdivision or nonprofit corporation, legal expenses, or lobbying expenses.

(5) Any assets acquired using grant funds shall be owned by the city of the first class, city of the second class, or village receiving such grant.

(6) Any grant awarded under this section shall be in an amount determined by the Nebraska Arts Council, which shall not be less than one hundred thousand dollars.

(7) For purposes of this section, creative district means a creative district established pursuant to subdivision (5) of section 82-312.

Source: Laws 2021, LB39, § 10; Laws 2023, LB727, § 105; Laws 2024, LB1197, § 7.
Effective date July 19, 2024.

Cross References

Sports Arena Facility Financing Assistance Act, see section 13-3101.

ARTICLE 4

NEBRASKA ART COLLECTION ACT

Section

- 82-401. Act, how cited.
- 82-402. Sections; purposes.
- 82-403. Terms, defined.
- 82-404. Nebraska Art Collection; program; how administered.
- 82-405. Nebraska Art Collection; composition.
- 82-406. Nebraska Art Collection; displayed; where; manner.
- 82-407. Acceptance of donations or loans; procedures.
- 82-408. Aid or grants; powers.

82-401 Act, how cited.

Sections 82-401 to 82-408 shall be known and may be cited as the Nebraska Art Collection Act.

Source: Laws 1979, LB 116, § 1.

82-402 Sections; purposes.

The purpose of sections 82-401 to 82-408 is to assist and encourage the artistic creations of Nebraska artists through the purchase and display of works

of art, to beautify public places by increasing the availability of works of art for exhibition, and to foster appreciation and understanding of art by making it more accessible to the public.

Source: Laws 1979, LB 116, § 2.

82-403 Terms, defined.

As used in sections 82-401 to 82-408, unless the context otherwise requires:

(1) Art shall mean the conscious use of skill, taste, and creative imagination in the production of aesthetic objects and may include sculpture, painting, photography, prints, tapestries, weavings, film, videotape, folk arts and crafts, graphic design, pottery, architectural sketches, and other items considered to be art; and

(2) Nebraska artists shall mean artists born in Nebraska, artists who have worked in or received a portion of their training in Nebraska, or artists living in Nebraska at the time of purchase of their works of art.

Source: Laws 1979, LB 116, § 3.

82-404 Nebraska Art Collection; program; how administered.

The Board of Regents of the University of Nebraska may establish a Nebraska Art Collection program at the University of Nebraska at Kearney. The Nebraska Art Collection shall be administered by the Board of Regents and the chief administrative officer of the University of Nebraska at Kearney. The Board of Regents shall designate a curator for the collection. The Board of Regents shall appoint any advisory committees it deems necessary to aid in the administration of the art collection.

Source: Laws 1979, LB 116, § 4; Laws 1989, LB 247, § 14.

82-405 Nebraska Art Collection; composition.

The collection shall be one that is representative of various mediums, styles, and periods of Nebraska artists and shall be representative of Nebraska's ethnic, racial minority, and cultural groups.

Source: Laws 1979, LB 116, § 5.

82-406 Nebraska Art Collection; displayed; where; manner.

Art collected under sections 82-401 to 82-408 may be displayed in museums, government buildings, schools, hospitals, libraries, public malls, community theaters, colleges and universities, state and county fairs, city halls, county courthouses, and other public places. It may be placed on temporary loan or displayed through traveling displays. Efforts should be made to display the art as widely throughout the state as possible in places where it is accessible to the public.

Source: Laws 1979, LB 116, § 6.

82-407 Acceptance of donations or loans; procedures.

The Board of Regents of the University of Nebraska and the chief administrative officer of the University of Nebraska at Kearney shall approve procedures

for the acceptance of donations or loans of art that meet the criteria of the Nebraska Art Collection Act.

Source: Laws 1979, LB 116, § 7; Laws 1989, LB 247, § 15.

82-408 Aid or grants; powers.

The Board of Regents of the University of Nebraska and the chief administrative officer of the University of Nebraska at Kearney, through the curator, may apply for and receive aid or grants from state sources, private foundations, local art organizations, or the federal government.

Source: Laws 1979, LB 116, § 8; Laws 1989, LB 247, § 16.

ARTICLE 5

NEBRASKA ARCHAEOLOGICAL RESOURCES PRESERVATION ACT

Section

- 82-501. Act, how cited.
- 82-502. Legislative findings and declarations.
- 82-503. Terms, defined.
- 82-504. State Archaeology Office; created; powers; State Archaeologist; qualifications.
- 82-505. State or state-funded undertaking; notice required; exemption from act; act, how construed.
- 82-506. Funds, property, and services; acceptance and use.
- 82-507. Public land; prohibited acts; penalty; temporary restraining order or injunction.
- 82-508. Archaeological resource or archaeological site; prohibited acts; penalty.
- 82-509. Matching funds authorized.
- 82-510. State Archaeology Cash Fund; created; use; investment.

82-501 Act, how cited.

Sections 82-501 to 82-510 shall be known and may be cited as the Nebraska Archaeological Resources Preservation Act.

Source: Laws 2005, LB 211, § 1.

82-502 Legislative findings and declarations.

The Legislature hereby finds and declares that:

- (1) Archaeological sites represent an important public resource embodying the record of our state's cultural heritage;
- (2) The resource base of archaeological sites is being threatened at an increasing rate by agricultural, urban, commercial, transportation, governmental, and industrial development; and
- (3) The rights of private property owners must be maintained even when their property contains archaeological sites or resources.

Source: Laws 2005, LB 211, § 2.

82-503 Terms, defined.

For purposes of the Nebraska Archaeological Resources Preservation Act:

- (1) Archaeological resource means any material object of past human life or activities that is of archaeological interest. Such objects include, but are not limited to, pottery, basketry, bottles, weapons, tools, structures or portions of structures, dwellings, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of such items. Nonfossilized

and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered archaeological resources unless found in an archaeological context. No object shall be treated as an archaeological resource under this subdivision unless such object is determined to be at least fifty years of age;

(2) Archaeological site means a place or location where archaeological resources are found;

(3) Master archaeological site file means the records inventory of all known Nebraska archaeological sites maintained by the Nebraska State Historical Society;

(4) National Register of Historic Places means the register of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture, maintained by the Secretary of the Interior under the authority of the federal Historic Sites, Buildings, and Antiquities Act, 16 U.S.C. 462(b), and the National Historic Preservation Act, 16 U.S.C. 470a(a)(1)(A);

(5) State agency means any division, department, board, bureau, commission, or agency of the State of Nebraska; and

(6) Undertaking means a project, activity, or program funded in whole or in part under the jurisdiction of a state agency.

Source: Laws 2005, LB 211, § 3.

82-504 State Archaeology Office; created; powers; State Archaeologist; qualifications.

(1) There is hereby established the State Archaeology Office which shall be a division within the Nebraska State Historical Society. The purpose of the office shall be to coordinate and encourage appropriate archaeological undertakings and to preserve archaeological resources. The State Archaeology Office may adopt and promulgate rules and regulations to carry out the purposes of the Nebraska Archaeological Resources Preservation Act.

(2) The State Archaeology Office shall be headed by the State Archaeologist. The State Archaeologist shall be a graduate of a recognized college or university with a graduate degree in archaeology or anthropology and shall have sufficient practical experience and knowledge of archaeology to carry out the purposes of the act.

(3) The State Archaeology Office may:

(a) Promote development of archaeological resources for educational, cultural, tourism, and scientific purposes;

(b) Support popular and avocational interest in archaeological resources through field trips, demonstrations, seminars, and excavations throughout the state;

(c) Conduct a program of locating, identifying, quantifying, and assessing the significance of the state's archaeological resources;

(d) Maintain the master archaeological site file;

(e) Advise state agencies, political subdivisions, nongovernmental organizations, commercial and business interests, private property owners, individuals, and others as to the provisions and requirements of the act;

- (f) Serve as the liaison office in transactions dealing with archaeological resources between state agencies and between the state and the federal government;
- (g) Cooperate with state agencies and others in overseeing the execution of undertakings required by the act;
- (h) Serve as the liaison office between state agencies and Indian tribes, the Commission on Indian Affairs, or other constituent groups culturally affiliated with archaeological sites involved in undertakings;
- (i) Maintain a list of archaeologists qualified to conduct research projects required by the act;
- (j) Maintain a permanent repository and electronic database of published and unpublished sources on the archaeological resources of the state;
- (k) Prepare, publish, and distribute for professional use and public education reports, bulletins, pamphlets, maps, and other products necessary to achieve the purposes of the act;
- (l) Implement a program of emergency salvage archaeology, which includes surveys and either salvage or preservation of archaeological resources imperiled by development activities or natural forces;
- (m) Administer and manage grants, bequests, devises, tax incentives, and easements of property to the state for the purposes of preserving archaeological sites and resources;
- (n) Ensure the long-term curation and management of collections and records resulting from undertakings within the state;
- (o) Identify properties included in the National Register of Historic Places that are endangered, and coordinate or facilitate the purchase and maintenance of such properties by other public or private agencies in order to preserve archaeological sites or resources located on the properties; and
- (p) Conduct all other activities necessary to carry out the purposes of the act.

Source: Laws 2005, LB 211, § 4.

82-505 State or state-funded undertaking; notice required; exemption from act; act, how construed.

(1) Except as provided in subsection (2) of this section, the head of any state agency having jurisdiction over a proposed state or state-funded undertaking, which has potential to affect archaeological resources or sites, shall, prior to the approval of the expenditure of any state funds on the undertaking, notify the State Archaeology Office of the undertaking and cooperate with the office to identify and develop measures to mitigate the effect of the undertaking on any archaeological site or resource that is included in or eligible for inclusion in the National Register of Historic Places.

(2) The Department of Transportation shall be exempt from the provisions of the Nebraska Archaeological Resources Preservation Act as long as a cooperative agreement exists between the Department of Transportation and the Nebraska State Historical Society which ensures that all highway construction projects meet federal historic preservation legislation and regulations, and such federal preservation legislation and regulations fulfill or exceed the objectives and standards of the act.

(3) Nothing in the Nebraska Archaeological Resources Preservation Act shall be construed to abridge the rights of private property owners and in no case shall a private property owner be required to pay for activities undertaken by the State Archaeology Office.

Source: Laws 2005, LB 211, § 5; Laws 2017, LB339, § 293.

82-506 Funds, property, and services; acceptance and use.

The State Archaeology Office may accept, use, disburse, and administer all funds or other property, services, and money allotted to it for purposes of the Nebraska Archaeological Resources Preservation Act and may prescribe the conditions under which such funds, property, services, or money will be accepted and administered.

Source: Laws 2005, LB 211, § 6.

82-507 Public land; prohibited acts; penalty; temporary restraining order or injunction.

(1) Any person who knowingly and willfully appropriates, excavates, injures, or destroys any archaeological resource on public land without written permission from the State Archaeology Office is guilty of a Class III misdemeanor.

(2) When the State Archaeology Office has cause to believe that a person has engaged in or is engaging in any unlawful conduct prescribed in this section, it may apply for and obtain, in an action in the appropriate district court of this state, a temporary restraining order or injunction, or both, pursuant to the Nebraska rules of civil procedure prohibiting such person from continuing such practices, or engaging therein, or doing any act in furtherance thereof.

Source: Laws 2005, LB 211, § 7.

82-508 Archaeological resource or archaeological site; prohibited acts; penalty.

No person shall 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. Any person committing such act is guilty of a Class III misdemeanor.

Source: Laws 2005, LB 211, § 8.

82-509 Matching funds authorized.

The Nebraska State Historical Society may use General Fund appropriations to match other funds, grants, or money received to carry out the Nebraska Archaeological Resources Preservation Act.

Source: Laws 2005, LB 211, § 9.

82-510 State Archaeology Cash Fund; created; use; investment.

The State Archaeology Cash Fund is hereby created. The fund may be used to carry out the purposes of the Nebraska Archaeological Resources Preservation 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 2005, LB 211, § 10.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 6

NEBRASKA AGRITOURISM PROMOTION ACT

Section

- 82-601. Act, how cited.
- 82-602. Purposes of act.
- 82-603. Terms, defined.
- 82-604. Owner; liability for injury, death, or damages; limitation on action; exception.
- 82-605. Liability of owner.
- 82-606. Participant; owner duties; warning notice; contents.
- 82-607. Participant; duty to exercise due care.

82-601 Act, how cited.

Sections 82-601 to 82-607 shall be known and may be cited as the Nebraska Agritourism Promotion Act.

Source: Laws 2015, LB329, § 1.

82-602 Purposes of act.

The purposes of the Nebraska Agritourism Promotion Act are to:

- (1) Promote tourism and rural economic development by encouraging owners of farms, ranches, and other rural land, including agricultural, historical, ecological, cultural, and natural attractions, to allow access to members of the public for educational, entertainment, and recreational purposes;
- (2) Promote a better understanding by visitors of agricultural operations and features, including the production of livestock and agricultural products, the land and other natural attributes, and wildlife; and
- (3) Encourage agritourism activities by limiting civil liability of owners of farms, ranches, and other rural land.

Source: Laws 2015, LB329, § 2.

82-603 Terms, defined.

For purposes of the Nebraska Agritourism Promotion Act:

- (1) Agritourism activities include any one or any combination of the following: Hunting, fishing, swimming, boating, canoeing, kayaking, tubing, water sports, camping, picnicking, hiking, backpacking, bicycling, horseback riding, nature study, birding, farm, ranch, and vineyard tours and activities, harvest-your-own activities, waterskiing, snow-shoeing, cross-country skiing, visiting and viewing historical, ecological, archaeological, scenic, or scientific sites, and similar activities;
- (2) Fee means the amount of money asked in return for an invitation or permission to enter the premises;
- (3) Inherent risks means those conditions, dangers, or hazards that are an integral part of land or waters used for agritourism activities, including the following:
 - (a) Surface and subsurface conditions and natural conditions of land, vegetation, and waters;

- (b) The behavior of wild or domestic animals;
 - (c) The ordinary dangers of structures or equipment ordinarily used in farming or ranching operations when such structures or equipment are used for farming or ranching purposes; and
 - (d) The potential of a participant to act in a negligent way that may contribute to injury to the participant or others whether by failing to follow safety procedures or failing to act with reasonable caution while engaging in an agritourism activity;
- (4) Owner includes any person who is a tenant, lessee, occupant, or person in control of the premises or any agent of such a person whose gross annual income from agritourism activities does not exceed five hundred thousand dollars;
- (5) Participant means an individual who engages in agritourism activities on premises owned by another but does not include an owner of the premises or any agent, employee, or contractor of the owner;
- (6) Person means an individual, corporation, limited liability company, partnership, unincorporated association, or other legal or commercial entity and does not include a governmental entity or political subdivision; and
- (7) Premises includes land, roads, pathways, trails, water, watercourses, private ways, and buildings and structures attached to the land outside of cities and villages and does not include land zoned commercial, industrial, or residential.

Source: Laws 2015, LB329, § 3.

82-604 Owner; liability for injury, death, or damages; limitation on action; exception.

- (1) Except as provided in section 82-605, an owner who allows a participant on the owner's premises for agritourism activities shall not be liable for injury to or death of the participant or damage to the participant's property resulting from an inherent risk on the owner's premises.
- (2) Except as provided in section 82-605, no participant or participant's representative shall maintain an action against or recover for injury to or death of the participant or damage to the participant's property resulting from an inherent risk on the owner's premises when such owner allows the participant on the owner's premises for agritourism activities.

Source: Laws 2015, LB329, § 4.

82-605 Liability of owner.

Nothing in the Nebraska Agritourism Promotion Act limits any liability of an owner:

- (1) Who fails to exercise reasonable care to protect against the particular dangers of structures or equipment used or kept on the owner's premises;
- (2) Who has actual knowledge of a particular dangerous condition on the owner's premises and does not make the particular danger known to the participant if the particular danger is a proximate cause of injury to or death of the participant or damage to the participant's property;
- (3) Who reasonably should have known of a particular dangerous condition of equipment used or kept on the owner's premises and does not make the

particular danger known to the participant if the particular danger is a proximate cause of injury to or death of the participant or damage to the participant's property;

(4) Who fails to properly train or supervise or improperly or inadequately trains or supervises employees who are actively involved in agritourism activities and an act or omission of the employee resulting from improper or inadequate training or supervision is a proximate cause of injury to or death of the participant or damage to the participant's property; or

(5) Who commits an act or omission that is a proximate cause of injury to or the death of the participant or damage to the participant's property if the act or omission:

- (a) Constitutes willful or wanton disregard for the safety of the participant;
- (b) Constitutes gross negligence;
- (c) Was intentional;
- (d) Did not constitute an inherent risk;
- (e) Occurred while the owner or the owner's employees were under the influence of alcohol or illegal drugs; or
- (f) Would otherwise be a violation of any other statute or rule or regulation of the State of Nebraska, a state regulatory body, or a political subdivision.

Source: Laws 2015, LB329, § 5.

82-606 Participant; owner duties; warning notice; contents.

(1) Nothing in section 82-604 limits any liability of an owner who receives a fee for allowing a participant on the premises if the owner fails to do at least one of the following:

- (a) Post and maintain signage containing the warning as described in subsection (2) of this section in a clearly visible and conspicuous location at or near the entrance to the property used for agritourism activities; or
- (b) Include the warning as described in subsection (2) of this section in any written contract between the owner of the property and each participant allowed on the premises for a fee. Such warning shall be in a conspicuous location within the contract and be written in not less than twelve-point boldface type.

(2) The warning notice shall read as follows: WARNING - Under Nebraska law, an owner of property, including lands and waters, is not liable for the injury to or death of the participant in agritourism activities or damage to the participant's property resulting from the inherent risks of such activities. Inherent risks include, without limitation, the risk of animals and land and water conditions, the ordinary dangers of structures or equipment ordinarily used in farming or ranching operations, and the potential for you or another participant to act in a negligent manner that may contribute to your own injury or death. You are assuming the risk of participating in the agritourism activities for which you are entering the owner's premises.

Source: Laws 2015, LB329, § 6.

82-607 Participant; duty to exercise due care.

Nothing in the Nebraska Agritourism Promotion Act limits the obligation of a participant entering upon or using premises of another for agritourism activi-

ties to exercise due care in his or her use of such premises and in his or her agritourism activities on the premises.

Source: Laws 2015, LB329, § 7.

ARTICLE 7

NATIONAL STATUARY HALL OF THE UNITED STATES CAPITOL

Section

- 82-701. Legislative findings and declarations.
- 82-702. Replacement of Julius Sterling Morton statue; Secretary of State; duties.
- 82-703. Willa Cather National Statuary Hall Selection Committee; created; members; duties; powers.
- 82-704. Willa Cather National Statuary Hall Cash Fund; created; use; investment.
- 82-705. Replacement of William Jennings Bryan statue; Secretary of State; duties.
- 82-706. Chief Standing Bear National Statuary Hall Selection Committee; created; members; duties; powers.
- 82-707. Chief Standing Bear National Statuary Hall Cash Fund; created; use; investment.

82-701 Legislative findings and declarations.

The Legislature finds and declares:

(1) In 1864, the United States Congress established the National Statuary Hall Collection in the Old Hall of the House of Representatives in the United States Capitol and authorized each state to contribute to the hall collection two statues that represent important historical figures of each state;

(2) Nebraska currently has on display in the National Statuary Hall Collection statues of William Jennings Bryan and Julius Sterling Morton given by the State of Nebraska in 1937;

(3) In 2000, the United States Congress enacted legislation authorizing states to request that the Joint Committee on the Library of Congress approve the replacement of statues the state had provided for display in the hall collection;

(4)(a) Willa Cather is a significant historical and literary figure from Red Cloud, Nebraska;

(b) Willa Cather immortalized Nebraska in such works as *My Antonia* and *O Pioneers!*;

(c) Willa Cather won the 1923 Pulitzer Prize for her novel *One of Ours*; and

(d) Willa Cather is worthy of recognition in the National Statuary Hall; and

(5)(a) Ponca Chief Standing Bear is a significant historical and civil rights figure from Nebraska's Niobrara River Valley region;

(b) Chief Standing Bear's epic return to his Nebraska homeland to bury his son culminated in the historic court case, *United States ex rel. Crook v. Standing Bear*, which took place in Omaha, Nebraska, in May 1879;

(c) The court case set the historic precedent that Chief Standing Bear, as a Native American individual, was found to be a person under the law; and

(d) Chief Standing Bear is worthy of recognition in the National Statuary Hall.

Source: Laws 2018, LB807, § 1.

82-702 Replacement of Julius Sterling Morton statue; Secretary of State; duties.

The Secretary of State shall submit to the United States Architect of the Capitol for his or her review for completeness a written request to approve the replacement of the statue of Julius Sterling Morton currently on display in the National Statuary Hall Collection in the United States Capitol with a statue of Willa Cather. The written request shall request authorization to provide a new statue, a description of the location in Nebraska where the replaced statue will be displayed after it is transferred, and a copy of the Nebraska statute authorizing such replacement. After such review, it is the intent of the Legislature that the architect forward the request to the Joint Committee on the Library of Congress for its approval or denial. If the request is approved by the committee, the architect and the Willa Cather National Statuary Hall Selection Committee created pursuant to section 82-703, acting on behalf of the State of Nebraska, shall enter into an agreement as provided in 2 U.S.C. 2132(b).

Source: Laws 2018, LB807, § 2.

82-703 Willa Cather National Statuary Hall Selection Committee; created; members; duties; powers.

(1) The Willa Cather National Statuary Hall Selection Committee is created. The committee shall consist of members of the Nebraska Hall of Fame Commission created pursuant to section 72-724.

(2) Upon approval by the Joint Committee on the Library of Congress and pursuant to the agreement described in section 82-702, the Willa Cather National Statuary Hall Selection Committee shall:

(a) Select a sculptor to create a statue of Willa Cather to be placed in the National Statuary Hall and review and approve the plans for the statue; and

(b) Identify a method to obtain necessary funding to pay for all of the following. All funds shall be privately donated and separately managed. No state funds shall be expended for such purposes:

(i) The sculptor for designing and carving or casting the statue;

(ii) The design and fabrication of the pedestal;

(iii) The transportation of the statue and pedestal to the United States Capitol;

(iv) The removal and transportation of the replaced statue;

(v) The temporary placement of the new statue in the Rotunda of the United States Capitol for the unveiling ceremony;

(vi) The unveiling ceremony; and

(vii) Any other expenses that the committee determines are necessary to incur.

(3) The committee has the authority to receive and disburse gifts.

(4) The committee shall execute the requirements of this section no later than June 30, 2023.

Source: Laws 2018, LB807, § 3.

82-704 Willa Cather National Statuary Hall Cash Fund; created; use; investment.

The Willa Cather National Statuary Hall Cash Fund is created. The fund shall be administered by the Nebraska State Historical Society. The fund shall consist of privately donated funds pursuant to subdivision (2)(b) of section

82-703. 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 2018, LB807, § 4.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

82-705 Replacement of William Jennings Bryan statue; Secretary of State; duties.

The Secretary of State shall submit to the United States Architect of the Capitol for his or her review for completeness a written request to approve the replacement of the statue of William Jennings Bryan currently on display in the National Statuary Hall Collection in the United States Capitol with a statue of Ponca Chief Standing Bear. The written request shall request authorization to provide a new statue, a description of the location in Nebraska where the replaced statue will be displayed after it is transferred, and a copy of the Nebraska statute authorizing such replacement. After such review, it is the intent of the Legislature that the architect forward the request to the Joint Committee on the Library of Congress for its approval or denial. If the request is approved by the committee, the architect and the Chief Standing Bear National Statuary Hall Selection Committee created pursuant to section 82-706, acting on behalf of the State of Nebraska, shall enter into an agreement as provided in 2 U.S.C. 2132(b).

Source: Laws 2018, LB807, § 5.

82-706 Chief Standing Bear National Statuary Hall Selection Committee; created; members; duties; powers.

(1) The Chief Standing Bear National Statuary Hall Selection Committee is created. The committee shall consist of (a) a representative of the Commission on Indian Affairs, selected by the chairperson of the commission, (b) a member of the State-Tribal Relations Committee of the Legislature, selected by the chairperson of the committee, (c) the chairperson of the Lincoln Partners for Public Art Development or its successor, and (d) the Historic Preservation Planner of the City of Lincoln.

(2) Upon approval by the Joint Committee on the Library of Congress and pursuant to the agreement described in section 82-705, the Chief Standing Bear National Statuary Hall Selection Committee may:

(a) Select a sculptor to create a statue of Chief Standing Bear to be placed in the National Statuary Hall and review and approve the plans for the statue; and

(b) Identify a method to obtain necessary funding to pay for all of the following. All funds shall be privately donated and separately managed. No state funds shall be expended for such purposes:

(i) The sculptor for designing and carving or casting the statue;

(ii) The design and fabrication of the pedestal;

(iii) The transportation of the statue and pedestal to the United States Capitol;

(iv) The removal and transportation of the replaced statue;

(v) The temporary placement of the new statue in the Rotunda of the United States Capitol for the unveiling ceremony;

(vi) The unveiling ceremony; and

(vii) Any other expenses that the committee determines are necessary to incur.

(3) The committee has the authority to receive and disburse gifts.

(4) The committee shall execute the requirements of this section no later than June 30, 2023.

Source: Laws 2018, LB807, § 6.

82-707 Chief Standing Bear National Statuary Hall Cash Fund; created; use; investment.

The Chief Standing Bear National Statuary Hall Cash Fund is created. The fund shall be administered by the Commission on Indian Affairs. The fund shall consist of privately donated funds pursuant to subdivision (2)(b) of section 82-706. 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 2018, LB807, § 7.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 8

FIRST REGIMENT NEBRASKA VOLUNTEER INFANTRY

Section

82-801. Legislative findings.

82-802. Fort Donelson National Battlefield; placement of monument; request for approval and authorization; agreement.

82-803. First Regiment Nebraska Volunteer Infantry at Fort Donelson Committee; created; purpose; members; meetings; duties; vacancy; report; termination.

82-804. First Regiment Nebraska Volunteer Infantry at Fort Donelson Committee; purpose; funding.

82-801 Legislative findings.

The Legislature finds that:

(1) In February 1862, the Battle of Fort Donelson was fought in the woods of northwestern Tennessee. On February 13, Brigadier General Ulysses S. Grant's Union army laid siege to Confederate fortifications surrounding the town of Dover, fortifications that guarded the vital Cumberland River route to Nashville. Bottled up in their trenches were thousands of Confederate defenders;

(2) Grant's army had failed to break the Confederate lines during brutal fighting on February 13. The next day, February 14, Union gunboats on the Cumberland River were repulsed by Confederate cannon firing from the shore. In the meantime, Union reinforcements reached the battlefield, including the First Regiment Nebraska Volunteer Infantry. That night, while both armies slept fitfully and snow fell upon the camps, Confederate generals hatched a plan for their army to break out of encirclement and to escape to open countryside. The First Nebraska would help ensure that the Confederate army

would not escape, and made an important contribution to the first decisive Union victory of the Civil War;

(3) At dawn on February 15, the Confederates assaulted the Union army's right and forced the blue-clad soldiers into headlong retreat. By mid-morning, the Union line had been broken. Just as the Confederates seemed poised on the brink of victory, Brigadier General Lew Wallace ordered up the First Nebraska, several Illinois and Ohio regiments, and two cannon batteries to block the Confederates' decisive attack. When the attack came, reported Private Thomas Keen, the First Nebraska soldiers "kept up a terrible fire on them" for three quarters of an hour and the enemy withdrew in confusion. The Nebraskans' performance in their first battle drew General Wallace's praise: "The (First Nebraska) met the storm, no man flinching, and their fire was terrible. To say they did well is not enough. Their conduct was splendid. They alone repelled the charge.";

(4) After the Confederate attack had been turned back, Grant ordered Union troops at the other end of his line to charge enemy trenches from which troops had been withdrawn to join the morning breakout. This charge captured part of the Confederate lines, giving the Union army the upper hand. The next morning, the Confederates surrendered, netting Grant a dramatic victory along with an estimated sixteen to seventeen thousand rebel soldiers as prisoners of war. General Grant earned his moniker "Unconditional Surrender" Grant from this battle;

(5) Civil War historian Bruce Catton called the Battle of Fort Donelson "one of the most decisive engagements of the entire war." It was a devastating blow to the Confederate strategic position in the western theater, and Nashville soon became the first rebel state capital to fall to Union forces. Moreover, Grant's success at Fort Donelson brought him to national attention. He would go on to command all Union armies by 1864; and

(6) Nebraskans can be proud of their regiment's role in this pivotal Civil War battle. The members of the First Nebraska deserve a monument at the battlefield commemorating their actions.

Source: Laws 2020, LB850, § 1.

82-802 Fort Donelson National Battlefield; placement of monument; request for approval and authorization; agreement.

The Secretary of State shall submit to the United States Secretary of the Interior, as administrator of the Fort Donelson National Battlefield pursuant to 16 U.S.C. 428f and 428o, or the superintendent under 16 U.S.C. 428f, as such sections existed on January 1, 2020, for his or her review, a written request to approve and authorize the placing of a monument within the boundaries of the Fort Donelson National Battlefield as such boundaries are set forth in 16 U.S.C. 428p, as such section existed on January 1, 2020, commemorating the First Regiment Nebraska Volunteer Infantry in the Union victory at the Battle of Fort Donelson. If the request is approved and authorized by the Secretary of the Interior or the superintendent, as applicable, the secretary or superintendent and the First Regiment Nebraska Volunteer Infantry at Fort Donelson Committee, created pursuant to section 82-803, acting on behalf of the State of Nebraska, shall enter into an agreement for placement of the monument.

Source: Laws 2020, LB850, § 2.

82-803 First Regiment Nebraska Volunteer Infantry at Fort Donelson Committee; created; purpose; members; meetings; duties; vacancy; report; termination.

(1) The First Regiment Nebraska Volunteer Infantry at Fort Donelson Committee is created. The purpose of the committee is to provide for the creation, production, transportation, installation, and unveiling of the monument. The committee shall consist of: An employee of the Nebraska State Historical Society appointed by the Secretary of State; two members of the public who are members of a local Civil War round table organization appointed by the Secretary of State; a professor of history from the University of Nebraska appointed by the Secretary of State; and, as a nonvoting, ex officio member, the Chairperson of the Government, Military and Veterans Affairs Committee of the Legislature or his or her designee.

(2) The members of the committee shall elect a chairperson and vice-chairperson from among its appointed members during the first meeting. A member may be reelected to serve as chairperson or vice-chairperson. The committee shall meet at least twice each calendar year. A majority of the members of the committee shall constitute a quorum.

(3) The committee may conduct its meetings by virtual conferencing as defined in section 84-1409, if practicable.

(4) The First Regiment Nebraska Volunteer Infantry at Fort Donelson Committee shall, in conformance with regulations of the Fort Donelson National Battlefield:

(a) Select a designer, sculptor, and mason, as appropriate, to create a monument and approve the design of the monument;

(b) Approve the production of the monument;

(c) Approve the method of transportation of the monument to the battlefield and its installation;

(d) Approve the unveiling ceremony for the monument; and

(e) Approve any other action the committee determines is necessary to achieve its purpose.

(5) If there is a vacancy on the committee, the Secretary of State shall fill such vacancy by appointing a member to serve during the unexpired term of the member whose office has become vacant.

(6) Members of the committee shall not be paid.

(7) The committee shall issue electronically a report to the Government, Military and Veterans Affairs Committee of the Legislature on the progress of the creation, production, and installation of the monument and any other information the committee deems necessary before December 31 of each year.

(8) The committee shall terminate upon the completion of its purpose.

Source: Laws 2020, LB850, § 3; Laws 2021, LB35, § 1; Laws 2021, LB83, § 10.

82-804 First Regiment Nebraska Volunteer Infantry at Fort Donelson Committee; purpose; funding.

The purpose of the First Regiment Nebraska Volunteer Infantry at Fort Donelson Committee shall be funded by gifts, grants, bequests, donations, and other privately donated funds and administered by a private foundation. No

general funds of the state shall be expended for the purpose of sections 82-801 to 82-804.

Source: Laws 2020, LB850, § 4.

ARTICLE 9

DAYS RECOGNIZED BY THE STATE

Section

82-901. Indigenous Peoples' Day and Columbus Day.

82-902. Nebraska Missing Persons Day.

82-903. El-Hajj Malik El-Shabazz, Malcolm X Day.

82-901 Indigenous Peoples' Day and Columbus Day.

The second Monday in October of each year shall be Indigenous Peoples' Day and Columbus Day and shall be set apart to recognize the historic, cultural, and contemporary significance of the people indigenous to the lands that are now known as the Americas, including Nebraska, and the many contributions of such people.

Source: Laws 2020, LB848, § 1.

82-902 Nebraska Missing Persons Day.

October 17 of each year shall be recognized as Nebraska Missing Persons Day. Nebraska Missing Persons Day is observed not only for the missing people, but also for their families and friends who deal with the trauma of having their loved one go missing without a trace. This day respects and honors their grief.

Source: Laws 2024, LB1102, § 1.

Effective date July 19, 2024.

82-903 El-Hajj Malik El-Shabazz, Malcolm X Day.

May 19 of each year shall be recognized as El-Hajj Malik El-Shabazz, Malcolm X Day, and shall be set apart for holding suitable exercises in the schools of the state in recognition of the sacrifices of the late Nebraska Hall of Fame inductee El-Hajj Malik El-Shabazz, Malcolm X and his contributions to the betterment of society.

Source: Laws 2024, LB1102, § 2.

Effective date July 19, 2024.

CHAPTER 83

STATE INSTITUTIONS

Article.

1. Management.
 - (a) General Provisions. 83-101 to 83-123.01.
 - (b) Officers and Employees. 83-124 to 83-133.
 - (c) Property and Supplies. 83-134 to 83-156.
 - (d) Sale of Real Estate. 83-157, 83-158. Repealed.
 - (e) Alcoholism, Drug Abuse, and Addiction Services Act. 83-158.01 to 83-169. Transferred or Repealed.
 - (f) Correctional Services, Parole, and Pardons. 83-170 to 83-1,135.05.
 - (g) Division of Juvenile Delinquency. 83-1,136 to 83-1,140. Transferred.
 - (h) Mental Retardation. 83-1,141 to 83-1,146.
 - (i) Division of Medical Services. 83-1,147 to 83-1,152. Transferred or Repealed.
2. Schools.
 - (a) Vocational Rehabilitation. 83-201 to 83-216. Transferred or Repealed.
 - (b) Beatrice State Developmental Center. 83-217 to 83-238.
 - (c) Home for Children. 83-239 to 83-245. Transferred or Repealed.
 - (d) Mentally Retarded Children. 83-246, 83-247. Transferred.
3. Hospitals.
 - (a) Nebraska Orthopedic Hospital. 83-301 to 83-304.01. Repealed.
 - (b) State Hospitals for the Mentally Ill. 83-305 to 83-360.04.
 - (c) Nebraska Hospital for the Tuberculous. 83-361, 83-362. Repealed.
 - (d) Cost of Patient Care. 83-363 to 83-380.01.
 - (e) Residential Facilities. 83-381 to 83-390.
 - (f) Skilled Nursing Care and Intermediate Care. 83-391 to 83-393.
4. Penal and Correctional Institutions.
 - (a) General Provisions. 83-401 to 83-454.
 - (b) State Reformatory. 83-455 to 83-462. Repealed.
 - (c) Youth Rehabilitation and Treatment Centers. 83-463 to 83-490. Transferred or Repealed.
 - (d) Genoa State Farm. 83-491 to 83-493. Repealed.
 - (e) Central Reception Center. 83-494 to 83-499. Repealed.
 - (f) Youth Diagnostic and Rehabilitation Center. 83-4,100 to 83-4,104.01. Transferred or Repealed.
 - (g) Comprehensive Penal Reform Plan. 83-4,105 to 83-4,108. Repealed.
 - (h) Disciplinary Procedures in Adult Institutions. 83-4,109 to 83-4,123.
 - (i) Jail Standards Board. 83-4,124 to 83-4,134.02.
 - (j) Inmate Grievances. 83-4,135 to 83-4,139.
 - (k) Regimented Inmate Discipline Unit. 83-4,140, 83-4,141. Repealed.
 - (l) Incarceration Work Camps. 83-4,142 to 83-4,147.
 - (m) Substance Abuse Treatment Task Force. 83-4,148 to 83-4,152. Repealed.
 - (n) Nebraska Correctional Health Care Services Act. 83-4,153 to 83-4,165.
5. Sterilization of Inmates of Beatrice State Home. Repealed.
6. Eminent Domain by the State. Transferred or Repealed.
7. Drug Users. Repealed.
8. Interstate Compact on Mental Health. 83-801 to 83-806.
9. Department of Correctional Services.
 - (a) General Provisions. 83-901 to 83-924.01.
 - (b) Office of Juvenile Services. 83-925 to 83-930. Transferred or Repealed.
 - (c) Division of Community-Centered Services. 83-931 to 83-934.
 - (d) Division of Adult Services. 83-935 to 83-941.
 - (e) Division of Administrative Services. 83-942 to 83-944.
 - (f) Criminal Detention Facilities. 83-945 to 83-955. Transferred or Repealed.
 - (g) Transfer of Foreign Offenders. 83-956.
 - (h) Central Warehouse System. 83-957 to 83-959.

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Article.

- (i) Correctional System Overcrowding Emergency Act. 83-960 to 83-963.
- (j) Lethal Injection. 83-964 to 83-972.
- (k) Prison Overcrowding. 83-973.
- (l) National Career Readiness Certificate. 83-974.
- 10. Mental Health Commitment and Release. Transferred or Repealed.
- 11. Persons with Mental Retardation. Repealed.
- 12. Developmental Disabilities Services. 83-1201 to 83-1228.

Cross References

Constitutional provisions:

- Board of Pardons and Board of Parole, see Article IV, section 13, Constitution of Nebraska.
- Corporations under state control for charitable, educational, penal, or reformatory purposes may be created by special laws, see Article XII, section 1, Constitution of Nebraska.
- Required accounts, reports and provision of information, see Article IV, sections 22 and 23, Constitution of Nebraska.
- Schools for reformation of children, Legislature may establish, see Article VII, section 12, Constitution of Nebraska.

ARTICLE 1

MANAGEMENT

Cross References

For other provisions relating to state agencies, see Chapter 81, article 1.

(a) GENERAL PROVISIONS

Section

- 83-101. Repealed. Laws 2020, LB1188, § 21.
- 83-101.01. Repealed. Laws 1996, LB 1044, § 985.
- 83-101.02. Repealed. Laws 1996, LB 1044, § 985.
- 83-101.03. Repealed. Laws 1996, LB 1044, § 985.
- 83-101.04. Repealed. Laws 1996, LB 1044, § 985.
- 83-101.05. Repealed. Laws 1996, LB 1044, § 985.
- 83-101.06. Department of Health and Human Services; duties.
- 83-101.07. Repealed. Laws 1990, LB 1067, § 2.
- 83-101.08. Coordination of activities; duties.
- 83-101.09. Repealed. Laws 1993, LB 109, § 1.
- 83-101.10. Repealed. Laws 1987, LB 7, § 1.
- 83-101.11. Repealed. Laws 1987, LB 7, § 1.
- 83-101.12. Repealed. Laws 1987, LB 7, § 1.
- 83-101.13. Repealed. Laws 1987, LB 7, § 1.
- 83-101.14. Deaf or hard of hearing persons; access to treatment programs; rules and regulations.
- 83-102. Youth rehabilitation and treatment centers; placement; programming and services provided; accreditation; report.
- 83-103. Authority for daily maintenance, minor repairs, custodial duties, and operations; buildings to which applicable.
- 83-104. State institutions; annual physical review; report.
- 83-104.01. Repealed. Laws 1959, c. 266, § 1.
- 83-105. Youth rehabilitation and treatment centers; grievances; reporting system.
- 83-106. Inpatient adolescent psychiatric unit; needs assessment and cost analysis; contract; report.
- 83-107. Repealed. Laws 1961, c. 416, § 32.
- 83-107.01. Department of Health and Human Services; official names of institutions under supervision; youth rehabilitation and treatment centers; gender separation; requirements; treatment; legislative intent.
- 83-107.02. Repealed. Laws 1972, LB 1253, § 4.
- 83-107.03. Repealed. Laws 1987, LB 8, § 1.
- 83-107.04. Repealed. Laws 1987, LB 8, § 1.
- 83-108. Department of Health and Human Services; institutions controlled.
- 83-108.01. Repealed. Laws 1969, c. 817, § 87.
- 83-108.02. Director of Correctional Services; establish facilities and programs; assignment of prisoners; basis.
- 83-108.03. Repealed. Laws 1987, LB 8, § 1.

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- Section
83-108.04. Department of Health and Human Services; additional facilities for care of children.
83-109. Patients and residents; admission to state institutions; records; to whom accessible; transfers; investigations; appeals.
83-110. Repealed. Laws 1981, LB 545, § 52.
83-111. Department of Health and Human Services; estimated appropriation; suggested improvements.
83-112. Department of Health and Human Services; collection of information; encouragement of scientific study; investigations.
83-113. Department of Health and Human Services; examination of employees; investigation of alleged abuses; report.
83-114. Department of Health and Human Services; investigatory powers; interference with investigation; penalty; privileges of witnesses; contempt.
83-115. Department of Health and Human Services; investigation; legislative committee; powers of committee.
83-116. Department of Health and Human Services; actions at law.
83-117. Repealed. Laws 1961, c. 416, § 32.
83-118. Repealed. Laws 1961, c. 416, § 32.
83-119. Repealed. Laws 1961, c. 416, § 32.
83-120. Repealed. Laws 2000, LB 1115, § 93.
83-121. School District Reimbursement Fund; created; use; investment.
83-122. Repealed. Laws 1971, LB 376, § 7.
83-123. Department of Correctional Services; license plates; materials; Department of Motor Vehicles; duties.
83-123.01. Repealed. Laws 1993, LB 31, § 83.

(b) OFFICERS AND EMPLOYEES

- 83-124. Transferred to section 80-325.
83-125. Repealed. Laws 2007, LB 296, § 815.
83-126. Facilities; chief executive officer; appointment.
83-127. Superintendent of institutional schools; qualifications; powers and duties.
83-128. Officers and employees; bond or insurance.
83-129. Repealed. Laws 1996, LB 1044, § 985.
83-129.01. Repealed. Laws 1999, LB 13, § 1.
83-130. Emergency Revolving Fund; amount; source; accounting.
83-131. Repealed. Laws 1969, c. 817, § 87.
83-132. Repealed. Laws 1961, c. 416, § 32.
83-133. Chief executive officers; excess funds belonging to inmates; investment; use and distribution of income.

(c) PROPERTY AND SUPPLIES

- 83-134. Repealed. Laws 2007, LB 256, § 17.
83-135. Grounds; abutting streets; paving; procedure.
83-136. Paving petitions; power to sign.
83-137. State institutions; adjacent highways; improvement.
83-138. Repealed. Laws 1963, c. 508, § 15.
83-139. Stewards; duties; reports; shortages; default; penalty.
83-140. Supplies for Department of Health and Human Services and Department of Correctional Services; purchase; monthly statement; estimates.
83-141. Repealed. Laws 1957, c. 368, § 7.
83-142. Repealed. Laws 1969, c. 818, § 24.
83-143. Paupers; inmates of public charitable institutions; clothing; county of last residence to furnish.
83-144. Department of Correctional Services-made goods; Department of Health and Human Services and Department of Correctional Services; administrative powers.
83-145. Department of Correctional Services-made goods; use; by whom; exchange of goods with other states; sales authorized.
83-145.01. Department of Correctional Services; sale and production of braille materials; authorized.

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Section	
83-146.	Purchases; Department of Administrative Services; requisition.
83-147.	Director of Administrative Services; Department of Correctional Services-made goods; discretionary powers.
83-148.	Unauthorized vouchers; issuance; effect; malfeasance in office; punishment.
83-149.	Department of Correctional Services-made goods; catalog; estimates of materials required.
83-150.	Correctional Industries Revolving Fund; created; use; investment.
83-151.	Department of Correctional Services-made goods; transportation and sale.
83-152.	Goods made by confined persons; reciprocity.
83-153.	Money or personal property to credit of inmate or patient; claim; time for presentment.
83-154.	Money to credit of inmate or patient; claim; failure to assert; disposition.
83-155.	Personal property to credit of inmate or patient; claim; failure to assert; sale; disposition of money.
83-156.	Money or personal property to credit of inmate or patient; delivery to owner or heirs not prohibited.

(d) SALE OF REAL ESTATE

83-157.	Repealed. Laws 1971, LB 33, § 1.
83-158.	Repealed. Laws 1971, LB 33, § 1.

(e) ALCOHOLISM, DRUG ABUSE, AND ADDICTION SERVICES ACT

83-158.01.	Repealed. Laws 2004, LB 1083, § 149.
83-159.	Repealed. Laws 2004, LB 1083, § 149.
83-160.	Repealed. Laws 2004, LB 1083, § 149.
83-160.01.	Repealed. Laws 1987, LB 9, § 1.
83-161.	Repealed. Laws 1980, LB 684, § 22.
83-161.01.	Repealed. Laws 1986, LB 674, § 9.
83-161.02.	Repealed. Laws 2004, LB 1083, § 149.
83-162.	Repealed. Laws 1980, LB 684, § 22.
83-162.01.	Repealed. Laws 2004, LB 1083, § 149.
83-162.02.	Repealed. Laws 2004, LB 1083, § 149.
83-162.03.	Repealed. Laws 2004, LB 1083, § 149.
83-162.04.	Transferred to section 71-817.
83-162.05.	Repealed. Laws 1997, LB 307, § 236.
83-162.06.	Repealed. Laws 2001, LB 541, § 12.
83-163.	Repealed. Laws 2004, LB 1083, § 149.
83-164.	Repealed. Laws 2004, LB 1083, § 149.
83-165.	Repealed. Laws 2004, LB 1083, § 149.
83-166.	Repealed. Laws 2004, LB 1083, § 149.
83-167.	Repealed. Laws 2004, LB 1083, § 149.
83-168.	Repealed. Laws 2004, LB 1083, § 149.
83-169.	Repealed. Laws 2004, LB 1083, § 149.

(f) CORRECTIONAL SERVICES, PAROLE, AND PARDONS

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 - 83-1,100. Division of Parole Supervision; created; duties; parole officer compensation.
 - 83-1,100.01. Repealed. Laws 2015, LB 1, § 1.
 - 83-1,100.02. Person on parole; levels of supervision; Division of Parole Supervision; duties.
 - 83-1,100.03. Board of Parole; rules and regulations relating to sentencing and supervision; duties; offenders released with no supervision; report; list for placement in community work release and reentry centers.
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- 83-1,103.02. Lifetime community supervision; Division of Parole Supervision; duties; certificate of community supervision; appeal.
- 83-1,103.03. Lifetime community supervision; Division of Parole Supervision; annual review.
- 83-1,103.04. Lifetime community supervision; determination or revision of conditions; appeal; burden of proof.
- 83-1,104. District parole officer; duties.
- 83-1,105. Repealed. Laws 1993, LB 529, § 2.
- 83-1,105.01. Repealed. Laws 2015, LB 268, § 35; Laws 2015, LB 605, § 112; Referendum 2016, No. 426.
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- 83-1,112. Committed offender; eligible for parole; parole plan of offender.
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- 83-1,113. Board of Parole and employees; access to offender; reports on conduct and character.
- 83-1,114. Board; deferment of parole; grounds.
- 83-1,115. Board of Parole; determination regarding committed offender's parole; factors considered.
- 83-1,116. Committed offender; release on parole; conditions of parole.
- 83-1,117. Parolee; conditions of parole.
- 83-1,118. Board; parolee; discharge from parole; when; department; discharge from custody; notice of civil rights.
- 83-1,119. Parolee; violation of parole; parole officer; administrative sanction; report to Board of Parole; action of board.
- 83-1,120. Parolee; violation of parole; hearing.
- 83-1,121. Parolee; legal custody of Board of Parole; action of board.
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- 83-1,122.01. Board of Parole; jurisdiction.
- 83-1,122.02. Technical parole violation residential housing program; pilot program; participants; placement; requirements; report.
- 83-1,123. Parole; revoked; action of Board of Parole.
- 83-1,124. Repealed. Laws 2018, LB841, § 58.
- 83-1,125. Warrant or detainer; Director of Supervision and Services; board; duties.
- 83-1,125.01. Person under jurisdiction of Board of Parole; file; contents; confidential; access by Public Counsel; information accessible through criminal justice information system.
- 83-1,126. Board of Pardons; created; members; secretary.

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- 83-1,126.01. Persons subject to act.
- 83-1,127. Board of Pardons; duties.
- 83-1,127.01. Department of Correctional Services; provide services to Board of Pardons and Board of Parole.
- 83-1,127.02. Board of Pardons; ignition interlock permit; ignition interlock device restriction; violation; penalty.
- 83-1,128. Board of Pardons; issue process; service; compel attendance of witnesses; fees.
- 83-1,129. Board of Pardons; pardon authority; application; consideration.
- 83-1,130. Board of Pardons; pardon authority; application; limitation; relief granted or denied.
- 83-1,131. Offender; granted a reprieve; commit to Department of Correctional Services.
- 83-1,132. Committed offender under sentence of death; application for exercise of pardon authority by Board of Pardons; denial; date of execution; fix.
- 83-1,133. Prohibited acts; threat of harm to member of Board of Pardons; penalty.
- 83-1,134. Administrative procedure provisions; not applicable.
- 83-1,135. Act, how cited.
- 83-1,135.01. Transferred to section 83-1,110.01.
- 83-1,135.02. Changes under Laws 2003, LB 46; changes under Laws 2015, LB605; changes under Laws 2016, LB1094; changes under Laws 2018, LB841; changes under Laws 2023, LB50; applicability; legislative intent.
- 83-1,135.03. Parolee; permission to leave; when.
- 83-1,135.04. Rules and regulations; guidance documents and internal procedural documents; availability; notice; contents.
- 83-1,135.05. Rules and regulations; inmate outside correctional facility.

(g) DIVISION OF JUVENILE DELINQUENCY

- 83-1,136. Transferred to section 83-925.
- 83-1,137. Transferred to section 83-927.
- 83-1,138. Transferred to section 83-928.
- 83-1,139. Transferred to section 83-929.
- 83-1,140. Transferred to section 83-930.

(h) MENTAL RETARDATION

- 83-1,141. Repealed. Laws 1991, LB 830, § 36.
- 83-1,142. Repealed. Laws 1991, LB 830, § 36.
- 83-1,143. Repealed. Laws 1991, LB 830, § 36.
- 83-1,143.01. Repealed. Laws 1991, LB 830, § 36.
- 83-1,143.02. Repealed. Laws 1991, LB 830, § 36.
- 83-1,143.03. Repealed. Laws 1991, LB 830, § 36.
- 83-1,143.04. Repealed. Laws 1991, LB 703, § 81; Laws 1991, LB 830, § 36.
- 83-1,143.05. Repealed. Laws 1991, LB 830, § 36.
- 83-1,143.06. Developmental disability regions; enumerated.
- 83-1,143.07. Repealed. Laws 1991, LB 830, § 36.
- 83-1,144. Repealed. Laws 1991, LB 830, § 36.
- 83-1,144.01. Repealed. Laws 1991, LB 830, § 36.
- 83-1,145. Repealed. Laws 1973, LB 311, § 10.
- 83-1,146. Repealed. Laws 1991, LB 830, § 36.

(i) DIVISION OF MEDICAL SERVICES

- 83-1,147. Transferred to section 83-101.06.
- 83-1,148. Transferred to section 83-125.
- 83-1,149. Repealed. Laws 1996, LB 1155, § 121.
- 83-1,150. Repealed. Laws 1996, LB 1155, § 121.
- 83-1,151. Repealed. Laws 1996, LB 1155, § 121.
- 83-1,152. Repealed. Laws 1996, LB 1155, § 121.

(a) GENERAL PROVISIONS

83-101 Repealed. Laws 2020, LB1188, § 21.

83-101.01 Repealed. Laws 1996, LB 1044, § 985.

83-101.02 Repealed. Laws 1996, LB 1044, § 985.

83-101.03 Repealed. Laws 1996, LB 1044, § 985.

83-101.04 Repealed. Laws 1996, LB 1044, § 985.

83-101.05 Repealed. Laws 1996, LB 1044, § 985.

83-101.06 Department of Health and Human Services; duties.

The Department of Health and Human Services shall:

(1) Administer the clinical programs and services of the Beatrice State Developmental Center, the Lincoln Regional Center, the Norfolk Regional Center, the Hastings Regional Center, and such other medical facilities, including skilled nursing care and intermediate care facilities, as may be provided by the department;

(2) Plan, develop, administer, and operate mental health and intellectual disability clinics, programs, and services;

(3) Plan, develop, and execute the clinical programs and services carried on by the department; and

(4) Represent the department in its work with the University of Nebraska Medical Center concerning psychiatric services.

Source: Laws 1969, c. 818, § 1, p. 3114; Laws 1973, LB 536, § 3; Laws 1987, LB 112, § 1; Laws 1996, LB 1044, § 925; R.S.1943, (1994), § 83-1,147; Laws 1996, LB 1155, § 80; Laws 2013, LB23, § 48.

83-101.07 Repealed. Laws 1990, LB 1067, § 2.

83-101.08 Coordination of activities; duties.

The Department of Health and Human Services shall consult and cooperate with the Department of Correctional Services so as to coordinate in an effective manner the activities of the departments with those related activities affecting the welfare of persons which are the responsibility of the Department of Health and Human Services and the Department of Correctional Services.

Source: Laws 1961, c. 416, § 7, p. 1266; Laws 1973, LB 563, § 18; Laws 1996, LB 1044, § 894; Laws 2007, LB296, § 778.

83-101.09 Repealed. Laws 1993, LB 109, § 1.

83-101.10 Repealed. Laws 1987, LB 7, § 1.

83-101.11 Repealed. Laws 1987, LB 7, § 1.

83-101.12 Repealed. Laws 1987, LB 7, § 1.

83-101.13 Repealed. Laws 1987, LB 7, § 1.

83-101.14 Deaf or hard of hearing persons; access to treatment programs; rules and regulations.

The Department of Health and Human Services with the assistance of the Commission for the Deaf and Hard of Hearing shall adopt and promulgate rules and regulations to define criteria and standards for access by eligible deaf

or hard of hearing persons to mental health, alcoholism, and drug abuse treatment programs.

Source: Laws 1995, LB 25, § 9; Laws 1996, LB 1044, § 895; Laws 1997, LB 851, § 26; Laws 2019, LB248, § 7.

83-102 Youth rehabilitation and treatment centers; placement; programming and services provided; accreditation; report.

(1) Youth rehabilitation and treatment centers shall be operated to provide programming and services to rehabilitate and treat juveniles committed under the Nebraska Juvenile Code. Each youth rehabilitation and treatment center shall be considered a separate placement. Each youth rehabilitation and treatment center shall provide:

(a) Safe and sanitary space for sleeping, hygiene, education, programming, treatment, recreation, and visitation for each juvenile;

(b) Health care and medical services;

(c) Appropriate physical separation and segregation of juveniles based on gender;

(d) Sufficient staffing to comply with state and federal law and protect the safety and security of each juvenile;

(e) Training that is specific to the population being served at the youth rehabilitation and treatment center;

(f) A facility administrator for each youth rehabilitation and treatment center who has the sole responsibility for administration of a single youth rehabilitation and treatment center;

(g) An evaluation process for the development of an individualized treatment plan within fourteen days after admission to the youth rehabilitation and treatment center;

(h) An age-appropriate and developmentally appropriate education program for each juvenile that can award relevant and necessary credits toward high school graduation that will be accepted by any public school district in the State of Nebraska. Juveniles committed to the youth rehabilitation and treatment centers are entitled to receive an appropriate education equivalent to educational opportunities offered within the regular settings of public school districts across the State of Nebraska;

(i) A case management and coordination process, designed to assure appropriate reintegration of the juvenile with his or her family, school, and community;

(j) Compliance with the requirements stated in Title XIX and Title IV-E of the federal Social Security Act, as such act existed on January 1, 2020, the Special Education Act, or other funding guidelines as appropriate;

(k) Research-based or evidence-based programming for all juveniles that includes a strong academic program and classes in health education, living skills, vocational training, behavior management and modification, money management, family and parent responsibilities, substance use awareness, physical education, job skills training, and job placement assistance; and

(l) Research-based or evidence-based treatment service for behavioral impairment, severe emotional disturbance, sex offender behavior, other mental health

or psychiatric disorder, drug and alcohol addiction, physical or sexual abuse, and any other treatment indicated by a juvenile's individualized treatment plan.

(2) Each youth rehabilitation and treatment center shall be accredited by a nationally recognized entity that provides accreditation for juvenile facilities and shall maintain accreditation as provided in section 79-703 to provide an age-appropriate and developmentally appropriate education program.

(3) Each youth rehabilitation and treatment center shall electronically submit a report of its activities for the preceding fiscal year to the Clerk of the Legislature on or before July 15 of each year beginning on July 15, 2021. The annual report shall include, but not be limited to, the following information:

- (a) Data on the population served, including, but not limited to, admissions, average daily census, average length of stay, race, and ethnicity;
- (b) An overview of programming and services; and
- (c) An overview of any facility issues or facility improvements.

Source: Laws 2020, LB1140, § 1; Laws 2021, LB428, § 3.

Cross References

Special Education Act, see section 79-1110.

83-103 Authority for daily maintenance, minor repairs, custodial duties, and operations; buildings to which applicable.

The Department of Health and Human Services shall have the authority to direct all daily maintenance, minor repairs, custodial duties, and operations of a public building under the administration of the Department of Health and Human Services where a juvenile resides who is committed to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center.

Source: Laws 2020, LB1188, § 13.

83-104 State institutions; annual physical review; report.

(1)(a) The office of Public Counsel shall conduct an annual physical review of the following state institutions:

- (i) The Youth Rehabilitation and Treatment Center-Geneva;
- (ii) The Youth Rehabilitation and Treatment Center-Kearney;
- (iii) Any other facility operated and utilized as a youth rehabilitation and treatment center;
- (iv) The Hastings Regional Center;
- (v) The Lincoln Regional Center;
- (vi) The Norfolk Regional Center; and
- (vii) The Beatrice State Developmental Center.

(b) Such physical review may include a review of the condition of buildings and grounds and the physical wear and tear of buildings, fixtures, equipment, furniture, security systems, and any improvements to the facility.

(2) The office of Public Counsel shall report to the Legislature on the condition of such state institutions. The report shall be due on or before March 15, 2021, for the 2020 calendar year, and on or before December 15 of each year beginning in 2021, for the period beginning with December 1 of the prior

year through November 30 of the then current year. Such report shall include, for each state institution listed in subdivision (1)(a) of this section:

- (a) The findings and observations from the annual physical review;
- (b) Recent inspection reports regarding the facility;
- (c) Staffing information, listed separately for each state institution, including, but not limited to:
 - (i) The number of assaults on staff;
 - (ii) Staffing levels;
 - (iii) Staff retention rates; and
 - (iv) Staff turnover rates, including unfilled and vacant positions; and
- (d) The number of reports received by the office of Public Counsel for each institution and any systemic issues identified as a result of such physical review.

Source: Laws 2020, LB1144, § 15; Laws 2021, LB273, § 7.

83-104.01 Repealed. Laws 1959, c. 266, § 1.

83-105 Youth rehabilitation and treatment centers; grievances; reporting system.

(1) It is the intent of the Legislature to establish a reporting system in order to provide increased accountability and oversight regarding the treatment of juveniles in youth rehabilitation and treatment centers.

(2) Beginning on January 1, 2021, the Department of Health and Human Services shall submit a report electronically to the office of Inspector General of Nebraska Child Welfare each January 1, April 1, July 1, and October 1. Such report shall include the following information for the prior calendar quarter:

- (a) The number of grievances filed at each youth rehabilitation and treatment center separated by facility;
- (b) A categorization of the issues to which each grievance relates and the number of grievances received in each category;
- (c) The process for addressing such grievances; and
- (d) Any actions or changes made as a result of such grievances.

Source: Laws 2020, LB1144, § 2.

83-106 Inpatient adolescent psychiatric unit; needs assessment and cost analysis; contract; report.

(1) The Department of Health and Human Services shall contract for the completion of a needs assessment and cost analysis for the establishment of an inpatient adolescent psychiatric unit housed within the Lincoln Regional Center. The department shall contract with an outside consultant with expertise in needs assessment and cost analysis of health care facilities within sixty days after May 26, 2021, for the purpose of conducting such assessment and analysis.

(2) The department shall submit a report electronically to the Health and Human Services Committee of the Legislature and the Clerk of the Legislature on or before December 1, 2021. Such report shall contain the following information:

- (a) A needs assessment, including the number of adolescents expected to use such inpatient adolescent psychiatric unit;
 - (b) The cost of opening an existing facility at the Lincoln Regional Center for use as an inpatient adolescent psychiatric unit;
 - (c) The cost of reopening the facility at the Lincoln Regional Center, including the costs for necessary construction, upgrades, or repairs;
 - (d) Annual operating costs of such unit, including, but not limited to, any federal funds available to operate the unit in addition to General Fund appropriations; and
 - (e) Cost savings realized by moving adolescents from out-of-state institutions back to Nebraska for treatment at such unit.
- (3) For purposes of this section, adolescent means a person under the jurisdiction of the juvenile court.

Source: Laws 2020, LB1140, § 9; Laws 2021, LB428, § 4.

83-107 Repealed. Laws 1961, c. 416, § 32.

83-107.01 Department of Health and Human Services; official names of institutions under supervision; youth rehabilitation and treatment centers; gender separation; requirements; treatment; legislative intent.

- (1) The official names of the state institutions under the supervision of the Department of Health and Human Services shall be as follows: (a) Beatrice State Developmental Center, (b) Lincoln Regional Center, (c) Norfolk Regional Center, (d) Hastings Regional Center, (e) Youth Rehabilitation and Treatment Center-Kearney, and (f) Youth Rehabilitation and Treatment Center-Geneva.
- (2)(a) This subsection applies beginning July 1, 2021.
- (b) Except as provided in subdivision (2)(e) of this section, so long as the department operates the Youth Rehabilitation and Treatment Center-Kearney, such institution shall be used for the treatment of boys only.
- (c) Except as provided in subdivision (2)(e) of this section, so long as the department operates the Youth Rehabilitation and Treatment Center-Geneva, such institution shall be used for the treatment of girls only.
- (d) For any other facility operated and utilized as a youth rehabilitation and treatment center in compliance with state law, the department shall ensure safe and appropriate gender separation.
- (e) In the event of an emergency, the department may use the Youth Rehabilitation and Treatment Center-Kearney, the Youth Rehabilitation and Treatment Center-Geneva, or another facility operated and utilized as a youth rehabilitation and treatment center in compliance with state law for the treatment of juveniles of both genders for up to seven days. During any such use the department shall ensure safe and appropriate gender separation.
- (f) For purposes of this section, emergency means a public health emergency or a situation including fire, flood, tornado, natural disaster, or damage to the institution that renders an institution uninhabitable. Emergency does not include inadequate staffing.
- (3) It is the intent of the Legislature that no institution under the supervision of the Department of Health and Human Services at which the department provides inpatient or subacute substance abuse or behavioral health residential

treatment for juveniles under the jurisdiction of a juvenile court shall delay such treatment to a juvenile when such treatment has been determined necessary under subsection (2) of section 43-407 or has been ordered by a juvenile court.

Source: Laws 1945, c. 250, § 1, p. 786; Laws 1949, c. 291, § 1, p. 994; Laws 1951, c. 318, § 1, p. 1086; Laws 1955, c. 341, § 2, p. 1055; Laws 1959, c. 418, § 9, p. 1403; Laws 1959, c. 419, § 10, p. 1412; Laws 1961, c. 416, § 12, p. 1269; Laws 1963, c. 528, § 2, p. 1656; Laws 1969, c. 814, § 6, p. 3061; Laws 1969, c. 818, § 7, p. 3117; Laws 1972, LB 1253, § 1; Laws 1973, LB 563, § 19; Laws 1975, LB 466, § 1; Laws 1976, LB 974, § 1; Laws 1996, LB 1044, § 896; Laws 1997, LB 396, § 22; Laws 1998, LB 1073, § 167; Laws 2006, LB 994, § 146; Laws 2007, LB296, § 779; Laws 2017, LB340, § 20; Laws 2020, LB1188, § 16; Laws 2021, LB273, § 8; Laws 2021, LB428, § 5.

Cross References

For provisions relating to the Beatrice State Developmental Center, see sections 83-217 to 83-227.02.
For provisions relating to the state hospitals for the mentally ill, see sections 83-305 to 83-357.

83-107.02 Repealed. Laws 1972, LB 1253, § 4.

83-107.03 Repealed. Laws 1987, LB 8, § 1.

83-107.04 Repealed. Laws 1987, LB 8, § 1.

83-108 Department of Health and Human Services; institutions controlled.

The Department of Health and Human Services shall have oversight and general control of the Beatrice State Developmental Center, the hospitals for the mentally ill, such skilled nursing care and intermediate care facilities as may be established by the department, any facility operated and utilized as a youth rehabilitation and treatment center in compliance with state law, and all charitable institutions.

Source: Laws 1913, c. 179, § 9, p. 537; R.S.1913, § 7187; C.S.1922, § 6838; C.S.1929, § 83-109; Laws 1935, c. 185, § 1, p. 685; C.S.Supp.,1941, § 83-109; R.S.1943, § 83-108; Laws 1949, c. 291, § 2, p. 994; Laws 1959, c. 442, § 1, p. 1485; Laws 1959, c. 418, § 13, p. 1405; Laws 1959, c. 419, § 11, p. 1412; Laws 1961, c. 416, § 14, p. 1270; Laws 1963, c. 526, § 3, p. 1649; Laws 1963, c. 528, § 3, p. 1656; Laws 1969, c. 814, § 7, p. 3061; Laws 1973, LB 563, § 20; Laws 1973, LB 536, § 2; Laws 1996, LB 1044, § 897; Laws 1997, LB 396, § 23; Laws 2017, LB340, § 21; Laws 2020, LB1188, § 17.

The statutes which give the Court of Industrial Relations jurisdiction over public employees are not unconstitutional. *American Fed. of S., C. & M. Emp. v. Department of Public Institutions*, 195 Neb. 253, 237 N.W.2d 841 (1976).

83-108.01 Repealed. Laws 1969, c. 817, § 87.

83-108.02 Director of Correctional Services; establish facilities and programs; assignment of prisoners; basis.

The Director of Correctional Services shall establish facilities and programs for persons committed to the Department of Correctional Services. The assignment to such programs shall be based on the evaluation and recommendation

from the Diagnostic and Evaluation Center. The director shall not classify prisoners committed to the department into separate dwelling units solely on the basis of race; except that any prisoner may be isolated for insubordination, security, or rehabilitation.

Source: Laws 1963, c. 528, § 6, p. 1657; Laws 1967, c. 601, § 1, p. 2043; Laws 1980, LB 794, § 1.

83-108.03 Repealed. Laws 1987, LB 8, § 1.

83-108.04 Department of Health and Human Services; additional facilities for care of children.

(1) The Department of Health and Human Services also may use other public facilities or contract for the use of private facilities for the care and treatment of children in its legal custody who have been adjudged to be as described in subdivision (3)(a) of section 43-247. Placement of children in private or public facilities not under its jurisdiction shall not terminate the legal custody of the department. No state funds may be paid for care of a child in the home of a parent.

(2) For children committed to the Office of Juvenile Services, the Department of Health and Human Services may use other public facilities operated by the Department of Health and Human Services for the care and treatment of such children or may contract for the use of space in another facility operated and utilized as a youth rehabilitation and treatment center in compliance with state law.

Source: Laws 1967, c. 249, § 1, p. 659; Laws 1973, LB 563, § 21; Laws 1988, LB 790, § 33; Laws 1996, LB 1044, § 898; Laws 2013, LB265, § 49; Laws 2020, LB1148, § 14; Laws 2020, LB1188, § 18.

83-109 Patients and residents; admission to state institutions; records; to whom accessible; transfers; investigations; appeals.

(1) The Department of Health and Human Services shall have general control over the admission of patients and residents to all institutions over which it has jurisdiction. Each individual shall be assigned to the institution best adapted to care for him or her.

(2) A record of every patient or resident of every institution shall be kept complete from the date of his or her entrance to the date of his or her discharge or death. Such records shall be accessible only (a) to the department, a legislative committee, the Governor, any federal agency requiring medical records to adjudicate claims for federal benefits, and any public or private agency under contract to provide facilities, programs, and patient services, (b) upon order of a judge, court, or mental health board, (c) in accordance with sections 20-161 to 20-166, (d) to the Nebraska State Patrol pursuant to section 69-2409.01, (e) to those portions of the record required to be released to a victim as defined in section 29-119 in order to comply with the victim notification requirements pursuant to subsections (5) and (6) of section 81-1850, (f) to law enforcement and county attorneys when a crime occurs on the premises of an institution, (g) upon request when a patient or resident has been deceased for fifty years or more, (h) to current treatment providers, or (i) to treatment providers for coordination of care related to transfer or discharge. In addition,

a patient or resident or his or her legally authorized representative may authorize the specific release of his or her records, or portions thereof, by filing with the department a signed written consent.

(3) Transfers of patients or residents from one institution to another shall be within the exclusive jurisdiction of the department and shall be recorded in the office of the department, with the reasons for such transfers.

(4) When the department is unable to assign a patient to a regional center or commit him or her to any other institution at the time of application, a record thereof shall be kept and the patient accepted at the earliest practicable date.

(5) The superintendents of the regional centers and Beatrice State Developmental Center shall notify the department immediately whenever there is any question regarding the propriety of the commitment, detention, transfer, or placement of any person admitted to a state institution. The department shall then investigate the matter and take such action as shall be proper. Any interested party who is not satisfied with such action may appeal such action, and the appeal shall be in accordance with the Administrative Procedure Act.

(6) The department shall have full authority on its own suggestion or upon the application of any interested person to investigate the physical and mental status of any patient or resident of any regional center or the Beatrice State Developmental Center. If upon such investigation the department considers such patient or resident fit to be released from the regional center or Beatrice State Developmental Center, it shall cause such patient or resident to be discharged or released on convalescent leave.

Source: Laws 1913, c. 179, § 27, p. 546; R.S.1913, § 7205; C.S.1922, § 6856; C.S.1929, § 83-127; R.S.1943, § 83-109; Laws 1961, c. 416, § 15, p. 1270; Laws 1963, c. 525, § 1, p. 1645; Laws 1971, LB 419, § 1; Laws 1975, LB 206, § 1; Laws 1979, LB 322, § 61; Laws 1981, LB 545, § 39; Laws 1985, LB 315, § 1; Laws 1988, LB 697, § 7; Laws 1988, LB 352, § 182; Laws 1996, LB 1044, § 899; Laws 1996, LB 1055, § 16; Laws 1997, LB 325, § 2; Laws 2016, LB816, § 2; Laws 2021, LB296, § 1; Laws 2023, LB50, § 44.

Cross References

Administrative Procedure Act, see section 84-920.

Burial of dead from state institutions, portion of Wyuka Cemetery reserved for, see section 12-102.

83-110 Repealed. Laws 1981, LB 545, § 52.

83-111 Department of Health and Human Services; estimated appropriation; suggested improvements.

The Department of Health and Human Services shall prepare an estimate of the appropriations necessary for the support and needed improvements of the institutions under its charge, and a report of their operation during the preceding biennium, for the use of the Legislature. The estimate shall be printed and may include a report of the results of investigation of methods of institution management and of treatment of patients and inmates, with suggestions for the betterment of any or all conditions.

Source: Laws 1913, c. 179, § 17, p. 541; R.S.1913, § 7195; C.S.1922, § 6846; C.S.1929, § 83-117; R.S.1943, § 83-111; Laws 1996, LB 1044, § 900.

83-112 Department of Health and Human Services; collection of information; encouragement of scientific study; investigations.

(1) The Department of Health and Human Services shall gather information as to the expenditures of charitable institutions in this and other countries and regarding the best and most successful methods of caring for persons with an intellectual disability and persons with a mental disorder.

(2) The Department of Health and Human Services shall encourage scientific investigation of the treatment of mental problems, epilepsy, and all other diseases and causes that contribute to mental disabilities by the medical staffs of the state medical institutions. The department shall provide forms for statistical returns to be made by the institutions. The department shall make an investigation of the conditions, causes, prevention, and cure of epilepsy, intellectual disability, and mental disorders. The department shall give special attention to the methods of care, treatment, education, and improvement of the persons served by the institutions under its control and shall exercise a careful supervision of the methods to the end that, so far as practicable, the best treatment and care known to modern science shall be given to such persons and that the best methods of teaching, improving, and educating such persons shall be used.

Source: Laws 1913, c. 179, § 28, p. 547; R.S.1913, § 7206; C.S.1922, § 6857; C.S.1929, § 83-128; R.S.1943, § 83-112; Laws 1955, c. 231, § 22, p. 728; Laws 1973, LB 563, § 22; Laws 1979, LB 322, § 62; Laws 1981, LB 545, § 40; Laws 1986, LB 1177, § 39; Laws 1996, LB 1044, § 901; Laws 2013, LB23, § 49.

83-113 Department of Health and Human Services; examination of employees; investigation of alleged abuses; report.

The Department of Health and Human Services may examine any of the officers, attendants, guards, and other employees and make such inquiries as will determine their fitness for their respective duties and shall investigate and report to the Governor any abuses or wrongs alleged to exist in the institution. The department shall also electronically submit any such report to the Health and Human Services Committee of the Legislature.

Source: Laws 1913, c. 179, § 18, p. 542; R.S.1913, § 7196; C.S.1922, § 6847; C.S.1929, § 83-118; R.S.1943, § 83-113; Laws 1961, c. 416, § 16, p. 1271; Laws 1996, LB 1044, § 902; Laws 2007, LB296, § 780; Laws 2020, LB1188, § 19.

83-114 Department of Health and Human Services; investigatory powers; interference with investigation; penalty; privileges of witnesses; contempt.

The Department of Health and Human Services shall have the power to summon and examine witnesses under oath, to examine books and papers pertaining to the subject under investigation, and to compel the production of such books and papers. Witnesses who are not employees of the state shall receive the same fees as witnesses in civil cases in the district court, and their fees shall be paid by vouchers. Any officer or employee who interferes in any manner with the department's official investigation shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be removed from his or her position, and be fined in a sum not less than ten dollars nor more than one hundred dollars. The claim that any testimony or evidence sought to be elicited

or produced may tend to incriminate the person giving or producing it, or expose him or her to public ignominy, shall not excuse him or her from testifying or producing the evidence, but any evidence given by a witness at such an investigation shall not be used against him or her in a criminal prosecution. A witness shall not be exempt from prosecution and punishment for perjury for testifying falsely at an investigation. It shall be the duty of the department to cause such testimony to be filed in the office of the department as soon thereafter as practicable, and such testimony shall be open for inspection. Any person failing to obey the orders of the department, issued under the provisions of this section, shall be reported by the department to the district court, or any judge thereof, and shall be dealt with by the court or judge as for contempt of court.

Source: Laws 1913, c. 179, § 19, p. 542; R.S.1913, § 7197; C.S.1922, § 6848; C.S.1929, § 83-119; R.S.1943, § 83-114; Laws 1961, c. 416, § 17, p. 1271; Laws 1996, LB 1044, § 903; Laws 2007, LB296, § 781.

Cross References

For witness fees in district court, see section 33-139.

83-115 Department of Health and Human Services; investigation; legislative committee; powers of committee.

The Department of Health and Human Services shall be prepared to give any information desired by the Legislature concerning the institutions under its control, and its administration shall be subject to examination under oath by a legislative committee, touching any matter in regard to which the Legislature may desire information concerning the condition of the institutions, their inmates, and the performance of their duties by the department. The committee may call and examine under oath any other persons as witnesses in such investigation. Such examinations shall be conducted in the manner and subject to the provisions of section 83-114.

Source: Laws 1913, c. 179, § 20, p. 543; R.S.1913, § 7198; C.S.1922, § 6849; C.S.1929, § 83-120; R.S.1943, § 83-115; Laws 1961, c. 416, § 18, p. 1272; Laws 1996, LB 1044, § 904; Laws 2007, LB296, § 782.

83-116 Department of Health and Human Services; actions at law.

The Department of Health and Human Services shall have the power to bring all suits necessary to protect the interests of the state. Such proceedings shall be instituted in the name of the State of Nebraska.

Source: Laws 1913, c. 179, § 26, p. 546; R.S.1913, § 7204; C.S.1922, § 6855; C.S.1929, § 83-126; R.S.1943, § 83-116; Laws 1996, LB 1044, § 905.

Cross References

Service of summons in actions against state, see section 25-21,203.

83-117 Repealed. Laws 1961, c. 416, § 32.

83-118 Repealed. Laws 1961, c. 416, § 32.

83-119 Repealed. Laws 1961, c. 416, § 32.

83-120 Repealed. Laws 2000, LB 1115, § 93.**83-121 School District Reimbursement Fund; created; use; investment.**

There is hereby created the School District Reimbursement Fund for use by the Department of Health and Human Services. The fund shall consist of money received from school districts or the department for the operation of special education programs within the department. The fund shall be used for the operation of such programs pursuant to sections 79-1155 to 79-1158.

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

Source: Laws 1994, LB 1194, § 11; Laws 1995, LB 7, § 139; Laws 1996, LB 900, § 1066; Laws 1996, LB 1044, § 907; Laws 2007, LB296, § 783; Laws 2019, LB675, § 54.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

83-122 Repealed. Laws 1971, LB 376, § 7.**83-123 Department of Correctional Services; license plates; materials; Department of Motor Vehicles; duties.**

(1) Out of the fund appropriated by the Legislature, the Department of Correctional Services shall purchase the materials for and manufacture the license plates each year for the various counties and the Department of Motor Vehicles. The Department of Motor Vehicles shall furnish to the Department of Correctional Services the information concerning license plates through a secure process and system, together with the number of plates to be manufactured for each county and the Department of Motor Vehicles for the current licensing year.

(2) The Department of Correctional Services shall deliver the license plates each year as directed by the Department of Motor Vehicles through a secure process and system.

Source: Laws 1931, c. 22, § 2, p. 95; C.S.Supp.,1941, § 83-137; R.S.1943, § 83-123; Laws 1951, c. 319, § 2, p. 1091; Laws 1953, c. 207, § 14, p. 730; Laws 1959, c. 442, § 3, p. 1486; Laws 1959, c. 284, § 5, p. 1078; Laws 1969, c. 497, § 2, p. 2067; Laws 1993, LB 31, § 24; Laws 1993, LB 112, § 46; Laws 2009, LB49, § 9; Laws 2017, LB263, § 101.

83-123.01 Repealed. Laws 1993, LB 31, § 83.

(b) OFFICERS AND EMPLOYEES

83-124 Transferred to section 80-325.**83-125 Repealed. Laws 2007, LB 296, § 815.****83-126 Facilities; chief executive officer; appointment.**

The chief executive officer of the Department of Health and Human Services shall appoint the chief executive officer of each facility referred to in section

83-107.01. Each chief executive officer shall report to the chief executive officer of the department or his or her designee and shall serve full time and without term at the pleasure of the chief executive officer of the department.

Source: Laws 1996, LB 1155, § 83; Laws 1997, LB 307, § 220; Laws 2002, LB 1062, § 66; Laws 2007, LB296, § 784.

83-127 Superintendent of institutional schools; qualifications; powers and duties.

(1) On or before December 1, 2020, the Department of Health and Human Services shall establish the position of superintendent of institutional schools to administer the education programs in state institutions under the supervision of the department that house juveniles and shall hire an individual meeting the qualifications required under section 79-801 to fill such position.

(2) The superintendent of institutional schools shall report directly to the chief executive officer of the Department of Health and Human Services.

(3) The superintendent of institutional schools shall report annually to the State Board of Education as a requirement for accreditation pursuant to section 79-703 of the education programs in state institutions under the supervision of the Department of Health and Human Services that house juveniles.

(4) Whenever a vacancy arises in the position of superintendent of institutional schools, the Department of Health and Human Services shall expediently hire another individual meeting the qualifications required under section 79-801 to fill such position.

Source: Laws 2020, LB1188, § 14.

83-128 Officers and employees; bond or insurance.

Each official and employee who is given the custody of funds or property of the state shall be bonded or insured as required by section 11-201.

Source: Laws 1913, c. 179, § 15, p. 541; R.S.1913, § 7193; C.S.1922, § 6844; C.S.1929, § 83-115; Laws 1941, c. 186, § 1, p. 754; C.S.Supp.,1941, § 83-115; R.S.1943, § 83-128; Laws 1978, LB 653, § 36; Laws 2004, LB 884, § 45.

83-129 Repealed. Laws 1996, LB 1044, § 985.

83-129.01 Repealed. Laws 1999, LB 13, § 1.

83-130 Emergency Revolving Fund; amount; source; accounting.

An Emergency Revolving Fund, not to exceed three thousand dollars for any one institution, upon order of the Department of Health and Human Services, shall be drawn from the State Treasurer, to be used by the chief executive officer of each institution as an emergency cash fund. The fund shall be drawn from the general maintenance appropriation for the department. An accounting of this fund shall be made by each executive officer once each month to the department.

Source: Laws 1913, c. 179, § 15, p. 541; R.S.1913, § 7193; C.S.1922, § 6844; C.S.1929, § 83-115; Laws 1941, c. 186, § 1, p. 754;

C.S.Supp.,1941, § 83-115; R.S.1943, § 83-130; Laws 1951, c. 321, § 1, p. 1093; Laws 1996, LB 1044, § 909; Laws 2007, LB296, § 785.

83-131 Repealed. Laws 1969, c. 817, § 87.

83-132 Repealed. Laws 1961, c. 416, § 32.

83-133 Chief executive officers; excess funds belonging to inmates; investment; use and distribution of income.

The chief executive officer of any state institution under the control of the Department of Health and Human Services shall refer for investment in accordance with sections 72-1244 and 72-1267 any surplus of canteen funds or trust funds which he or she may have belonging to the residents of the institution under his or her control. The income accruing from the investment of canteen funds shall be used for the general entertainment of the residents of the institution. The income accruing from the investment of the residents' personal trust funds shall be distributed and prorated to each resident's personal trust account in accordance with the participation of each resident's personal account.

Source: Laws 1929, c. 195, § 1, p. 682; C.S.1929, § 83-201; R.S.1943, § 83-133; Laws 1985, LB 335, § 4; Laws 1996, LB 1044, § 910; Laws 2003, LB 149, § 6.

(c) PROPERTY AND SUPPLIES

83-134 Repealed. Laws 2007, LB 256, § 17.

83-135 Grounds; abutting streets; paving; procedure.

The Department of Health and Human Services and the Department of Correctional Services shall have authority to petition the authorities of any city, town, or village in which a state institution is located, to grade, curb, and pave any street or streets upon which the grounds of the institution abut, where the streets are a part of a paving district, to waive any damage sustained by the grounds from the grading, curbing, or paving, and to charge the grounds with a proportionate share of the cost of paving. The contract for grading, curbing, and paving shall be let by the authorities of the city, town, or village, as provided for by the law governing the city, town, or village, and none of the provisions for the letting of contracts by the department shall apply. The cost of paving, including curbing and grading, assessed and levied against the property, shall be paid to the proper officers of the city, town, or village, by the State Treasurer, out of funds which may be appropriated by the Legislature for that purpose.

Source: Laws 1913, c. 179, § 22, p. 544; R.S.1913, § 7200; Laws 1915, c. 129, § 1, p. 291; C.S.1922, § 6851; C.S.1929, § 83-122; R.S.1943, § 83-135; Laws 1973, LB 563, § 25; Laws 1996, LB 1044, § 912.

83-136 Paving petitions; power to sign.

Wherever any paving district is created adjacent to any state institution or the Nebraska State Fairgrounds, the chief executive officer in charge of the state institution or the chairperson of the Nebraska State Fair Board for the fair-

grounds is authorized to sign petitions, in the name of the state, to create paving districts.

Source: Laws 1919, c. 215, § 1, p. 926; C.S.1922, § 6861; C.S.1929, § 83-132; R.S.1943, § 83-136; Laws 2002, LB 1236, § 20.

County commissioners are authorized to count the state's property as favoring the improvement when a petition is signed by the officers having charge of state institutions. *Brown Real Estate Co. v. Lancaster County*, 108 Neb. 514, 188 N.W. 247 (1922).

83-137 State institutions; adjacent highways; improvement.

Upon written request being filed with the Department of Transportation by the chief executive officer of any state institution, located more than one-half mile and not exceeding three miles from a railroad unloading track or permanent highway leading to a railroad unloading track, requesting aid for the improvement of a highway connecting the institution with the permanent highway or railroad unloading track, the department shall make a careful estimate of the cost of improving the highway, and the amount of the special benefits to abutting property, together with the excess of the cost of the improvement above the benefits. If the local authorities in charge of the highway shall adequately provide for the payment of the special benefits and one-half of the excess of the cost of the improvement, the department shall pay the remaining one-half of the excess from funds appropriated for that purpose.

Source: Laws 1919, c. 215, § 2, p. 927; C.S.1922, § 6862; C.S.1929, § 83-133; R.S.1943, § 83-137; Laws 2017, LB339, § 294.

Cross References

Procedure for acquiring institutional land for county roads and state highways, see sections 39-1323 and 39-1703.

83-138 Repealed. Laws 1963, c. 508, § 15.

83-139 Stewards; duties; reports; shortages; default; penalty.

The steward of each institution shall have charge of all supplies for that institution, and shall be charged therewith at their invoice value. Supplies shall be issued only on requisition by the chief executive officer, and on printed blanks which shall serve as the steward's vouchers. The steward shall report monthly to the Department of Health and Human Services or the Department of Correctional Services, whichever has jurisdiction, the amounts of supplies received, used, and on hand. At the close of the biennial period the steward shall make a comprehensive report to the department showing all the transactions of his or her department. Any shortage, not allowed by the department for unavoidable causes, shall be paid for by the steward within ten days after the amount due is officially determined, and in default of payment the steward shall forfeit his or her office and suit to recover the amount shall be instituted upon his or her official bond or equivalent commercial insurance policy.

Source: Laws 1913, c. 179, § 14, p. 540; R.S.1913, § 7192; C.S.1922, § 6843; C.S.1929, § 83-114; R.S.1943, § 83-139; Laws 1973, LB 563, § 26; Laws 1996, LB 1044, § 913; Laws 2004, LB 884, § 46.

83-140 Supplies for Department of Health and Human Services and Department of Correctional Services; purchase; monthly statement; estimates.

The materiel administrator of the Department of Administrative Services shall purchase all necessary supplies for the institutions under the Department of Health and Human Services and the Department of Correctional Services,

except, in its discretion, fresh fruit, vegetables, and emergency and minor purchases. The last-named supplies may be purchased by the chief executive officer or steward under the order of the department. An itemized statement of such purchases, duly verified, shall be filed with the department on the first day of each month. Estimates of needed supplies shall be furnished the department by each chief executive officer. Such estimates shall be examined by the department, and an itemized statement of such as are approved by the department, showing kind, quantity, and quality, shall be filed with the materiel administrator, and upon request shall be furnished to any applicant therefor.

Source: Laws 1913, c. 179, § 21, p. 543; R.S.1913, § 7199; C.S.1922, § 6850; C.S.1929, § 83-121; R.S.1943, § 83-140; Laws 1951, c. 322, § 1, p. 1094; Laws 1957, c. 368, § 4, p. 1295; Laws 1973, LB 563, § 27; Laws 1996, LB 1044, § 914; Laws 2000, LB 654, § 46.

Cross References

For other provisions relating to the materiel division of Department of Administrative Services, see sections 81-145 to 81-161.06.

83-141 Repealed. Laws 1957, c. 368, § 7.

83-142 Repealed. Laws 1969, c. 818, § 24.

83-143 Paupers; inmates of public charitable institutions; clothing; county of last residence to furnish.

Whenever any inmate of any public charitable institution shall be unable to provide suitable clothing for himself, and shall have no parent or legal guardian able and legally bound to do so, the county board of the county where the inmate last resided, before entering or applying for admission into the institution, shall adjudge and declare the inmate a pauper. The proper officers of the institution shall then provide suitable clothing for such person, and the inmate shall send the bill therefor to the county board. The county board shall then audit and allow the bill and cause a warrant therefor to be drawn upon the general fund of the county in favor of the officers of the institution.

Source: Laws 1875, § 1, p. 177; R.S.1913, § 7208; C.S.1922, § 6859; C.S.1929, § 83-130; R.S.1943, § 83-143.

83-144 Department of Correctional Services-made goods; Department of Health and Human Services and Department of Correctional Services; administrative powers.

The Department of Health and Human Services and the Department of Correctional Services shall administer the provisions of sections 83-144 to 83-152.

Source: Laws 1935, c. 183, § 1, p. 678; C.S.Supp.,1941, § 83-956; R.S. 1943, § 83-144; Laws 1963, c. 526, § 6, p. 1650; Laws 1973, LB 563, § 28; Laws 1996, LB 1044, § 915.

83-145 Department of Correctional Services-made goods; use; by whom; exchange of goods with other states; sales authorized.

All departments, institutions, and agencies of this state which are supported in whole or in part by taxation for state purposes and all counties and other political subdivisions of this state shall purchase from the Department of Correctional Services all articles required by them produced, printed, or

manufactured by offenders confined in facilities of the Department of Correctional Services, or elsewhere, including products of any farms operated by the department unless such articles of equal quality and materials could be purchased from another supplier at a lesser cost. The quality and materials must be certified as being equal by the materiel division of the Department of Administrative Services. No such article shall be purchased by any department, institution, or agency of the state from any other source unless excepted from the provisions of this section as provided in sections 83-144 to 83-152. Printing by offenders shall be restricted to such as may be required at the various institutions under the jurisdiction of the department and such other printing requirements as may be determined by the materiel division of the Department of Administrative Services pursuant to subdivision (3) of section 81-152. No products of any institutional printing plant, other than that used by departments, institutions, agencies, and other political subdivisions of the state, shall be sold in competition with outside labor. Nothing in this section shall be construed to prohibit the department from exchanging Department of Correctional Services-made goods with other states. Goods received from divisions of corrections outside of Nebraska shall be of the same status and will be subject to the same restrictions and penalties as if they had been manufactured in the Nebraska Department of Correctional Services. In cases of exchange of Department of Correctional Services-made goods with other states, the department is authorized to pay or receive in cash any differences that may exist in the articles exchanged, the amounts paid or received to be charged or credited to the Correctional Industries Revolving Fund. In exchange of Department of Correctional Services-made goods with other states, the goods received in exchange shall be restricted to such use and needs as may be required in the various institutions under the jurisdiction of the department. Any authorized agency, bureau, commission, or department of the federal government or any charitable, fraternal, or nonprofit corporation may purchase from the Department of Correctional Services goods produced or manufactured by offenders confined in facilities of the Department of Correctional Services, or elsewhere, including products of any farms operated by the department.

Source: Laws 1935, c. 183, § 2, p. 678; Laws 1937, c. 201, § 1, p. 824; C.S.Supp., 1941, § 83-957; R.S. 1943, § 83-145; Laws 1967, c. 602, § 1, p. 2044; Laws 1969, c. 820, § 1, p. 3125; Laws 1973, LB 563, § 29; Laws 1974, LB 569, § 1; Laws 1980, LB 319, § 7; Laws 1981, LB 381, § 33; Laws 1983, LB 594, § 1; Laws 1992, Third Spec. Sess., LB 2, § 1; Laws 2024, LB461, § 47.
Effective date July 19, 2024.

83-145.01 Department of Correctional Services; sale and production of braille materials; authorized.

The Department of Correctional Services may sell braille books and materials produced by offenders confined in facilities of the department. The department may enter into contracts for the use of the services of such offenders to produce braille books and materials. The department may also service any braille machinery needed to produce braille products.

Source: Laws 1983, LB 594, § 2; Laws 1993, LB 121, § 547; Laws 2002, LB 951, § 1.

83-146 Purchases; Department of Administrative Services; requisition.

All purchases shall be made through the Department of Administrative Services upon the requisition of the proper authority of the department, institution or agency of the state, or of the county or other governmental subdivision requiring such articles.

Source: Laws 1935, c. 183, § 3, p. 679; C.S.Supp.,1941, § 83-958; R.S. 1943, § 83-146; Laws 1967, c. 603, § 1, p. 2045.

83-147 Director of Administrative Services; Department of Correctional Services-made goods; discretionary powers.

The Director of Administrative Services may create an exception from the mandatory provisions of sections 83-144 to 83-152 when in the opinion of the director, the article produced or manufactured does not meet the reasonable requirements of the department, institution, or agency of the state. The Director of Correctional Services may create an exception from the mandatory provisions of sections 83-144 to 83-152 in any case when the requisition made cannot be completely complied with on account of an insufficient supply of the article or supplies required, or otherwise. No such department, institution, or agency of the state shall be allowed to evade the intent and meaning of this section by slight violations from standards adopted by the department, when articles produced or manufactured by it in accordance with its standards are reasonably adapted to the actual needs of the department, institution, or agency.

Source: Laws 1935, c. 183, § 4, p. 679; C.S.Supp.,1941, § 83-959; R.S. 1943, § 83-147; Laws 1961, c. 416, § 20, p. 1273; Laws 1973, LB 563, § 30; Laws 1981, LB 381, § 34.

83-148 Unauthorized vouchers; issuance; effect; malfeasance in office; punishment.

No voucher issued by any such department, institution or agency upon the Director of Administrative Services shall be questioned by him or by the State Treasurer on the ground that sections 83-144 to 83-152 shall not have been complied with by the department, institution or agency; but intentional violation of the provisions of such sections by any department, institution or agency continued after notice in writing from the Department of Correctional Services to desist, shall constitute malfeasance in office, and shall subject the officer, officers or public employees responsible for the violations to suspension or removal from office, in the manner provided by law in other cases of malfeasance.

Source: Laws 1935, c. 183, § 5, p. 679; C.S.Supp.,1941, § 83-960; R.S. 1943, § 83-148; Laws 1973, LB 563, § 31.

83-149 Department of Correctional Services-made goods; catalog; estimates of materials required.

The Department of Correctional Services shall prepare, annually, and at such other times as it may determine necessary, a catalog or bulletin sheets containing a description of all articles and supplies manufactured and produced by the department under sections 83-144 to 83-152. Copies of the catalog and bulletin sheets shall be sent by said department to all departments, institutions and agencies of the state referred to in section 83-145. On or before June 15 of each year, each constitutional state officer, each head of every executive department

of the state and each titular head of each institution and other agency of the state shall report in writing to the Department of Administrative Services, estimates for the ensuing year commencing July 1, or ensuing quarter, if desired, the kinds and amounts of articles and supplies required by them for the ensuing year or quarter, referring in such estimates to the catalog and bulletin sheets issued by the Department of Correctional Services insofar as the articles and supplies indicated are included in the catalog or bulletin sheets.

Source: Laws 1935, c. 183, § 6, p. 680; C.S.Supp.,1941, § 83-961; R.S. 1943, § 83-149; Laws 1967, c. 603, § 2, p. 2046; Laws 1973, LB 563, § 32.

83-150 Correctional Industries Revolving Fund; created; use; investment.

All funds received by the Department of Correctional Services under sections 83-144 to 83-152 and from the recycling of material used in the production of goods or the provision of services by the department's correctional industries program shall be remitted to the State Treasurer for credit to the Correctional Industries Revolving Fund, which fund is hereby created. The fund shall be administered by the Director of Correctional Services. The fund (1) shall be used to pay all proper expenses incident to the administration of sections 83-144 to 83-152 and (2) may be used to carry out section 83-186.01, except that transfers from the fund to the General Fund may be made at the direction of the Legislature. Any money in the Correctional Industries Revolving Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1935, c. 183, § 9, p. 681; Laws 1939, c. 135, § 1, p. 580; C.S.Supp.,1941, § 83-964; R.S.1943, § 83-150; Laws 1959, c. 442, § 5, p. 1487; Laws 1969, c. 820, § 2, p. 3126; Laws 1969, c. 584, § 111, p. 2417; Laws 1973, LB 563, § 33; Laws 1992, Third Spec. Sess., LB 2, § 2; Laws 1994, LB 1066, § 129; Laws 2013, LB483, § 2; Laws 2016, LB1080, § 3.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

83-151 Department of Correctional Services-made goods; transportation and sale.

Goods produced in whole or in part by persons confined to the department in this state may be transported and sold in the same manner as goods produced by free persons, if persons confined to the department are paid at least minimum wage under state law. The minimum wage requirement does not apply to hobby and craft items produced by persons committed to the department on their own time with their own resources.

Source: Laws 1935, c. 183, § 11, p. 682; C.S.Supp.,1941, § 83-966; R.S.1943, § 83-151; Laws 1969, c. 820, § 3, p. 3126; Laws 1969, c. 817, § 73, p. 3108; Laws 1972, LB 1122, § 1; Laws 1977, LB 39, § 309; Laws 1980, LB 319, § 8.

Pursuant to the provisions of this section, any money derived from the sale of a hobby or craft item made by an offender is to be placed in the offender's account and the Department of

Corrections may not assess a handling charge against the offender. *Randolph v. Dept. of Correctional Services*, 205 Neb. 672, 289 N.W.2d 529 (1980).

83-152 Goods made by confined persons; reciprocity.

Goods produced in whole or in part by persons confined in another state or territory may be transported and sold in this state in the same manner as goods produced by persons committed to the department in this state may be transported or sold in that state or territory.

Source: Laws 1935, c. 183, § 10, p. 681; C.S.Supp.,1941, § 83-965; R.S.1943, § 83-152; Laws 1969, c. 820, § 4, p. 3127; Laws 1969, c. 817, § 74, p. 3108; Laws 1980, LB 319, § 9.

83-153 Money or personal property to credit of inmate or patient; claim; time for presentment.

Any claim to money or personal property in the hands of the Department of Health and Human Services, the Department of Correctional Services, or the Department of Veterans' Affairs to the credit of an inmate or patient of any institution subject to the jurisdiction of such departments shall be required to be asserted within two years from and after either (1) the date of the death of the inmate or patient, while confined in such institution, or (2) the date of the discharge of the inmate or patient from such institution. If such claim is not presented within the time limited by this section, it shall be forever barred.

Source: Laws 1953, c. 352, § 1, p. 1128; Laws 1973, LB 563, § 34; Laws 1996, LB 1044, § 916; Laws 2018, LB827, § 4.

83-154 Money to credit of inmate or patient; claim; failure to assert; disposition.

Upon the failure to assert a claim for money within two years as prescribed by section 83-153, the Department of Health and Human Services, the Department of Correctional Services, or the Department of Veterans' Affairs shall transfer such money to a special fund to be set up for the use and benefit of all the inmates or patients of the institution in which the deceased or discharged inmate or patient was confined.

Source: Laws 1953, c. 352, § 2, p. 1128; Laws 1973, LB 563, § 35; Laws 1996, LB 1044, § 917; Laws 2018, LB827, § 5.

83-155 Personal property to credit of inmate or patient; claim; failure to assert; sale; disposition of money.

Upon the failure to assert a claim for personal property within two years as prescribed by section 83-153, the Department of Health and Human Services, the Department of Correctional Services, or the Department of Veterans' Affairs shall sell the property, either with or without notice at either public or private sale, and shall place the proceeds of such sale in the special fund provided for by section 83-154.

Source: Laws 1953, c. 352, § 3, p. 1128; Laws 1973, LB 563, § 36; Laws 1996, LB 1044, § 918; Laws 2018, LB827, § 6.

83-156 Money or personal property to credit of inmate or patient; delivery to owner or heirs not prohibited.

Nothing contained in sections 83-153 to 83-156 shall be construed in such a manner as to prohibit the Department of Health and Human Services, the

Department of Correctional Services, or the Department of Veterans' Affairs from voluntarily remitting or delivering to any present or former inmate or patient of any state institution, subject to the jurisdiction of such department, or to his or her heirs, legatees, or other persons lawfully entitled to the same, any money or other personal property in the hands of the department to the credit of such inmate or patient, either during the confinement of such inmate or patient, or at any time thereafter.

Source: Laws 1953, c. 352, § 4, p. 1128; Laws 1973, LB 563, § 37; Laws 1996, LB 1044, § 919; Laws 2018, LB827, § 7.

(d) SALE OF REAL ESTATE

83-157 Repealed. Laws 1971, LB 33, § 1.

83-158 Repealed. Laws 1971, LB 33, § 1.

(e) ALCOHOLISM, DRUG ABUSE, AND ADDICTION SERVICES ACT

83-158.01 Repealed. Laws 2004, LB 1083, § 149.

83-159 Repealed. Laws 2004, LB 1083, § 149.

83-160 Repealed. Laws 2004, LB 1083, § 149.

83-160.01 Repealed. Laws 1987, LB 9, § 1.

83-161 Repealed. Laws 1980, LB 684, § 22.

83-161.01 Repealed. Laws 1986, LB 674, § 9.

83-161.02 Repealed. Laws 2004, LB 1083, § 149.

83-162 Repealed. Laws 1980, LB 684, § 22.

83-162.01 Repealed. Laws 2004, LB 1083, § 149.

83-162.02 Repealed. Laws 2004, LB 1083, § 149.

83-162.03 Repealed. Laws 2004, LB 1083, § 149.

83-162.04 Transferred to section 71-817.

83-162.05 Repealed. Laws 1997, LB 307, § 236.

83-162.06 Repealed. Laws 2001, LB 541, § 12.

83-163 Repealed. Laws 2004, LB 1083, § 149.

83-164 Repealed. Laws 2004, LB 1083, § 149.

83-165 Repealed. Laws 2004, LB 1083, § 149.

83-166 Repealed. Laws 2004, LB 1083, § 149.

83-167 Repealed. Laws 2004, LB 1083, § 149.

83-168 Repealed. Laws 2004, LB 1083, § 149.

83-169 Repealed. Laws 2004, LB 1083, § 149.

(f) CORRECTIONAL SERVICES, PAROLE, AND PARDONS

83-170 Terms, defined.

As used in the Nebraska Treatment and Corrections Act, unless the context otherwise requires:

- (1) Board means the Board of Parole;
- (2) Committed offender means any person who, under any provision of law, is sentenced or committed to a facility operated by the department or is sentenced or committed to the department other than a person adjudged to be as described in subdivision (1), (2), (3)(b), or (4) of section 43-247 by a juvenile court;
- (3) Department means the Department of Correctional Services;
- (4) Director means the Director of Correctional Services;
- (5) Director of Supervision and Services means the Director of Supervision and Services appointed pursuant to section 83-1,101;
- (6) Facility means any prison, reformatory, training school, reception center, community guidance center, group home, or other institution operated by the department;
- (7) Good time means any reduction of sentence granted pursuant to sections 83-1,107 and 83-1,108;
- (8) Maximum term means the maximum sentence provided by law or the maximum sentence imposed by a court, whichever is shorter;
- (9) Minimum term means the minimum sentence provided by law or the minimum sentence imposed by a court, whichever is longer;
- (10) Pardon authority means the power to remit fines and forfeitures and to grant respites, reprieves, pardons, or commutations;
- (11) Parole term means the time from release on parole to the completion of the maximum term, reduced by good time;
- (12) Person committed to the department means any person sentenced or committed to a facility within the department;
- (13) Restrictive housing means conditions of confinement that provide limited contact with other offenders, strictly controlled movement while out of cell, and out-of-cell time of less than twenty-four hours per week; and
- (14) Solitary confinement means the status of confinement of an inmate in an individual cell having solid, soundproof doors and which deprives the inmate of all visual and auditory contact with other persons.

Source: Laws 1969, c. 817, § 1, p. 3072; Laws 1973, LB 563, § 38; Laws 1975, LB 567, § 1; Laws 1976, LB 621, § 1; Laws 1988, LB 790, § 34; Laws 1992, LB 816, § 1; Laws 2015, LB598, § 22; Laws 2018, LB841, § 15.

Cross References

Inmate transfer to University of Nebraska Medical Center for psychiatric diagnosis or treatment, see section 83-305.03.

Applies retroactively to prisoners who receive Board of Pardon approval. *Johnson & Cunningham v. Exon*, 199 Neb. 154, 256 N.W.2d 869 (1977).

This section is not applicable to the imposition of a sentence by the trial court. *State v. Suggett*, 189 Neb. 714, 204 N.W.2d 793 (1973).

Under life sentence with no minimum stated, the statutory minimum of ten years for second degree murder would apply for purposes of eligibility for parole. State v. Thompson, 189 Neb. 115, 201 N.W.2d 204 (1972).

83-171 Department of Correctional Services; created; duties.

There is hereby created a Department of Correctional Services which shall:

- (1) Maintain and administer facilities required for the custody, control, correctional treatment, and rehabilitation of persons committed to the department and for the safekeeping of such other persons as may be remanded to the department in accordance with law;
- (2) Develop policies and programs for the correctional treatment and rehabilitation of persons committed to the department;
- (3) Supervise parolees who have been committed to the department; and
- (4) Administer parole services in the facilities and in the community.

Source: Laws 1969, c. 817, § 2, p. 3073; Laws 1973, LB 563, § 39; Laws 1993, LB 31, § 26; Laws 2015, LB598, § 23; Laws 2018, LB841, § 16; Laws 2024, LB631, § 26.
Effective date July 19, 2024.

83-171.01 Corrections and parole staff; performance metrics; requirements.

The department and the Division of Parole Supervision shall establish performance metrics for corrections and parole staff. Such metrics shall measure staff efficacy in providing rehabilitative and reentry services to committed offenders and parolees. Such metrics shall:

- (1) Reflect a balanced approach that considers both compliance and enforcement measures as well as outcomes related to rehabilitation, reintegration, and public safety;
- (2) Include indicators of progress for committed offenders and parolees, such as successful completion of treatment programs, educational attainment, employment status, and compliance with conditions of supervision;
- (3) Emphasize the importance of providing supportive services, fostering positive relationships with committed offenders and parolees, and promoting successful community reentry; and
- (4) Be aligned with best practices, stakeholder input, and the evolving goals and priorities of the criminal justice system.

Source: Laws 2024, LB631, § 37.
Effective date July 19, 2024.

83-172 Director of Correctional Services; appointment; salary; qualifications.

The Governor shall appoint and fix the salary of the Director of Correctional Services with the approval of the Legislature. The Director of Correctional Services shall be qualified for his position by appropriate training and experience in corrections and such director shall have a minimum of ten years of correctional administrative work.

Source: Laws 1969, c. 817, § 3, p. 3073; Laws 1973, LB 563, § 40.

83-173 Director of Correctional Services; duties.

The Director of Correctional Services shall:

(1) Supervise and be responsible for the administration of the Department of Correctional Services;

(2) Establish, consolidate, or abolish any administrative subdivision within the department and appoint and remove for cause the heads thereof and delegate appropriate powers and duties to them;

(3) Establish and administer policies and programs for the operation of the facilities in the department and for the custody, control, safety, correction, and rehabilitation of persons committed to the department;

(4) Appoint and remove the chief executive officer of each facility and delegate appropriate powers and duties to him or her;

(5) Appoint and remove employees of the department and delegate appropriate powers and duties to them;

(6) Adopt and promulgate rules and regulations for the management, correctional treatment, and rehabilitation of persons committed to the department, the administration of facilities, and the conduct of officers and employees under his or her jurisdiction;

(7) Designate the place of confinement of persons committed to the department subject to section 83-176;

(8) Establish and administer policies that ensure that complete and up-to-date electronic records are maintained for each person committed to the department and which also ensure privacy protections. Electronic records shall include programming recommendations, program completions, time spent in housing other than general population, and medical records, including mental and behavioral health records;

(9) Collect, develop, and maintain statistical information concerning persons committed to the department, sentencing practices, and correctional treatment as may be useful in penological research or in the development of treatment programs;

(10) Provide training programs designed to equip employees for duty in the facilities and related services of the department and to raise and maintain the educational standards, level of performance, and safety of such employees;

(11) Notify law enforcement agencies of upcoming furloughs as required by section 83-173.01;

(12) Issue or authorize the issuance of a warrant for the arrest of any person committed to the department who has escaped from the custody of the department; and

(13) Exercise all powers and perform all duties necessary and proper in carrying out his or her responsibilities.

Source: Laws 1969, c. 817, § 4, p. 3074; Laws 1973, LB 563, § 41; Laws 1979, LB 322, § 64; Laws 1980, LB 794, § 3; Laws 1981, LB 545, § 42; Laws 1986, LB 481, § 1; Laws 2015, LB598, § 24; Laws 2023, LB50, § 45.

Prison authorities had no right, absent statutory authority, to prescribe and enforce regulations authorizing forfeiture of money discovered in the possession of inmates as a punitive measure

and their actions in so doing violated due process. *Sell v. Parratt*, 548 F.2d 753 (8th Cir. 1977).

83-173.01 Director of Correctional Services; release of certain convicts; duties.

Two weeks prior to releasing a person convicted of a Class IA felony or sexual assault in the first degree on furlough, the Director of Correctional

Services shall deliver a copy of the release authorization to at least one law enforcement agency in the jurisdiction in which such person is authorized to temporarily reside.

Source: Laws 1986, LB 481, § 3.

83-173.02 Repealed. Laws 2023, LB157, § 22.

83-173.03 Use of restrictive housing; levels; department; duties; use of immediate segregation.

(1) No inmate shall be held in restrictive housing unless done in the least restrictive manner consistent with maintaining order in the facility and pursuant to rules and regulations adopted and promulgated by the department pursuant to the Administrative Procedure Act.

(2) The department shall adopt and promulgate rules and regulations pursuant to the Administrative Procedure Act establishing levels of restrictive housing as may be necessary to administer the correctional system. Rules and regulations shall establish behavior, conditions, and mental health status under which an inmate may be placed in each confinement level as well as procedures for making such determinations. Rules and regulations shall also provide for individualized transition plans, developed with the active participation of the committed offender, for each confinement level back to the general population or to society.

(3) On and after March 1, 2020, no inmate who is a member of a vulnerable population shall be placed in restrictive housing. In line with the least restrictive framework, an inmate who is a member of a vulnerable population may be assigned to immediate segregation to protect himself or herself, staff, other inmates, or inmates who are members of vulnerable populations pending classification. The department shall adopt and promulgate rules and regulations pursuant to the Administrative Procedure Act regarding restrictive housing to address risks for inmates who are members of vulnerable populations. Nothing in this subsection prohibits the department from developing secure mental health housing to serve the needs of inmates with serious mental illnesses as defined in section 44-792, developmental disabilities as defined in section 71-1107, or traumatic brain injuries as defined in section 79-1118.01 in such a way that provides for meaningful access to social interaction, exercise, environmental stimulation, and therapeutic programming.

(4) For purposes of this section, member of a vulnerable population means an inmate who is eighteen years of age or younger, pregnant, or diagnosed with a serious mental illness as defined in section 44-792, a developmental disability as defined in section 71-1107, or a traumatic brain injury as defined in section 79-1118.01.

Source: Laws 2015, LB598, § 31; Laws 2016, LB867, § 1; Laws 2019, LB686, § 13.

Cross References

Administrative Procedure Act, see section 84-920.

83-174 Registered sex offender; release or termination of supervision; notice required; county attorney; duties.

(1) At least ninety days prior to the release from incarceration or civil commitment or the termination of probation or parole supervision of an

individual who is required to register under section 29-4003, the agency with jurisdiction over the individual shall provide notice to the Attorney General, the Nebraska State Patrol, the prosecuting county attorney, and the county attorney in the county in which an individual is incarcerated, supervised, or committed.

(2) The Board of Parole shall also provide notice to the Attorney General, the Nebraska State Patrol, the prosecuting county attorney, and the county attorney in the county in which such individual is incarcerated or committed within five days after scheduling a parole hearing for an individual who is required to register under section 29-4003.

(3) A county attorney shall, no later than forty-five days after receiving notice of the pending release of an individual pursuant to this section, notify the Attorney General whether the county attorney intends to initiate civil commitment proceedings against such individual upon his or her release from custody.

Source: Laws 2006, LB 1199, § 86.

83-174.01 Dangerous sex offender; terms, defined.

For purposes of sections 83-174 to 83-174.05:

(1) Dangerous sex offender means (a) a person who suffers from a mental illness which makes the person likely to engage in repeat acts of sexual violence, who has been convicted of one or more sex offenses, and who is substantially unable to control his or her criminal behavior or (b) a person with a personality disorder which makes the person likely to engage in repeat acts of sexual violence, who has been convicted of two or more sex offenses, and who is substantially unable to control his or her criminal behavior;

(2) Likely to engage in repeat acts of sexual violence means the person's propensity to commit sex offenses resulting in serious harm to others is of such a degree as to pose a menace to the health and safety of the public;

(3) Person who suffers from a mental illness means an individual who has a mental illness as defined in section 71-907;

(4) Person with a personality disorder means an individual diagnosed with a personality disorder;

(5) Sex offense means any of the offenses listed in section 29-4003 for which registration as a sex offender is required; and

(6) Substantially unable to control his or her criminal behavior means having serious difficulty in controlling or resisting the desire or urge to commit sex offenses.

Source: Laws 2006, LB 1199, § 87.

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

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

83-174.02 Dangerous sex offender; evaluation; Department of Correctional Services; duties; notice.

(1) The Department of Correctional Services shall order an evaluation of the following individuals by a mental health professional to determine whether or not the individual is a dangerous sex offender:

(a) Individuals who have been convicted of (i) sexual assault of a child in the first degree pursuant to section 28-319.01 or (ii) sexual assault in the first degree pursuant to section 28-319;

(b) Individuals who have been convicted of two or more offenses requiring registration as a sex offender under section 29-4003 if one of the convictions was for any of the following offenses: (i) Kidnapping of a minor pursuant to section 28-313, except when the person is the parent of the minor and was not convicted of any other offense; (ii) sexual assault in the first degree pursuant to section 28-319 or sexual assault in the second degree pursuant to section 28-320; (iii) sexual assault of a child pursuant to section 28-320.01; (iv) sexual assault of a child in the first degree pursuant to section 28-319.01; (v) sexual assault of a child in the second or third degree pursuant to section 28-320.01; (vi) sexual assault of a vulnerable adult or senior adult pursuant to subdivision (1)(c) of section 28-386; (vii) incest of a minor pursuant to section 28-703; (viii) visual depiction of sexually explicit conduct of a child pursuant to section 28-1463.03; or (ix) any offense that is substantially equivalent to an offense listed in this section by any state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, or by court-martial or other military tribunal, notwithstanding a procedure comparable in effect to that described in section 29-2264 or any other procedure to nullify a conviction other than by pardon;

(c) Individuals convicted of a sex offense against a minor who have refused to participate in or failed to successfully complete the sex offender treatment program offered by the Department of Correctional Services or the Department of Health and Human Services during the term of incarceration. The failure to successfully complete a treatment program due to time constraints or the unavailability of treatment programming shall not constitute a refusal to participate in treatment; and

(d) Individuals convicted of failure to comply with the registration requirements of the Sex Offender Registration Act who have previously been convicted for failure to comply with the registration requirements of the act or a similar registration requirement in another state.

(2) The evaluation required by this section shall be ordered at least one hundred eighty days before the scheduled release of the individual. Upon completion of the evaluation, and not later than one hundred fifty days prior to the scheduled release of the individual, the department shall send written notice to the Attorney General, the county attorney of the county where the offender is incarcerated, and the prosecuting county attorney. The notice shall contain an affidavit of the mental health professional describing his or her findings with respect to whether or not the individual is a dangerous sex offender.

Source: Laws 2006, LB 1199, § 88; Laws 2016, LB934, § 32.

Cross References

Sex Offender Registration Act, see section 29-4001.

This section provides a mechanism for identifying potentially dangerous sex offenders prior to their release from incarceration and for notifying prosecuting authorities so that they have adequate time to determine whether to file a petition under the

Sex Offender Commitment Act before the offender's release date. It does not create any substantive or procedural rights in the offender who is the subject of the mental health evaluation. In re Interest of D.H., 281 Neb. 554, 797 N.W.2d 263 (2011).

83-174.03 Certain sex offenders; supervision by Division of Parole Supervision; notice prior to release; risk assessment and evaluation; conditions of community supervision.

(1) Any individual who, on or after July 14, 2006, (a) is convicted of or completes a term of incarceration for a registrable offense under section

29-4003 and has a previous conviction for a registrable offense under such section, (b) is convicted of sexual assault of a child in the first degree pursuant to section 28-319.01, or (c) is convicted of or completes a term of incarceration for an aggravated offense as defined in section 29-4001.01, shall, upon completion of his or her term of incarceration or release from civil commitment, be supervised in the community by the Division of Parole Supervision for the remainder of his or her life.

(2) Notice shall be provided to the division by an agency or political subdivision which has custody of an individual required to be supervised in the community pursuant to subsection (1) of this section at least sixty days prior to the release of such individual from custody.

(3) Individuals required to be supervised in the community pursuant to subsection (1) of this section shall undergo a risk assessment and evaluation by the division to determine the conditions of community supervision to be imposed to best protect the public from the risk that the individual will reoffend.

(4) Conditions of community supervision imposed on an individual by the division may include the following:

(a) Drug and alcohol testing if the conviction resulting in the imposition of community supervision involved the use of drugs or alcohol;

(b) Restrictions on employment and leisure activities necessary to minimize interaction with potential victims;

(c) Requirements to report regularly to the individual's community supervision officer;

(d) Requirements to reside at a specified location and notify the individual's community supervision officer of any change in address or employment;

(e) A requirement to allow the division access to medical records from the individual's current and former providers of treatment;

(f) A requirement that the individual submit himself or herself to available medical, psychological, psychiatric, or other treatment, including, but not limited to, polygraph examinations; or

(g) Any other conditions designed to minimize the risk of recidivism, including, but not limited to, the use of electronic monitoring, which are not unduly restrictive.

Source: Laws 2006, LB 1199, § 89; Laws 2009, LB285, § 13; Laws 2018, LB841, § 17.

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

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

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

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

83-174.04 Violation of condition of community supervision; actions authorized.

An individual who violates one or more of the conditions of community supervision established for him or her pursuant to section 83-174.03 shall

undergo a review by the Division of Parole Supervision to evaluate the risk posed to the public by the violation in question. The division may take any of the following actions in response to a violation of conditions of community supervision:

- (1) Revise or impose additional conditions of community supervision in order to minimize the risk to the public from the continued presence of the individual in the community;
- (2) Forward to the Attorney General or the county attorney in the county where the individual resides a request to initiate a criminal prosecution for failure to comply with the terms of community supervision; or
- (3) Forward to the county attorney or Attorney General a recommendation that civil commitment proceedings be instituted with respect to the individual.

Source: Laws 2006, LB 1199, § 90; Laws 2018, LB841, § 18.

83-174.05 Violation of conditions of community supervision; penalty.

Failure to comply with the conditions of community supervision imposed by the Division of Parole Supervision is a Class IV felony for the first offense and a Class III felony for any subsequent offense.

Source: Laws 2006, LB 1199, § 91; Laws 2018, LB841, § 19.

83-175 Committed person; treatment; duties.

Whenever the Director of Correctional Services finds that a person committed to the department requires specialized treatment, or treatment of a kind that is not feasible to provide within the department, the director may place such person in institutions providing such treatment in another jurisdiction and may agree to pay reimbursement therefor. A person so transferred to an out-of-state institution shall be subject to the rules and regulations of such institution concerning the custody, conduct, and discipline of its inmates but shall remain subject to the Nebraska Treatment and Corrections Act concerning his or her term, reduction of term, and release on parole.

Source: Laws 1969, c. 817, § 6, p. 3075; Laws 1997, LB 396, § 24.

83-176 Director of Correctional Services; designate place of confinement.

(1) Whenever any person is sentenced or committed under any provision of law to a specific facility within the department or to the custody of the warden or superintendent of such facility, he or she shall be deemed to be sentenced or committed to the department.

(2) The director may designate as a place of confinement of a person committed to the department any available, suitable, and appropriate residence facility or institution, whether or not operated by the state, and may at any time transfer such person from one place of confinement to another.

Source: Laws 1969, c. 817, § 7, p. 3075; Laws 1973, LB 57, § 1; Laws 1988, LB 790, § 35; Laws 1993, LB 31, § 27; Laws 1996, LB 1044, § 923.

83-177 Facility; chief executive officer; designation.

There shall be in each facility a chief executive officer designated as warden or superintendent and such deputy or associate wardens or assistant superin-

tendents as the director determines. The chief executive officer shall be responsible to the director for the custody, control, and correctional treatment of persons committed to the department and for the general administration of the facility. Deputy or associate wardens or assistant superintendents in each facility shall advise and be responsible to the chief executive officer of the facility and shall have such powers and duties as the chief executive officer delegates to them in accordance with law or pursuant to the directions of the director.

Source: Laws 1969, c. 817, § 8, p. 3076; Laws 1993, LB 31, § 28.

83-178 Director; records; contents; confidential; classification and treatment of persons committed.

(1) The director shall establish and maintain, in accordance with the regulations of the department, an individual file for each person committed to the department. Each individual file shall include, when available and appropriate, the following information on such person:

- (a) His or her admission summary;
- (b) His or her presentence investigation report;
- (c) His or her classification report and recommendation;
- (d) Official records of his or her conviction and commitment as well as any earlier criminal records;
- (e) Progress reports and admission-orientation reports;
- (f) Reports of any disciplinary infractions and of their disposition;
- (g) His or her parole plan; and
- (h) Other pertinent data concerning his or her background, conduct, associations, and family relationships.

(2) Any decision concerning the classification, reclassification, transfer to another facility, preparole preparation, or parole release of a person committed to the department shall be made only after his or her file has been reviewed. The content of the file shall be confidential and shall not be subject to public inspection except by court order for good cause shown and shall not be accessible to any person committed to the department. An inmate may obtain access to his or her medical records by request to the provider pursuant to sections 71-8401 to 71-8407 notwithstanding the fact that such medical records may be a part of his or her individual department file. The department retains the authority to withhold mental health and psychological records of the inmate when appropriate.

(3) The program of each person committed to the department shall be reviewed at regular intervals and recommendations shall be made to the chief executive officer concerning changes in such person's program of treatment, training, employment, care, and custody as are considered necessary or desirable.

(4) The chief executive officer of the facility shall have final authority to determine matters of treatment classification within his or her facility and to recommend to the director the transfer of any person committed to the department who is in his or her custody.

(5) The director may at any time order a person committed to the department to undergo further examination and study for additional recommendations

concerning his or her classification, custodial control, and rehabilitative treatment.

(6) Nothing in this section shall be construed to limit in any manner the authority of the Public Counsel to inspect and examine the records and documents of the department pursuant to sections 81-8,240 to 81-8,254, except that the Public Counsel's access to an inmate's medical or mental health records shall be subject to the inmate's consent. The office of Public Counsel shall not disclose an inmate's medical or mental health records to anyone else, including any person committed to the department, except as authorized by law.

Source: Laws 1969, c. 817, § 9, p. 3076; Laws 1993, LB 31, § 29; Laws 2001, LB 15, § 1.

For purposes of subsection (2) of this section, "good cause" means a logical or legally sufficient reason in light of all the surrounding facts and circumstances and in view of the very narrow access intended by the Legislature. *Pettit v. Nebraska Dept. of Corr. Servs.*, 291 Neb. 513, 867 N.W.2d 553 (2015).

Whether a person seeking access to an inmate's institutional file shows good cause is a mixed question of law and fact. What the parties show presents questions of fact, which an appellate court reviews for clear error. Whether the showing establishes good cause is a question of law, and an appellate court reviews questions of law independently. Where the facts are undisputed, the entire question becomes one of law. *Pettit v. Nebraska Dept. of Corr. Servs.*, 291 Neb. 513, 867 N.W.2d 553 (2015).

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

Because this section requires that files be maintained in accordance with the regulations of the department, it is clear from the Department of Correctional Services' own regulations that records of disciplinary proceedings need not be maintained where the result of those proceedings is dismissed on appeal. *Nissen v. Nebraska Dept. of Corr. Servs.*, 8 Neb. App. 865, 602 N.W.2d 672 (1999).

83-179 Person committed; physical examination; evaluation; contents; recommendations.

Upon initial admission to a facility, each person committed to the department shall be given a physical examination and a thorough evaluation. The evaluation shall include such person's psychological, social, educational, and vocational condition and history and the motivation of the offense. A report containing the findings of the examination and evaluation shall be submitted on each such person to the chief executive officer of the facility. The report shall include recommendations regarding the facility to which such person should be assigned, the degree and kind of custodial control, and the program of treatment for rehabilitation, including medical and psychological treatment and educational and vocational training. A medical determination shall be made as to whether such person shall be kept apart from other persons committed to the department.

Source: Laws 1969, c. 817, § 10, p. 3078; Laws 1993, LB 31, § 30.

83-180 Physician or psychologist; designation; duties; transfer of person committed; jurisdiction; release; conditions; director; duties.

(1) When a physician designated by the Director of Correctional Services finds that a person committed to the department suffers from a physical disease or defect, or when a physician or psychologist designated by the director finds that a person committed to the department is mentally ill as defined in section 71-907, the chief executive officer of the facility may order such person to be segregated from other persons in the facility in the least restrictive manner possible. If the physician or psychologist is of the opinion that the person cannot be given proper treatment in that facility, the director may arrange for his or her transfer for examination, study, and treatment to any medical-

correctional facility or to another institution in the Department of Health and Human Services where proper treatment is available. A person who is so transferred shall remain subject to the jurisdiction and custody of the Department of Correctional Services and shall be returned to the department when, prior to the expiration of his or her sentence, treatment in such facility is no longer necessary.

(2) When the physician or psychologist designated by the Director of Correctional Services finds that a person committed to the department suffers from a physical disease or defect or mental illness which in his or her opinion cannot be properly treated in any facility or institution in the Department of Health and Human Services, the director may arrange for his or her transfer for treatment to a hospital or psychiatric facility outside the department. The director shall make appropriate arrangements with other public or private agencies for the transportation to, and for the care, custody, and security of the person in, such hospital or psychiatric facility. While receiving treatment in such hospital or psychiatric facility, the person shall remain subject to the jurisdiction and custody of the Department of Correctional Services and shall be returned to the department when, prior to the expiration of his or her sentence, such hospital or psychiatric treatment is no longer necessary.

(3) The director shall adopt and promulgate rules and regulations to establish evidence-based criteria which the department shall use to identify any person nearing release who should be evaluated to determine whether he or she is a mentally ill and dangerous person as defined in section 71-908. When two psychiatrists designated by the director find that a person about to be released or discharged from any facility is a mentally ill and dangerous person as defined in section 71-908, the director shall transfer him or her to, or if he or she has already been transferred, permit him or her to remain in, a psychiatric facility in the Department of Health and Human Services and shall promptly commence proceedings under the Nebraska Mental Health Commitment Act.

(4) The director shall adopt and promulgate rules and regulations for risk assessment and management for inmates. Such rules and regulations shall establish a structured decisionmaking process that is consistent with professional standards of care and is consistent with available risk assessment and management guidelines. The process developed shall be performed by individuals with proper training and continuing education related to relevant areas of risk assessment and management. Appropriate quality assurance and outcome assessment shall be included to ensure fidelity to the process and address relevant challenges. The rules and regulations shall establish a rational process for prioritizing who shall be screened and evaluated and when, which shall include, but not be limited to: Incidents of violent activity during incarceration; attempts of suicide or other major self-harm behaviors; and a process for staff to nominate inmates for screening based upon behavior that raises concern for community safety as release approaches.

(5) The director shall adopt and promulgate rules and regulations to ensure that all persons who are incarcerated receive a full mental health screening within the first two weeks of intake to determine whether or not an inmate is mentally ill as defined in section 71-907. Such determination shall be reflected in the inmate's individualized treatment plan and shall include adequate mental health treatment. If, at any point during his or her incarceration, an inmate is found to be mentally ill, such determination shall be reflected in the inmate's

individualized treatment plan and shall include adequate mental health treatment.

Source: Laws 1969, c. 817, § 11, p. 3078; Laws 1996, LB 1044, § 924; Laws 2015, LB598, § 25.

Cross References

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

Failure to return to a hospital after a temporary leave constitutes an escape from custody. *State v. Mayes*, 190 Neb. 837, 212 N.W.2d 623 (1973).

In order for application of this section to be constitutional, a prisoner must be provided, prior to transfer, with written notice, a hearing before an independent factfinder, qualified independent

assistance at the hearing, a written decision, and notice of the above rights. *Vitek v. Jones*, 445 U.S. 480 (1980).

Involuntary transfer of prisoner into more controlled confinement, for those mentally diseased or defective, requires transferee be afforded due process of notice, hearing, counsel, and confrontation of witnesses. *Miller v. Vitek* 437 F.Supp. 569 (D. Neb. 1977).

83-180.01 Risk assessment tools; study; evaluation.

On or before October 1, 2025, the department shall complete a study examining risk assessment tools employed by the department, the board, and the Office of Probation Administration. The department shall evaluate the feasibility of establishing a unified risk assessment framework across all criminal justice agencies.

Source: Laws 2024, LB631, § 42.
Effective date July 19, 2024.

83-181 Committed offender; health care; food and clothing; access to attorney.

(1) Each committed offender shall have regular medical and dental care. Each committed offender shall be adequately fed and clothed in accordance with the regulations of the department. No committed offender shall be required to wear stripes or other degrading apparel.

(2) The department shall allow each committed offender reasonable access to his or her attorney or attorneys. If a committed offender communicates with his or her attorney or attorneys by telephone or videoconferencing, such communication shall be provided without charge to the committed offender and without monitoring or recording by the department or law enforcement.

Source: Laws 1969, c. 817, § 12, p. 3079; Laws 2019, LB443, § 1.

83-182 Director; establish programs.

The director shall establish appropriate programs for each facility designed as far as practical to prepare and assist each person committed to the department to assume his or her responsibilities as a useful citizen. In developing such programs, the director shall seek to make available to each person capable of benefiting therefrom academic or vocational training, participation in productive work, religious and recreational activities, and such therapeutic measures as are practicable. No person shall be ordered or compelled to participate in religious activities.

Source: Laws 1969, c. 817, § 13, p. 3079; Laws 1993, LB 31, § 31.

Evidence held insufficient to show denial of property rights afforded under sections 83-182 and 83-183. *Journey v. Vitek*, 685 F.2d 239 (8th Cir. 1982).

83-182.01 Structured programming; evaluation.

(1) Structured programming shall be planned for all adult persons committed to the department. The structured programming shall include any of the following: Work programs, vocational training, behavior management and modification, money management, and substance abuse awareness, counseling, or treatment. Programs and treatment services shall address:

- (a) Behavioral impairments, severe emotional disturbances, and other mental health or psychiatric disorders;
- (b) Drug and alcohol use and addiction;
- (c) Health and medical needs;
- (d) Education and related services;
- (e) Counseling services for persons committed to the department who have been physically or sexually abused;
- (f) Work ethic and structured work programs;
- (g) The development and enhancement of job acquisition skills and job performance skills; and
- (h) Cognitive behavioral intervention.

Structured programming may also include classes and activities organized by inmate self-betterment clubs, cultural clubs, and other inmate-led or volunteer-led groups.

(2) The goal of such structured programming is to provide the skills necessary for the person committed to the department to successfully return to his or her home or community or to a suitable alternative community upon his or her release from the adult correctional facility. The Legislature recognizes that many inmate self-betterment clubs and cultural clubs help achieve this goal by providing constructive opportunities for personal growth.

(3) If a person committed to the department refuses to participate in the structured programming described in subsection (1) of this section, he or she may be subject to disciplinary action, except that a person committed to the department who refuses to participate in structured programming consisting of classes and activities organized by inmate self-betterment clubs, cultural clubs, or other inmate-led or volunteer-led groups shall not be subject to disciplinary action.

(4) Any person committed to the department who is qualified by reason of education, training, or experience to teach academic or vocational classes may be given the opportunity to teach such classes to committed offenders as part of the structured programming described in this section.

(5)(a) The department shall evaluate the quality of programs funded by the department, including whether program participation reduces recidivism. The department shall contract with an academic institution located within the State of Nebraska for each program evaluation. Each program evaluation shall be standardized and shall include a site visit, interviews with key staff, interviews with offenders, group observation, if applicable, and review of materials used for the program. The evaluation shall include adherence to concepts that are linked with program effectiveness, such as program procedures, staff qualifications, and fidelity to the program model of delivering offender assessment and treatment. Each program evaluation shall also include a rating on the effectiveness of the program and feedback to the department and the office of Inspector General of the Nebraska Correctional System concerning program strengths

and weaknesses and recommendations for better adherence to evidence-based programming, if applicable.

(b) The evaluation shall also make recommendations regarding the availability of programs throughout the correctional system, the ability to deliver the programs in a timely manner, and the therapeutic environment in which such programs are delivered at each facility and shall include a cost-benefit analysis of each program, if applicable. Program evaluations shall be prioritized in the following order: (i) Clinical treatment programs; (ii) nonclinical treatment programs; and (iii) other structured programs. Clinical treatment programs shall be evaluated at least once every three years and nonclinical treatment and structured programs shall be evaluated at least once every eight years.

(c) For purposes of this subsection:

(i) Clinical treatment program means a program designed to address specific behavioral health needs delivered by a licensed behavioral health professional; and

(ii) Nonclinical treatment program means a cognitive behavioral intervention program delivered by volunteers or department staff.

Source: Laws 1995, LB 371, § 29; Laws 1997, LB 364, § 18; Laws 2015, LB605, § 93; Laws 2022, LB896, § 1.

83-182.02 Book donations; establish program.

The director shall establish a program to accept donations of books for use by committed offenders. The program shall seek to gather a culturally diverse selection of books.

Source: Laws 2024, LB631, § 43.
Effective date July 19, 2024.

83-183 Persons committed; employment; wages; use; rules and regulations.

(1) To establish good habits of work and responsibility, to foster vocational training, and to reduce the cost of operating the facilities, persons committed to the department shall be employed, eight hours per day, so far as possible in constructive and diversified activities in the production of goods, services, and foodstuffs to maintain the facilities, for state use, and for other purposes authorized by law. To accomplish these purposes, the director may establish and maintain industries and farms in appropriate facilities and may enter into arrangements with any other board or agency of the state, any natural resources district, or any other political subdivision, except that any arrangements entered into with school districts, educational service units, community colleges, state colleges, or universities shall include supervision provided by the department, for the employment of persons committed to the department for state or governmental purposes. Nothing in this subsection shall be construed to effect a reduction in the number of work release positions.

(2) The director shall make rules and regulations governing the hours, the conditions of labor, and the rates of compensation of persons committed to the department. In determining the rates of compensation, such regulations may take into consideration the quantity and quality of the work performed by such person, whether or not such work was performed during regular working hours, the skill required for its performance, and the economic value of similar work outside of correctional facilities.

(3) Except as provided in section 83-183.01, wage payments to a person committed to the department shall be set aside by the chief executive officer of the facility in a separate fund. The fund shall enable such person committed to the department to contribute to the support of his or her dependents, if any, to make necessary purchases from the commissary, to set aside sums to be paid to him or her at the time of his or her release from the facility, and to pay restitution if restitution is required.

(4) The director shall adopt and promulgate rules and regulations which will protect the committed offender's rights to due process and govern the collection of restitution as provided in section 83-184.01.

(5) The director may authorize the chief executive officer to invest the earnings of a person committed to the department. Any accrued interest thereon shall be credited to such person's fund.

(6) The director may authorize the chief executive officer to reimburse the state from the wage fund of a person committed to the department for:

(a) The actual value of property belonging to the state or any other person intentionally or recklessly destroyed by such person committed to the department during his or her commitment;

(b) The actual value of the damage or loss incurred as a result of unauthorized use of property belonging to the state or any other person by such person committed to the department;

(c) The actual cost to the state for injuries or other damages caused by intentional acts of such person committed to the department; and

(d) The reasonable costs incurred in returning such person committed to the department to the facility to which he or she is committed in the event of his or her escape.

(7) No person committed to the department shall be required to engage in excessive labor, and no such person shall be required to perform any work for which he or she is declared unfit by a physician designated by the director. No person who performs labor or work pursuant to this section shall be required to wear manacles, shackles, or other restraints.

(8) The director may authorize that a portion of the earnings of a person committed to the department be retained by that person for personal use.

Source: Laws 1969, c. 817, § 14, p. 3080; Laws 1980, LB 319, § 10; Laws 1993, LB 31, § 32; Laws 1994, LB 889, § 1; Laws 1999, LB 865, § 7; Laws 2002, LB 112, § 1; Laws 2009, LB63, § 42; Laws 2015, LB605, § 94.

Reimbursement for expense of returning escapee is not a proper matter to be raised in appeal from criminal conviction and sentence. *State v. Mayes*, 190 Neb. 837, 212 N.W.2d 623 (1973).

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

Evidence held insufficient to show denial of property rights afforded under sections 83-182 and 83-183. *Journey v. Vitek*, 685 F.2d 239 (8th Cir. 1982).

The reduction of sentence for good behavior and faithful performance of duties is a statutory right and cannot be eliminated or withheld for failure to perform work which a prisoner is unable to do because of physical infirmity not caused by his misconduct, nor as punishment except for flagrant or serious misconduct. *Sawyer v. Sigler*, 320 F.Supp. 690 (D. Neb. 1970).

83-183.01 Persons committed; wages; disposition; director; adopt rules and regulations.

A person committed to the department, who is earning at least minimum wage and is employed pursuant to sections 81-1827 and 83-183, shall have his

or her wages set aside by the chief executive officer of the facility in a separate wage fund. The director shall adopt and promulgate rules and regulations which will protect the inmate's rights to due process, provide for hearing as necessary before the Crime Victim's Reparations Committee, and govern the disposition of a confined person's gross monthly wage minus required payroll deductions and payment of necessary work-related incidental expenses for the following purposes:

- (1) For the support of families and dependent relatives of the respective inmates;
- (2) For the discharge of any legal obligations, including judgments for restitution as provided in section 83-184.01;
- (3) To pay all or a part of the cost of their board, room, clothing, medical, dental, and other correctional services;
- (4) To provide for funds payable to the person committed to the department upon his or her release;
- (5) For the actual value of state property intentionally or willfully and wantonly destroyed by such person during his or her commitment;
- (6) For reasonable costs incurred in returning such person to the facility to which he or she is committed in the event of escape; and
- (7) For deposit in the Victim's Compensation Fund.

Source: Laws 1980, LB 319, § 11; Laws 1986, LB 540, § 40; Laws 1987, LB 353, § 3; Laws 2015, LB605, § 95.

Section 83-183, when construed with this section, does not require that an inmate be provided with full-time employment as a prerequisite to the applicability of rules and regulations

promulgated under the authority of this section. *Hurbenca v. Nebraska Dept. of Corr. Servs.*, 18 Neb. App. 31, 773 N.W.2d 402 (2009).

83-184 Person committed; authorized employment and treatment activities; funds; disposal; withholding; use; violations; effect.

(1) When the conduct, behavior, mental attitude, and conditions indicate that a person committed to the department and the general society of the state will be benefited, and there is reason to believe that the best interests of the people of the state and the person committed to the department will be served thereby, in that order, the director may authorize such person, under prescribed conditions, to:

(a) Visit a specifically designated place or places and return to the same or another facility. An extension of limits may be granted to permit a visit to a dying relative, attendance at the funeral of a relative, the obtaining of medical services, the contacting of prospective employers, or for any other reason consistent with the public interest;

(b) Work at paid employment or participate in a training program in the community on a voluntary basis whenever:

(i) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and

(ii) The rates of pay and other conditions of employment will not be less than those paid or provided for work of similar nature in the locality in which the work is to be performed; or

(c) Leave the facility to participate in substance abuse evaluations or treatment, attend rehabilitative programming or treatment, seek residency or employment, or participate in structured programming as provided in section 83-182.01 and return to the same or another facility. The department shall collaborate with community-based providers to enhance the availability of community-based options for such participation that meet the department's requirements for rehabilitative programming or treatment or structured programming.

(2) The wages earned by a person authorized to work at paid employment in the community under this section shall be credited by the chief executive officer of the facility to such person's wage fund. The director shall authorize the chief executive officer to withhold up to five percent of such person's net wages. The funds withheld pursuant to this subsection shall be remitted to the State Treasurer for credit as provided in subsection (2) of section 33-157.

(3) A person authorized to work at paid employment in the community under this section may be required to pay, and the director is authorized to collect, such costs incident to the person's confinement as the director deems appropriate and reasonable. Collections shall be deposited in the state treasury as miscellaneous receipts.

(4) A person authorized to work at paid employment in the community under this section may be required to pay restitution. The director shall adopt and promulgate rules and regulations which will protect the committed offender's rights to due process and govern the collection of restitution as provided in section 83-184.01.

(5) The willful failure of a person to remain within the extended limits of his or her confinement or to return within the time prescribed to a facility designated by the director may be deemed an escape from custody punishable as provided in section 28-912.

(6) No person employed in the community under this section or otherwise released shall, while working in such employment in the community or going to or from such employment or during the time of such release, be deemed to be an agent, employee, or servant of the state.

Source: Laws 1969, c. 817, § 15, p. 3081; Laws 1978, LB 748, § 46; Laws 1999, LB 106, § 1; Laws 2010, LB510, § 5; Laws 2015, LB605, § 96; Laws 2018, LB841, § 20; Laws 2024, LB631, § 27.
Effective date July 19, 2024.

The word willful herein means only intentional and not accidental or involuntary. *State v. Gascoigen*, 191 Neb. 15, 213 N.W.2d 452 (1973).

Failure to return to a hospital after a temporary leave constitutes an escape from custody. *State v. Mayes*, 190 Neb. 837, 212 N.W.2d 623 (1973).

Sentence of one year for willful failure to return to Nebraska Penal and Correctional Complex from twenty-seven-hour fur-

lough was not excessive. *State v. Cox*, 189 Neb. 821, 205 N.W.2d 546 (1973).

The Director of Corrections may refuse to release a prisoner for work under this section notwithstanding a favorable recommendation by the Board of Parole. *Housand v. Sigler*, 186 Neb. 414, 183 N.W.2d 493 (1971).

83-184.01 Restitution order; collection from wage funds; report.

(1) The department, in consultation with the State Court Administrator, shall adopt and promulgate rules and regulations to provide an effective process for the transfer of funds for the purpose of satisfying restitution orders.

(2) A sentencing order requiring an inmate to pay restitution shall be treated as a court order authorizing the department to withhold and transfer funds for the purpose of satisfying a restitution order.

(3) This section applies to funds in the wage fund of any inmate confined in a correctional facility on or after August 30, 2015.

(4) The department shall report annually to the Legislature on the collection of restitution from wage funds. The report shall include the total number of inmates with restitution judgments, the total number of inmates with wage funds, the total number of inmates with both, the number of payments made to either victims or clerks of the court, the average amount of payments, and the total amount of restitution collected. The report shall be submitted electronically.

Source: Laws 2015, LB605, § 97.

83-185 Transferred to section 83-4,114.01.

83-186 Visitors of facilities; enumerated.

(1) The following persons shall be allowed to visit any facility in the Department of Correctional Services at any time:

- (a) Members of the Legislature;
- (b) Members of the judiciary;
- (c) Members of the Board of Pardons;
- (d) Members of the Board of Parole; and
- (e) Members of the clergy, subject to the approval of the Director of Correctional Services.

(2) The chief executive officer of a facility may permit any other person to visit the facility.

Source: Laws 1969, c. 817, § 17, p. 3083; Laws 1973, LB 563, § 43; Laws 1990, LB 1067, § 1.

83-186.01 Adult correctional facilities; reentry planning program; legislative findings; Department of Correctional Services; duties.

(1) The Legislature finds that:

- (a) Research reveals that children who have parents involved in their lives perform better academically and socially in school, experience fewer mental health and substance abuse issues, and are less likely to commit serious crime;
- (b) Strategies to address family stability and intergenerational poverty are specifically needed for children with incarcerated parents; and
- (c) Research reveals that family-based reentry planning, including relationship development and housing and employment strategies, results in lower recidivism and greater family economic stability.

(2) The department shall implement a program for the purpose of providing in Nebraska adult correctional facilities an evidence-based program of parent education, early literacy, relationship skills development, and reentry planning involving family members of incarcerated parents prior to their release. Incarcerated parents of children between birth and five years of age shall have priority for participation in the program. The department may award a contract to operate the program. Such contract shall be based on competitive bids as provided in sections 73-101 to 73-105. The department shall track data related to program participation and recidivism.

Source: Laws 2013, LB483, § 1; Laws 2015, LB598, § 26.

83-187 Release of person committed; procedures.

(1) When a person committed to the department is released from a facility on parole, on post-release supervision, or upon final discharge, the person shall be returned any personal possessions taken upon confinement, and the chief executive officer of the facility shall furnish the person with a written notice as required in section 83-1,118, clothing appropriate for the season of the year, a transportation ticket to the place where he or she will reside, if within the continental limits of the United States or if not, the state may purchase transportation to the nearest United States border en route to such residence, and such sum of money as may be prescribed by the regulations of the department to enable the person to meet his or her immediate needs. If at the time of release the person is too ill or feeble or otherwise unable to use public means of transportation, the chief executive officer may make special arrangements for transportation to the place where the person will reside.

(2) At the time of release, the person shall also be paid his or her earnings and any accrued interest thereon set aside in the wage fund. Such earnings and interest shall be paid either in a lump sum or otherwise as determined by the chief executive officer to be in the best interest of the person. No less than one-third of such fund shall be paid upon release, and the entire fund shall be paid within six months of the person's release.

(3) The department shall send a copy of the release or discharge to the court which committed the person and also to the sheriff of the county in which the court is located and, when such county contains a city of the metropolitan class, to the police department of such city.

Source: Laws 1969, c. 817, § 18, p. 3083; Laws 1971, LB 48, § 1; Laws 1972, LB 1499, § 2; Laws 2002, LB 1054, § 27; Laws 2016, LB1094, § 34.

83-187.01 Legislative intent.

The Legislature affirms the importance of parole as a program for the supervised release of inmates making the transition from confinement to responsible citizenship. Therefor the Legislature intends that committed offenders who are eligible for parole have the opportunity to complete the final stages of their sentences on parole.

Source: Laws 2003, LB 46, § 18.

83-188 Board of Parole; created; act, how construed; employees.

(1) There is hereby created the Board of Parole. For administrative purposes only, the board shall be within the Board of Pardons. Nothing in the Nebraska Treatment and Corrections Act shall be construed to give the director or the Board of Pardons any authority, power, or responsibility over the Board of Parole, its employees, or the exercise of its functions under the provisions of the act. The employees of the Board of Parole shall be covered by the State Personnel System.

(2) Employees of the Board of Parole shall consist of the following:

(a) The administrative staff necessary to assist the board with parole reviews, revocations, and hearings;

(b) At least one legal counsel;

(c) At least one fiscal analyst, policy analyst, or data analyst; and

(d) At least one staff member to assist with the daily supervision and training of employees of the board.

Source: Laws 1969, c. 817, § 19, p. 3084; Laws 1972, LB 1499, § 3; Laws 1973, LB 563, § 44; Laws 1992, Third Spec. Sess., LB 13, § 1; Laws 1994, LB 677, § 2; Laws 2015, LB598, § 27.

Cross References

State Personnel System, see sections 81-1301 to 81-1316.

83-189 Board of Parole; members; appointment; qualifications; chairperson; duties.

The Board of Parole shall consist of five full-time members to be appointed by the Governor. The members of the board shall be of good character and judicious temperament. The members of the board shall have all the powers and duties of board members commencing on the date of appointment. The appointments shall be subject to confirmation by the Legislature at its next regular session following the appointments. At least one member of the board shall be of an ethnic minority group, at least one member shall be female, and at least one member shall have a professional background in corrections.

One of the five members of the board shall be designated as chairperson by the Governor. In addition to the chairperson's duties as a member of the board as prescribed in subsection (1) of section 83-192, he or she shall supervise the administration and operation of the board and shall carry out the duties prescribed in subsection (2) of such section.

Source: Laws 1969, c. 817, § 20, p. 3084; Laws 1973, LB 524, § 1; Laws 1987, LB 603, § 1; Laws 1994, LB 677, § 3.

83-190 Board of Parole; members; terms; removal; procedure.

(1) The members of the Board of Parole shall have terms of office of six years and until their successors are appointed. The successors shall be appointed in the same manner as provided for the members first appointed, and a vacancy occurring before expiration of a term of office shall be similarly filled for the unexpired term. A member of the board may be reappointed. The members of the board shall be removed for disability, neglect of duty, or malfeasance in office by the Board of Pardons after a hearing. The Board of Pardons shall promptly file in the office of the Secretary of State a complete statement of the charges, its findings and disposition, and a complete record of the proceedings.

(2) For purposes of this section, neglect of duty includes not attending a total of twelve full days of hearings of the Board of Parole within a calendar year. A member's failure to attend a hearing day shall not count toward such limit if the failure was due to a medical appointment that could not reasonably be rescheduled or delayed, a family emergency, illness, an act of God, or similar circumstances beyond the member's control.

Source: Laws 1969, c. 817, § 21, p. 3084; Laws 1973, LB 524, § 2; Laws 1987, LB 603, § 2; Laws 1994, LB 677, § 4; Laws 2024, LB631, § 28.

Effective date July 19, 2024.

83-191 Board of Parole; members; restriction on activities; salary.

The members of the Board of Parole shall devote full time to their duties with such board and shall not engage in any other business or profession or hold any other public office. No member shall, at the time of his or her appointment or during his or her tenure, serve as the representative of any political party or of any executive committee or governing body thereof or as an executive officer or employee of any political party, organization, association, or committee. A member shall resign from the board upon filing as a candidate for any elective public office. Each member of the board shall receive an annual salary to be fixed by the Governor. Such salaries shall be paid in equal monthly portions.

Source: Laws 1969, c. 817, § 22, p. 3085; Laws 1973, LB 524, § 3; Laws 1987, LB 603, § 3; Laws 1992, Third Spec. Sess., LB 13, § 2; Laws 1994, LB 677, § 5; Laws 2018, LB841, § 21.

83-191.01 Board of Parole; rules and regulations.

The board shall adopt and promulgate rules and regulations that include:

- (1) Clearly defined and easily understood written mission statements and strategic plans encompassing public safety and rehabilitation. The board shall align such statements and plans with those of the department;
- (2) Procedures to ensure that victims are appropriately notified and given the opportunity to provide input in the rulemaking process;
- (3) A requirement that board members receive initial and ongoing training on cultural competency, implicit bias, an understanding of the historical perspective of how and why parole was created, the powers and duties of the board, and ethics. Such training shall address current suggested best practices and enhance and strengthen members' decisionmaking skills;
- (4) A requirement that board members receive initial and ongoing training on motivational interviewing using approaches and materials developed and approved by the National Institute of Corrections;
- (5) A code of ethics for members of the board;
- (6) Requirements and procedures for the board to incorporate evidence-based practices that reduce recidivism. This includes, but is not limited to, a requirement that the board measure performance outcomes and develop transparent, written criteria that shall be considered when making decisions on whether to grant or revoke parole and when setting the conditions of parole;
- (7) Methods by which the board will enhance opportunities for the success of people released on parole by collaborating with partners within and outside of the criminal justice system, supporting the supervision of people released on parole in their communities, employing informal social controls, and enabling people released on parole to participate meaningfully in the supervision process; and
- (8) Policies and standard practices that will assist in ensuring neutrality, impartiality, and objectivity as an integral part of the board's culture and practices.

Source: Laws 2024, LB631, § 38.
Effective date July 19, 2024.

83-192 Board of Parole; chairperson; powers; duties.

- (1) The Board of Parole shall:

(a) Determine the time of release on parole of committed offenders eligible for such release;

(b) Fix the conditions of parole, revoke parole, issue or authorize the issuance of warrants for the arrest of parole violators, and impose other sanctions short of revocation for violation of conditions of parole;

(c) Determine the time of mandatory discharge from parole;

(d) Visit and inspect any facility, state or local, for the detention of persons charged with or convicted of an offense and for the safekeeping of such other persons as may be remanded to such facility in accordance with law;

(e) Within two years after July 1, 2006, implement the utilization of a validated risk and needs assessment in coordination with the Department of Correctional Services and the Division of Parole Supervision. The assessment shall be prepared and completed by the department or the division for use by the board in determining release on parole;

(f) Review the record of every parole-eligible committed offender annually when he or she is within three years of his or her earliest parole eligibility date.

The review schedule shall be based on court-imposed sentences or statutory minimum sentences, whichever are greater. The board is not required to review the record of a committed offender when the committed offender's parole eligibility date is within one month of his or her mandatory discharge date. Nothing in such schedule shall prohibit the board from reviewing a committed offender's case at any time;

(g) Appoint and remove all employees of the board as prescribed by the State Personnel System and delegate appropriate powers and duties to them;

(h) Carry out its duties under section 83-962 during a correctional system overcrowding emergency;

(i) Adopt and promulgate rules and regulations; and

(j) Exercise all powers and perform all duties necessary and proper in carrying out its responsibilities under the Nebraska Treatment and Corrections Act.

(2) The chairperson of the board shall:

(a) Supervise the administration and operation of the board;

(b) Serve in an advisory capacity to the director in administering parole services within any facility;

(c) Interpret the parole program to the public with a view toward developing a broad base of public support;

(d) Conduct research for the purpose of evaluating and improving the effectiveness of the parole system;

(e) Recommend parole legislation to the Governor;

(f) Adopt and promulgate rules and regulations for the administration and operation of the board;

(g) Take all actions necessary to assist the board in carrying out its duties under section 83-962 during a correctional system overcrowding emergency; and

(h) Exercise all other powers and perform all other duties necessary and proper in carrying out his or her responsibilities as chairperson.

(3) This section does not prohibit a committed offender from requesting that the board review his or her record. The board is not required to review a committed offender's record more than once a year, except as otherwise required by statute, including section 83-962.

Source: Laws 1969, c. 817, § 23, p. 3085; Laws 1979, LB 322, § 65; Laws 1981, LB 545, § 43; Laws 1986, LB 1241, § 1; Laws 1992, Third Spec. Sess., LB 13, § 3; Laws 1994, LB 677, § 6; Laws 2006, LB 1113, § 50; Laws 2018, LB841, § 22; Laws 2024, LB631, § 29. Effective date July 19, 2024.

Cross References

State Personnel System, see sections 81-1301 to 81-1316.

83-192.01 Board of Parole Grant Awards Cash Fund; created; use; investment.

The Board of Parole Grant Awards Cash Fund is created. All funds received by virtue of public grants awarded to the Board of Parole shall be remitted to the State Treasurer for credit to the fund. The fund shall be utilized by the board for the purposes stated in the individual grant applications and awards. 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 2018, LB841, § 23.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

83-193 Board of Parole; no jurisdiction over person neglected, dependent, delinquent, or in need of special supervision.

The Board of Parole shall not have jurisdiction over persons who are committed to the Department of Correctional Services after being found neglected, dependent, delinquent or in need of special supervision in accordance with the provisions of Chapter 43, article 2.

Source: Laws 1969, c. 817, § 24, p. 3086.

83-194 Board of Parole; advise Board of Pardons upon request.

The Board of Parole shall, when requested by the Board of Pardons, advise it concerning applications requesting the exercise of pardon authority and shall make such investigation and collect such records as may bear on such applications.

Source: Laws 1969, c. 817, § 25, p. 3086.

83-195 Board of Parole; issue process; service; compel attendance of witnesses; fees.

In the performance of its duties, the Board of Parole, or any member thereof, shall have the power to issue subpoenas, to compel the attendance of witnesses and the production of books, papers, and other documents pertinent to the subject of an inquiry, and to administer oaths and take the testimony of persons under oath. Subpoenas so issued may be served by any sheriff, constable, police officer, parole officer, or peace officer in the same manner as similar process in

the district court. Any person who knowingly testifies falsely, submits any false affidavit or deposition, fails to appear when subpoenaed, or fails or refuses to produce such material pursuant to the subpoena shall be subject to the same orders and penalties to which a person before the district court is subject. Any district court of this state, upon application by the board, may compel the attendance of such witnesses, the production of such material, and the giving of testimony before the board by an attachment for contempt or otherwise in the same manner as production of evidence may be compelled before such court. Every person shall attend as a witness when subpoenaed anywhere within the state and shall be entitled to the same fees, if requested, as a witness in the district court and mileage as provided in section 81-1176 for state employees. Fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses shall be paid by the board.

Source: Laws 1969, c. 817, § 26, p. 3087; Laws 1981, LB 204, § 202; Laws 1988, LB 864, § 64.

83-196 Board of Parole; quorum; decisions; record.

Three members of the Board of Parole shall constitute a quorum for the purpose of transacting any official business. The decisions of the Board of Parole shall be by majority vote. The board shall keep a record of its acts and shall notify the Director of Correctional Services of its decisions relating to offenders who are or have been committed.

Source: Laws 1969, c. 817, § 27, p. 3087; Laws 1987, LB 603, § 4.

83-196.01 Board of Parole; determination regarding parole; requirements.

(1) This section applies to the board whenever it makes a determination of whether to grant or deny parole, sets the conditions of parole, or determines the sanctions for a violation of parole.

(2) The board shall serve as an impartial, neutral, and objective decisionmaker and shall be insulated from undue influences of specific ideological views and positions and from predetermined conceptions of the desired outcomes of proceedings before the board.

(3) If the board collaborates with or receives input from other entities within the criminal justice system, the board shall do so in a manner that respects and reinforces impartiality, neutrality, and objectivity.

(4) The board shall consider all evidence regarding a committed offender in an impartial, neutral, and objective manner.

(5) The board shall not recommend or require that a committed offender complete or participate in any program or treatment not included in the offender's department-approved personalized program plan created under section 83-1,107.

(6) The board shall not make recommendations to the department regarding specific custody levels for committed offenders.

Source: Laws 2024, LB631, § 39.
Effective date July 19, 2024.

83-196.02 Board of Parole; decisions regarding parole; considerations.

When making decisions regarding parole, the board shall consider information and reports provided by the Reentry Continuity Advisory Board created under section 47-1117.

Source: Laws 2024, LB631, § 40.
Effective date July 19, 2024.

83-197 Department of Correctional Services; records to be kept.

The Board of Parole shall have the power to direct the Director of Correctional Services to keep records concerning committed offenders which the board deems pertinent to its functions.

Source: Laws 1969, c. 817, § 28, p. 3087.

83-198 Prohibited acts; violation; penalty.

A person shall be guilty of a Class IV felony if he or she threatens or attempts to threaten harm to a member or an employee of the Board of Parole with the purpose to influence a decision, an opinion, a recommendation, a vote, or any other exercise of discretion as member or employee of the board or if he or she privately addresses to any member or employee of the board any representation, entreaty, argument, or other communication designed to influence the outcome of any matter which is or may come before the board on the basis of considerations other than those authorized by law.

Source: Laws 1969, c. 817, § 29, p. 3087; Laws 1977, LB 39, § 310; Laws 2018, LB841, § 24.

83-199 Board of Parole; provision of law not applicable.

The provisions of the Administrative Procedure Act shall not apply to the Board of Parole or to the exercise of its functions.

Source: Laws 1969, c. 817, § 30, p. 3088.

Cross References

Administrative Procedure Act, see section 84-920.

83-1,100 Division of Parole Supervision; created; duties; parole officer compensation.

(1) There is hereby created the Division of Parole Supervision within the department. The employees of the division shall consist of the Director of Supervision and Services, the field parole service officers, and all other division staff. The division shall be responsible for the following:

(a) The administration of parole services in the community, including administration of the Community Work Release and Reentry Centers Act;

(b) The maintenance of all records and files associated with the Board of Parole;

(c) The daily supervision and training of staff members of the division, including training regarding evidence-based practices in supervision pursuant to section 83-1,100.02; and

(d) The assessment, evaluation, and supervision of individuals who are subject to parole supervision, including lifetime community supervision pursuant to section 83-174.03.

(2) Parole officers shall be compensated with salaries substantially equal to other state employees who have similar responsibilities, including employees of the Office of Probation Administration. This subsection shall apply only to field parole service officers and support staff and shall not apply to the Director of Supervision and Services or any other management-level position.

(3) This section does not prohibit the division from maintaining daily records and files associated with the Board of Pardons.

Source: Laws 1969, c. 817, § 31, p. 3088; Laws 1992, Third Spec. Sess., LB 13, § 4; Laws 1994, LB 677, § 7; Laws 2006, LB 1199, § 92; Laws 2015, LB598, § 28; Laws 2015, LB605, § 98; Laws 2018, LB841, § 25; Laws 2024, LB631, § 30.
Effective date July 19, 2024.

Cross References

Community Work Release and Reentry Centers Act, see section 47-1101.

83-1,100.01 Repealed. Laws 2015, LB 1, § 1.

83-1,100.02 Person on parole; levels of supervision; Division of Parole Supervision; duties.

(1) For purposes of this section:

(a) Levels of supervision means the determination of the following for each person on parole:

(i) Supervision contact requirements, including the frequency, location, methods, and nature of contact with the parole officer;

(ii) Substance abuse testing requirements and frequency;

(iii) Contact restrictions;

(iv) Curfew restrictions;

(v) Access to available programs and treatment, with priority given to moderate-risk and high-risk parolees; and

(vi) Severity of graduated responses to violations of supervision conditions;

(b) Responsivity factors means characteristics of a parolee that affect the parolee's ability to respond favorably or unfavorably to any treatment goals; and

(c) Risk and needs assessment means an actuarial tool that has been validated in Nebraska to determine the likelihood of the parolee engaging in future criminal behavior.

(2) The Division of Parole Supervision shall establish an evidence-based process that utilizes a risk and needs assessment to measure criminal risk factors, specific individual needs, and responsivity factors.

(3) The risk and needs assessment shall be performed at the commencement of the parole term and every six months thereafter by division staff trained and certified in the use of the risk and needs assessment.

(4) The validity of the risk and needs assessment shall be tested at least every five years.

(5) Based on the results of the risk and needs assessment, the division shall target parolee criminal risk and need factors by focusing sanction, program, and treatment resources on moderate-risk and high-risk parolees.

(6) The division shall provide training to its parole officers on (a) use of a risk and needs assessment, (b) risk-based supervision strategies, (c) relationship skills, (d) cognitive behavioral interventions, (e) community-based resources, (f) criminal risk factors, (g) targeting criminal risk factors to reduce recidivism, (h) proper use of a matrix of administrative sanctions, custodial sanctions, and rewards developed pursuant to section 83-1,119, and (i) addressing responsivity factors. Each parole officer shall complete the training requirements set forth in this subsection within one year after his or her hire date or September 1, 2024, whichever is later.

(7) The division shall provide training for chief parole officers to become trainers so as to ensure long-term and self-sufficient training capacity in the state.

Source: Laws 2015, LB605, § 99; Laws 2016, LB1094, § 35; Laws 2018, LB841, § 26; Laws 2023, LB50, § 46.

83-1,100.03 Board of Parole; rules and regulations relating to sentencing and supervision; duties; offenders released with no supervision; report; list for placement in community work release and reentry centers.

(1) The board, in consultation with the department, shall adopt and promulgate rules and regulations to reduce the number of inmates under the custody of the department who serve their entire sentence in a correctional facility and are released without supervision. The rules and regulations shall establish clear guidelines and procedures to ensure that each parolee is subject to a minimum of nine months of supervision and shall place priority on providing supervision lengths that enable meaningful transition periods for all offenders. The rules and regulations shall ensure that each inmate eligible for parole is assessed for risk of reoffending using a validated risk and needs assessment provided by the department and shall incorporate into the release decision an inmate's assessed risk of reoffending, past criminal history, program completion, institutional conduct, and other individual characteristics related to the likelihood of reoffending into parole release decisions.

(2) By February 1 of each year, the board and the department shall submit a report to the Legislature, the Supreme Court, and the Governor that describes the percentage of offenders sentenced to the custody of the department who complete their entire sentence and are released with no supervision. The report shall document characteristics of the individuals released without supervision, including the highest felony class of conviction, offense type of conviction, most recent risk assessment, status of the individualized release or reentry plan, and reasons for the release without supervision. The report also shall provide recommendations from the department and board for changes to policy and practice to meet the goal of achieving a reduction in the number of inmates under the custody of the department who serve their entire sentence in a correctional facility and are released without supervision. The report to the Legislature shall be submitted electronically.

(3) The department, in consultation with the board, shall maintain a list of individuals who are eligible for parole but are expected to complete their entire sentence in the custody of the department and be released with no supervision. This list shall be used to facilitate the placement of committed offenders in

community work release and reentry centers under the Community Work Release and Reentry Centers Act.

Source: Laws 2015, LB605, § 100; Laws 2024, LB631, § 31.
Effective date July 19, 2024.

Cross References

Community Work Release and Reentry Centers Act, see section 47-1101.

83-1,101 Director of Supervision and Services; appointment; qualifications.

The Director of Correctional Services shall appoint a Director of Supervision and Services who shall be a person with appropriate experience and training, including, but not limited to, familiarity with the implementation of evidence-based processes for utilizing risk and needs assessments to measure criminal risk factors and specific individual needs.

Source: Laws 1969, c. 817, § 32, p. 3088; Laws 1972, LB 1499, § 4; Laws 2016, LB1094, § 36; Laws 2018, LB841, § 27; Laws 2024, LB631, § 32.
Effective date July 19, 2024.

Sentencing judge's announcement he considered possible effect of statutes permitting prison authorities to ameliorate sentences did not violate constitutional due process, and sentences were not excessive. *State v. Houston*, 196 Neb. 724, 246 N.W.2d 63 (1976).

83-1,102 Director of Supervision and Services; duties.

The Director of Supervision and Services shall:

- (1) Supervise and administer the Division of Parole Supervision;
- (2) Establish and maintain policies, standards, and procedures for the field parole service and the community supervision of sex offenders pursuant to section 83-174.03;
- (3) Divide the state into parole districts and appoint district parole officers and such other employees as may be required to carry out adequate parole supervision of all parolees, prescribe their powers and duties, and obtain division offices for staff in each district as may be necessary;
- (4) Cooperate with the Board of Parole, the courts, the Community Corrections Division of the Nebraska Commission on Law Enforcement and Criminal Justice, and all other agencies, public and private, which are concerned with the treatment or welfare of persons on parole;
- (5) Provide the Board of Parole and district judges with any record of a parolee which the board or such judges may require;
- (6) Make recommendations to the Board of Parole or district judge in cases of violation of the conditions of parole, issue warrants for the arrest of parole violators when so instructed by the board or district judge, notify the Director of Correctional Services of determinations made by the board, and upon instruction of the board, issue certificates of parole and of parole revocation to the facilities and certificates of discharge from parole to parolees;
- (7) Organize and conduct training programs for the district parole officers and other employees;
- (8) Use the funds provided under section 83-1,107.02 to augment operational or personnel costs associated with the development, implementation, and evaluation of enhanced parole-based programs and purchase services to provide such programs aimed at enhancing adult parolee supervision in the

community and treatment needs of parolees. Such enhanced parole-based programs include, but are not limited to, specialized units of supervision, related equipment purchases and training, and programs that address a parolee's vocational, educational, mental health, behavioral, or substance abuse treatment needs, including evidence-based peer and family support programs;

(9) Ensure that any risk or needs assessment instrument utilized by the system be periodically validated;

(10) Report annually to the Governor and electronically to the Clerk of the Legislature beginning January 1, 2015, the number of parole revocations and the number of technical violations of parole;

(11) Take all actions necessary to assist the board in carrying out its duties under section 83-962 during a correctional system overcrowding emergency; and

(12) Exercise all powers and perform all duties necessary and proper in carrying out his or her responsibilities.

Source: Laws 1969, c. 817, § 33, p. 3088; Laws 1971, LB 680, § 28; Laws 2003, LB 46, § 19; Laws 2005, LB 538, § 23; Laws 2006, LB 1199, § 93; Laws 2011, LB390, § 25; Laws 2014, LB907, § 15; Laws 2018, LB841, § 28; Laws 2024, LB631, § 33.
Effective date July 19, 2024.

Cross References

Definitions applicable, see section 29-2246.

83-1,103 Field parole service; duties.

The field parole service, consisting of district parole officers working under the direction of the Director of Supervision and Services or district judge, shall be responsible for the investigation, supervision, and assistance of parolees, probationers, or individuals subject to community supervision under section 83-174.03. The field parole service shall be sufficient in size to assure that no district parole officer carries a case load larger than is compatible with adequate parole investigation or supervision.

Source: Laws 1969, c. 817, § 34, p. 3089; Laws 1971, LB 680, § 29; Laws 2006, LB 1199, § 94; Laws 2018, LB841, § 29.

Cross References

Definitions applicable, see section 29-2246.

83-1,103.01 Lifetime community supervision; parole officer; duties.

A parole officer assigned by the Director of Supervision and Services to supervise individuals subject to lifetime community supervision pursuant to section 83-174.03 shall:

(1) Make investigations, prior to an individual subject to community supervision being released from incarceration, in cooperation with institutional case-workers at prisons, mental health facilities, and county jails, to determine the community supervision conditions necessary to protect the public and make reasonable advance preparation for release into the community;

(2) Assist individuals subject to community supervision to comply with the conditions of supervision and to make a successful adjustment in the community;

- (3) Supervise individuals subject to community supervision by keeping informed of their conduct and condition;
- (4) Make reports as required by the Director of Supervision and Services to determine the effectiveness of community supervision in protecting the public or the progress of an individual subject to community supervision;
- (5) Cooperate with social welfare agencies and treatment providers to ensure that individuals subject to community supervision receive any necessary services or treatment;
- (6) Inform the Director of Supervision and Services when, in the opinion of the community supervision officer, an individual is in violation of the conditions of his or her community supervision, and whenever necessary exercise the power of arrest as provided in section 83-1,102;
- (7) Conduct periodic reviews of the conditions of community supervision imposed on an individual as required by the Director of Supervision and Services; and
- (8) Exercise all powers and perform all duties necessary and proper in carrying out his or her responsibilities.

Source: Laws 2006, LB 1199, § 95; Laws 2018, LB841, § 30.

83-1,103.02 Lifetime community supervision; Division of Parole Supervision; duties; certificate of community supervision; appeal.

- (1) Prior to the release from incarceration of an individual subject to lifetime community supervision pursuant to section 83-174.03, the Division of Parole Supervision shall:
 - (a) Notify the individual in writing that he or she is subject to community supervision upon completion of his or her criminal sentence;
 - (b) Inform the individual subject to community supervision of the process by which conditions of community supervision are determined and his or her right to submit relevant information to the division for consideration when establishing the conditions of supervision;
 - (c) Determine the individual's risk of recidivism if released into the community, utilizing a validated risk assessment tool;
 - (d) After considering the information required in subdivision (e) of this subsection, determine the conditions of supervision which will most effectively minimize the risk of the individual committing another sex offense. The conditions shall be the least restrictive conditions available, in terms of the effect on the individual's personal freedom, which minimize the risk of recidivism and are compatible with public safety; and
 - (e) In determining the conditions of supervision to be imposed, the division shall consider the following:
 - (i) A report prepared by the institutional caseworkers relating to the individual's personality, social history, and adjustment to authority and including any recommendations which the staff of the facility may make;
 - (ii) All official reports of the individual's prior criminal record, including reports and records of earlier probation and parole experiences;
 - (iii) The presentence investigation report;

(iv) The reports of any physical, mental, and psychiatric examinations of the individual;

(v) Any relevant information which may be submitted by the individual, his or her attorney, the victim of the crime, or other persons; and

(vi) Such other relevant information concerning the individual as may be reasonably available.

(2) Upon completion of the risk assessment and the determination of the conditions of community supervision and no later than thirty days prior to the completion of the individual's criminal sentence, the division shall issue a certificate of community supervision to the individual containing the conditions of community supervision he or she will be required to comply with upon the completion of his or her criminal sentence. The Director of Supervision and Services shall include with the certificate written information on how to appeal the determination of the conditions of community supervision.

Source: Laws 2006, LB 1199, § 96; Laws 2018, LB841, § 31.

83-1,103.03 Lifetime community supervision; Division of Parole Supervision; annual review.

The Division of Parole Supervision shall review the conditions of community supervision imposed on an individual pursuant to section 83-174.03 on an annual basis and shall provide the individual the opportunity to submit written materials to the division for consideration during such review.

If the division determines, after reviewing the individual's conduct while under supervision and any other relevant facts, that one or more of the conditions of community supervision imposed upon the individual is no longer necessary to reduce the risk of the individual reoffending or is no longer the least restrictive condition compatible with public safety, the division shall revise the conditions of community supervision so that the individual's freedom is not unnecessarily restricted.

Source: Laws 2006, LB 1199, § 97; Laws 2018, LB841, § 32.

83-1,103.04 Lifetime community supervision; determination or revision of conditions; appeal; burden of proof.

(1) Whenever a determination or revision of the conditions of community supervision is made by the Division of Parole Supervision, the individual subject to the conditions shall be entitled to an appeal. The appeal shall be heard by the district court in the county where the individual resides. The individual shall be informed of his or her right to request counsel, and if counsel is requested the court shall determine if the individual is indigent. If the court finds the individual to be indigent, it shall appoint counsel from the public defender's office to represent the individual during the appeal.

(2) In an appeal contesting the determination or revision of the conditions of community supervision, the burden of proof shall be on the individual subject to community supervision to show by clear and convincing evidence (a) that the conditions in question will not reduce the risk of the individual reoffending or otherwise protect the public or (b) that the condition is overly restrictive of the individual's freedom and a less restrictive condition is available which is equally or more effective in reducing the risk of the individual reoffending.

Source: Laws 2006, LB 1199, § 98; Laws 2018, LB841, § 33.

83-1,104 District parole officer; duties.

A district parole officer shall:

(1) Make investigations, prior to a committed offender's release on parole, in cooperation with institutional caseworkers and the Board of Parole to determine the adequacy of parole plans and make reasonable advance preparation for release on parole;

(2) Assist a committed offender who requests assistance prior to release or a parolee to comply with the conditions of parole and to make a successful adjustment in the community, including facilitating the transitional needs of housing and employment, access to and participation in job training services in the community, access to mental health services, assisting with applications for health care coverage or ensuring that the committed offender or parolee knows how to apply for and obtain health care coverage, and assisting with enrollment in the medical assistance program established pursuant to the Medical Assistance Act, if eligible, to ensure that the committed offender or parolee has access to such program close to the time of release or soon thereafter;

(3) Supervise parolees by keeping informed of their conduct and condition, utilizing global positioning systems and other monitoring technology as needed during the period of supervision;

(4) Make such reports as required by the Director of Supervision and Services or district judge to determine the effectiveness of the parole system or the progress of an individual parolee;

(5) Cooperate with social welfare agencies;

(6) Observe the work of any parole officer under his or her supervision from time to time;

(7) Inform the Director of Supervision and Services when, in his or her opinion, any eligible parolee's conduct and attitude warrant his or her discharge from active supervision, or when any parolee's violation of the conditions of parole is of sufficient seriousness to require action by the Board of Parole or district judge and whenever necessary exercise the power of arrest as provided in section 83-1,119;

(8) Delegate in his or her discretion any of the above responsibilities to a parole officer under his or her supervision; and

(9) Exercise all powers and perform all duties necessary and proper in carrying out his or her responsibilities.

Source: Laws 1969, c. 817, § 35, p. 3089; Laws 1971, LB 680, § 30; Laws 2014, LB907, § 16; Laws 2018, LB841, § 34.

Cross References

Definitions applicable, see section 29-2246.

Medical Assistance Act, see section 68-901.

83-1,105 Repealed. Laws 1993, LB 529, § 2.**83-1,105.01 Repealed. Laws 2015, LB 268, § 35; Laws 2015, LB 605, § 112; Referendum 2016, No. 426.**

Note: Section 83-1,105.01 was repealed by Laws 2015, LB 268, section 35, and Laws 2015, LB 605, section 112. Although the repeal of section 83-1,105.01 by Laws 2015, LB 268, was not effective because of the vote on the referendum at the November 2016 general election, section 83-1,105.01 remains repealed as a result of Laws 2015, LB 605, section 112.

83-1,106 Maximum term; credit; how obtained.

(1) Credit against the maximum term and any minimum term shall be given to an offender for time spent in custody as a result of the criminal charge for which a prison sentence is imposed or as a result of the conduct on which such a charge is based. This shall specifically include, but shall not be limited to, time spent in custody prior to trial, during trial, pending sentence, pending the resolution of an appeal, and prior to delivery of the offender to the custody of the Department of Correctional Services, the county board of corrections, or, in counties which do not have a county board of corrections, the county sheriff.

(2) Credit against the maximum term and any minimum term shall be given to an offender for time spent in custody under a prior sentence if he or she is later reprosecuted and resentenced for the same offense or for another offense based on the same conduct. In the case of such a reprosecution, this shall include credit in accordance with subsection (1) of this section for time spent in custody as a result of both the original charge and any subsequent charge for the same offense or for another offense based on the same conduct.

(3) If an offender is serving consecutive or concurrent sentences, or both, and if one of the sentences is set aside as the result of a direct or collateral proceeding, credit against the maximum term and any minimum term of the remaining sentences shall be given for all time served since the commission of the offenses on which the sentences set aside were based.

(4) If the offender is arrested on one charge and prosecuted on another charge growing out of conduct which occurred prior to his or her arrest, credit against the maximum term and any minimum term of any sentence resulting from such prosecution shall be given for all time spent in custody under the former charge which has not been credited against another sentence.

(5) Credit for time served shall only be given in accordance with the procedure specified in this subsection:

(a) Credit to an offender who is eligible therefor under subsections (1), (2), and (4) of this section shall be set forth as a part of the sentence; or

(b) Credit to an offender who is eligible therefor under subsection (3) of this section shall only be given by the court in which such sentence was set aside by entering such credit in the final order setting aside such sentence.

Source: Laws 1969, c. 817, § 37, p. 3091; Laws 1972, LB 1499, § 6; Laws 1988, LB 1054, § 1; Laws 1993, LB 113, § 4.

- 1. Credit against sentence
- 2. Discretion of court
- 3. Not retrospective
- 4. Miscellaneous

1. Credit against sentence

There is nothing in the language of subsection (1) of this section indicating that credit for time served should be applied to only one concurrent sentence while a defendant is in custody before any sentence is pronounced but should be applied to multiple concurrent sentences when the defendant is in custody pending the resolution of an appeal and then pending sentence. *State v. Wines*, 308 Neb. 468, 954 N.W.2d 893 (2021).

The credit for time served to which a defendant is entitled is an absolute and objective number that is established by the record. *State v. McCulley*, 305 Neb. 139, 939 N.W.2d 373 (2020).

Failing to give credit for time served, while erroneous, does not render the sentence void. *State v. Barnes*, 303 Neb. 167, 927 N.W.2d 64 (2019).

Pursuant to subsection (1) of this section, the defendant was not entitled to credit for time served during his pretrial detainment in Nebraska, following his extradition from Colorado, for time that occurred prior to Colorado's grant of parole, since he was in custody because of his Colorado sentence up until he was paroled. *State v. Leahy*, 301 Neb. 228, 917 N.W.2d 895 (2018).

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

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

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

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

Pursuant to subsection (1) of this section, a court must give credit for time served on a charge when a prison sentence is imposed for that charge. *State v. Banes*, 268 Neb. 805, 688 N.W.2d 594 (2004).

The import of subsection (4) of this section is that all credit available due to presentence incarceration shall be applied, but only once. *State v. Banes*, 268 Neb. 805, 688 N.W.2d 594 (2004).

When concurrent sentences are imposed, the credit is applied once, and the credit applied once, in effect, is applied against each concurrent sentence, because the longest sentence determines the offender's actual length of time in prison. *State v. Banes*, 268 Neb. 805, 688 N.W.2d 594 (2004).

A defendant is provided credit for jail time which is time he or she spends in detention pending trial and sentencing. *State v. Baker*, 250 Neb. 896, 553 N.W.2d 464 (1996).

Subsection (1) of this section requires that a defendant receive credit for time served pending the resolution of an appeal. *State v. Marks*, 248 Neb. 592, 537 N.W.2d 339 (1995).

On being sentenced for life imprisonment upon conviction of first degree murder, defendant is not entitled to credit for time in custodial detention pending trial and sentence. *State v. Masters*, 246 Neb. 1018, 524 N.W.2d 342 (1994).

In a criminal case, a judge in sentencing is required to separately determine, state, and grant the amount of credit on defendant's sentence to which defendant is entitled under subsection (1) of this section. *State v. Esquivel*, 244 Neb. 308, 505 N.W.2d 736 (1993).

For purposes of subsection (1) of this section, "in custody" means judicially imposed physical confinement in a government facility authorized for detention, control, or supervision of a defendant before, during, or after a trial on a criminal charge. The "in-custody" credit against a sentence eventually imposed on a defendant ensures that the defendant is not incarcerated longer than the maximum period of incarceration statutorily prescribed as punishment for a particular offense. *State v. Jordan*, 240 Neb. 919, 485 N.W.2d 198 (1992).

Home detention on probation, subject to electronic monitoring, is insufficiently restrictive to constitute "custody" under subsection (1) of this section. *State v. Muratella*, 240 Neb. 567, 483 N.W.2d 128 (1992).

Overruling the holding in *State v. Von Busch*, 234 Neb. 119, 449 N.W.2d 237 (1989), which gave credit upon sentencing for "any previously served jail time," subsection (1) of this section refers only to any jail time served on the charges for which sentences were imposed. *State v. Heckman*, 239 Neb. 25, 473 N.W.2d 416 (1991).

When a defendant is sentenced to an indefinite term up to the maximum prison term possible, credit must be given for any previously served jail time. *State v. Von Busch*, 234 Neb. 119, 449 N.W.2d 237 (1989).

One sentenced to life imprisonment is not entitled to credit for time in custodial detention pending disposition of the proceedings on the charge levied. *State v. Lynch*, 215 Neb. 528, 340 N.W.2d 128 (1983).

There is no requirement in this section that a defendant be awarded credit against a sentence for time spent in a mental institution. *State v. Prosser*, 209 Neb. 766, 311 N.W.2d 525 (1981).

Authority to give credit for time served in custody lies with district court under this section. Under section in effect in 1970, only Director of Corrections had authority to allow credit for time spent in custody as a result of the criminal charge for which a prison sentence is imposed or as a result of the conduct on which such a charge is based. *State v. Al-Hafeez*, 208 Neb. 681, 305 N.W.2d 379 (1981).

This section held constitutional and sentence affirmed where defendant's time in custody prior to sentence was considered by court at sentencing. *Eutz v. State*, 199 Neb. 384, 258 N.W.2d 829 (1977).

Where on motion for credit for prior jail time, sentencing judge found he had considered prior jail time, constitutional guarantees of due process and equal protection were not violated although the record at sentencing is silent on the subject. *State v. Nelson*, 189 Neb. 580, 203 N.W.2d 785 (1973).

Credit for time served must be given against the minimum and maximum terms of a sentence. Credit for presentence incarceration is properly granted only against the aggregate of all terms imposed. *State v. Sanchez*, 2 Neb. App. 1008, 520 N.W.2d 33 (1994).

2. Discretion of court

The crediting of prior jail time to a sentence imposed as the minimum permitted by statute is discretionary with the sentencing judge. *Addison v. Parratt*, 208 Neb. 459, 303 N.W.2d 785 (1981).

A trial court may order that sentences be served consecutively, and has broad discretion in determining amount of credit for jail time. *State v. Tweedy*, 196 Neb. 251, 242 N.W.2d 629 (1976); *State v. Tweedy*, 196 Neb. 248, 242 N.W.2d 627 (1976).

A trial court has broad discretion in determining the amount of credit to be allowed defendant for time spent in jail. *State v. Tweedy*, 196 Neb. 246, 242 N.W.2d 626 (1976).

3. Not retrospective

This section does not apply retrospectively. *State v. Keever*, 234 Neb. 289, 450 N.W.2d 682 (1990).

This section is not retrospective. *Housand v. Sigler*, 186 Neb. 414, 183 N.W.2d 493 (1971).

4. Miscellaneous

Subsection (1) of this section does not set forth a right to collaterally attack the final judgment in a criminal case on the ground that credit for time served was not given as mandated by statute. *State v. Barnes*, 303 Neb. 167, 927 N.W.2d 64 (2019).

Jail time is commonly understood to be the time an accused spends in detention pending trial and sentencing. *State v. Fisher*, 218 Neb. 479, 356 N.W.2d 880 (1984).

This section does not prohibit a second trial for offenses arising out of the same conduct, nor does it specifically indicate any direct federal-state application. *State v. Pope*, 190 Neb. 689, 211 N.W.2d 923 (1973).

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

83-1,107 Reductions of sentence; personalized program plan; how credited; forfeiture; withholding; restoration; release or reentry plan; treatment programming; individualized post-release supervision plan.

(1)(a) Within sixty days after initial classification and assignment of any offender committed to the department, all available information regarding such

committed offender shall be reviewed and a committed offender department-approved personalized program plan document shall be drawn up. The document shall specifically describe the department-approved personalized program plan and the specific goals the department expects the committed offender to achieve. The document shall also contain a realistic schedule for completion of the department-approved personalized program plan. The department-approved personalized program plan shall be developed with the active participation of the committed offender. The department shall provide programs to allow compliance by the committed offender with the department-approved personalized program plan.

Programming may include, but is not limited to:

- (i) Academic and vocational education, including teaching such classes by qualified offenders;
- (ii) Substance abuse treatment;
- (iii) Mental health and psychiatric treatment, including criminal personality programming;
- (iv) Constructive, meaningful work programs; and
- (v) Any other program deemed necessary and appropriate by the department.

(b) A modification in the department-approved personalized program plan may be made to account for the increased or decreased abilities of the committed offender or the availability of any program. Any modification shall be made only after notice is given to the committed offender. The department may not impose disciplinary action upon any committed offender solely because of the committed offender's failure to comply with the department-approved personalized program plan, but such failure may be considered by the board in its deliberations on whether or not to grant parole to a committed offender.

(2)(a) The department shall reduce the term of a committed offender by six months for each year of the offender's term and pro rata for any part thereof which is less than a year.

(b) In addition to reductions granted in subdivision (2)(a) of this section, the department shall reduce the term of a committed offender by three days on the first day of each month following a twelve-month period of incarceration within the department during which the offender has not been found guilty of (i) a Class I or Class II offense or (ii) more than three Class III offenses under the department's disciplinary code. Reductions earned under this subdivision shall not be subject to forfeit or withholding by the department.

(c) The total reductions under this subsection shall be credited from the date of sentence, which shall include any term of confinement prior to sentence and commitment as provided pursuant to section 83-1,106, and shall be deducted from the maximum term, to determine the date when discharge from the custody of the state becomes mandatory.

(3) While the offender is in the custody of the department, reductions of terms granted pursuant to subdivision (2)(a) of this section may be forfeited, withheld, and restored by the chief executive officer of the facility with the approval of the director after the offender has been notified regarding the charges of misconduct.

(4) The department, in consultation with the board, shall ensure that a release or reentry plan is complete or near completion when the offender has

served at least eighty percent of his or her sentence. For purposes of this subsection, release or reentry plan means a comprehensive and individualized strategic plan to ensure an individual's safe and effective transition or reentry into the community to which he or she resides with the primary goal of reducing recidivism. At a minimum, the release or reentry plan shall include, but not be limited to, consideration of the individual's housing needs, medical or mental health care needs, and transportation and job needs and shall address an individual's barriers to successful release or reentry in order to prevent recidivism. The release or reentry plan does not include an individual's programming needs included in the individual's personalized program plan for use inside the prison. However, the department shall include in the release or reentry plan information regarding the individual's progress on the individual's personalized program plan for use inside the prison.

(5)(a) The department shall make treatment programming available to committed offenders as provided in section 83-1,110.01 and shall include continuing participation in such programming as part of each offender's department-approved personalized program plan developed under subsection (1) of this section.

(b) Any committed offender with a mental illness shall be provided with the community standard of mental health care. The mental health care shall utilize evidence-based therapy models that include an evaluation component to track the effectiveness of interventions.

(c) Any committed offender with a mental illness shall be evaluated before release to ensure that adequate monitoring and treatment of the committed offender will take place or, if appropriate, that a commitment proceeding under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act will take place.

(6)(a) Within thirty days after any committed offender has been paroled, all available information regarding such parolee shall be reviewed and a case plan document shall be drawn up and approved by the Division of Parole Supervision. The document shall specifically describe the approved case plan and the specific goals the division expects the parolee to achieve. The document shall also contain a realistic schedule for completion of the approved case plan. The approved case plan shall be developed with the active participation of the parolee. During the term of parole, the parolee shall comply with the approved case plan and the division shall provide programs to allow compliance by the parolee with the approved case plan.

Programming may include, but is not limited to:

- (i) Academic and vocational education;
- (ii) Substance abuse treatment;
- (iii) Mental health and psychiatric treatment, including criminal personality programming;
- (iv) Constructive, meaningful work programs;
- (v) Community service programs; and
- (vi) Any other program deemed necessary and appropriate by the division.

(b) A modification in the approved case plan may be made to account for the increased or decreased abilities of the parolee or the availability of any program. Any modification shall be made only after notice is given to the parolee. Intentional failure to comply with the approved case plan by any

parolee as scheduled for any year, or pro rata part thereof, shall cause disciplinary action to be taken by the division resulting in the forfeiture of up to a maximum of three months' good time for the scheduled year.

(7) While the offender is in the custody of the board, reductions of terms granted pursuant to subdivision (2)(a) of this section may be forfeited, withheld, and restored by the director upon the recommendation of the board after the offender has been notified regarding the charges of misconduct or breach of the conditions of parole.

(8) Good time or other reductions of sentence granted under the provisions of any law prior to July 1, 1996, may be forfeited, withheld, or restored in accordance with the terms of the Nebraska Treatment and Corrections Act.

(9) Pursuant to rules and regulations adopted by the probation administrator and the director, an individualized post-release supervision plan shall be collaboratively prepared by the Office of Probation Administration and the department and provided to the court to prepare individuals under custody of the department for post-release supervision. All records created during the period of incarceration shall be shared with the Office of Probation Administration and considered in preparation of the post-release supervision plan.

Source: Laws 1969, c. 817, § 38, p. 3092; Laws 1972, LB 1499, § 7; Laws 1975, LB 567, § 2; Laws 1992, LB 816, § 2; Laws 1995, LB 371, § 20; Laws 1997, LB 364, § 19; Laws 2003, LB 46, § 20; Laws 2011, LB191, § 1; Laws 2014, LB907, § 17; Laws 2015, LB598, § 29; Laws 2015, LB605, § 101; Laws 2018, LB841, § 35; Laws 2024, LB631, § 34.
Effective date July 19, 2024.

Cross References

Nebraska Mental Health Commitment Act, see section 71-901.
Sex Offender Commitment Act, see section 71-1201.

1. Reduction of term
2. Good-time credit forfeited
3. Applicability of section
4. Mandatory minimum
5. Miscellaneous

1. Reduction of term

Good time earned pursuant to subdivision (2)(b) of this section is applicable only to reduce an inmate's maximum sentence and, as such, has no applicability to an inmate's parole eligibility date. *Heist v. Nebraska Dept. of Corr. Servs.*, 312 Neb. 480, 979 N.W.2d 772 (2022).

Under former law, the director and chief executive officer of a correctional facility have the authority to delegate to subordinate officials the duty to approve the forfeiture of reductions of terms granted pursuant to subsection (2) of this section. *Martin v. Dept. of Corr. Servs.*, 267 Neb. 33, 671 N.W.2d 613 (2003).

When an indeterminate sentence is imposed, a prisoner's earliest parole eligibility date is determined by crediting good behavior time on the basis of his minimum, not his maximum, term. *Ebert v. Black*, 216 Neb. 814, 346 N.W.2d 254 (1984).

The good time reductions provided in this section are used to determine eligibility for release on parole or supervision and are subject to forfeiture. *Wycoff v. Vitek*, 201 Neb. 62, 266 N.W.2d 211 (1978); *Brown v. Sigler*, 186 Neb. 800, 186 N.W.2d 735 (1971).

2. Good-time credit forfeited

Pursuant to the Nebraska Treatment and Corrections Act, there may be a forfeiture of credit for meritorious behavior

earned before release on mandatory parole. *Nichols v. Gunter*, 225 Neb. 638, 407 N.W.2d 203 (1987); *Anderson v. Gunter*, 225 Neb. 637, 407 N.W.2d 202 (1987); *Wounded Shield v. Gunter*, 225 Neb. 327, 405 N.W.2d 9 (1987).

Neither mandatory good time earned pursuant to this section nor meritorious good time earned pursuant to section 83-1,107.01 is automatically forfeited upon revocation of parole. Such forfeiture must occur upon recommendation of the chief executive officer of the facility to which the offender is entrusted or the parole administrator, depending upon who has custody at the time of revocation, subject to approval of the director of the Department of Correctional Services. Once forfeited or withheld, good time credits may be restored to the offender in like manner. *Malone v. Benson*, 219 Neb. 28, 361 N.W.2d 184 (1985).

Pursuant to this section and section 83-1,107.01, the Board of Parole merely has the right to make recommendation of forfeitures of good time when the offender is in the custody of the Board of Parole. The discretion referred to by statute vests solely in the chief executive officer of the facility when the offender is in the custody of the Department of Correctional Services and in the parole administrator when the offender is in the custody of the Board of Parole, in each instance subject to the approval of the director of the Department of Correctional Services. *Malone v. Benson*, 219 Neb. 28, 361 N.W.2d 184 (1985).

Fighting and threatening an officer's life would amount to flagrant or serious misconduct for which statutory good time may be withheld. Certain activities which would not, or which are best left to judgment of adjustment committee, are outlined. *McDonnell v. Wolff*, 342 F.Supp. 616 (D. Neb. 1972).

3. Applicability of section

"New good time law" inapplicable to those offenders who started serving sentences before the effective date of July 15, 1992, absent approval of the Board of Pardons, even if the offender is resentenced pursuant to the new Convicted Sex Offender Act, also effective July 15, 1992. *Duff v. Clarke*, 247 Neb. 345, 526 N.W.2d 664 (1995).

This section governs an offender's good time computation even though offender was sentenced before this section changed, effective July 15, 1992, because the offender's judgment was not final until after appeal. *State v. Schrein*, 247 Neb. 256, 526 N.W.2d 420 (1995).

The good time provisions of LB 567 are not to be retroactively applied to those who were initially incarcerated prior to its effective date, regardless of whether the incarceration is on a consolidated sentence made up of crimes committed both before and after LB 567's effective date, without Board of Pardons approval. *Boston v. Black*, 215 Neb. 701, 340 N.W.2d 401 (1983).

This section through section 83-1,111 applies retroactively to prisoners only with approval of the Board of Pardons. *Johnson & Cunningham v. Exon*, 199 Neb. 154, 256 N.W.2d 869 (1977).

This section governs eligibility for parole or release under supervision rather than for absolute discharge as under previous statutes. *Von Bokelman v. Sigler*, 186 Neb. 378, 183 N.W.2d 267 (1971).

The reduction of sentence for good behavior and faithful performance of duties is a statutory right and cannot be eliminated or withheld for failure to perform work which a prisoner is unable to do because of physical infirmity not caused by his misconduct, nor as punishment except for flagrant or serious misconduct. *Sawyer v. Sigler*, 320 F.Supp. 690 (D. Neb. 1970).

4. Mandatory minimum

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

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

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

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

Good time credit under subsection (1) of this section does not apply to mandatory minimum sentences imposed on habitual criminals pursuant to subsection (1) of section 29-2221. *Johnson v. Kenney*, 265 Neb. 47, 654 N.W.2d 191 (2002).

5. Miscellaneous

Pursuant to subsection (1)(b) of this section, an inmate who has been given proper notice that certain conduct could result in disciplinary segregation and that disciplinary segregation could prevent the inmate from participation in the program plan can be found to have intentionally violated the program plan. *Ponce v. Nebraska Dept. of Corr. Servs.*, 263 Neb. 609, 641 N.W.2d 375 (2002).

Good time is figured under the statutory scheme in existence at the time the offender's sentence becomes final; therefore, if this section is amended while the offender's sentence is suspended pending direct appeal, the amended version of this section applies. *Jones v. Clarke*, 253 Neb. 161, 568 N.W.2d 897 (1997).

Sentencing judge's announcement he considered possible effect of statutes permitting prison authorities to ameliorate sentences did not violate constitutional due process, and sentences were not excessive. *State v. Houston*, 196 Neb. 724, 246 N.W.2d 63 (1976).

Prisoner's statutory right to good time may not be taken away from him without following minimum appropriate due process procedures. *Wolff v. McDonnell*, 418 U.S. 539 (1974).

The decision to impose discipline is discretionary with the chief executive officer of a penal facility and imposition of a greater penalty for infraction of a prison rule than would have been sustained by a citizen prosecuted in a court of law for a similar offense is neither an abuse of that discretion nor a violation of the U.S. Constitution. *Glouser v. Parratt*, 605 F.2d 419 (8th Cir. 1979).

83-1,107.01 Fees; waiver; when; failure to pay; effect.

(1) Unless otherwise provided by this section, whenever an adult offender is paroled, the board shall require a parolee to pay a monthly parole programming fee.

(2) Parolees under the supervision of the Division of Parole Supervision shall pay a monthly parole programming fee of twenty-five dollars, not later than the tenth day of each month, beginning the second month of parole supervision and continuing for the duration of the parole.

(3) The board shall waive payment of the monthly parole programming fee in whole or in part if after a hearing a determination is made that such payment would constitute an undue hardship on the parolee due to limited income, employment or school status, or physical or mental handicap. Such waiver shall be in effect only during the period of time that the parolee is unable to pay his or her monthly parole programming fee.

(4) When monthly parole programming fees are waived, in whole or in part, the parole officer, pursuant to rules and regulations adopted by the board, may contract with the parolee to perform approved community service at the rate of five dollars per hour in lieu of payment of monthly parole programming fees. A

parolee may be required to pay a participation fee in order to take advantage of community service programs. A parolee may not accumulate more than three months' advance credit for community service. The use of community service alternatives does not preclude the imposition of other intermediate measures.

(5) The division with the approval of the Board of Parole shall implement sanctions if a parolee defaults in the payment of monthly parole programming fees or any installment thereof as established by subsection (2) of this section, except that parole shall not be revoked nor shall the parolee be imprisoned for such nonpayment if the parolee is financially unable to make the payment.

(6) If the board determines that the default in payment described in subsection (5) of this section was not attributable to a deliberate refusal to obey the order of the board or to failure on the parolee's part to make a good faith effort to obtain the funds required for payment, the board may allow the parolee additional time for payment, reduce the amount of each installment, or revoke the fees or the unpaid portion in whole or in part.

(7) No parolee shall be required to pay more than one monthly parole programming fee per month.

(8) The imposition of monthly parole programming fees in this section shall be considered separate and apart from specific service delivery fees.

(9) Any adult offender received for supervision pursuant to section 29-2637 or the Interstate Compact for Adult Offender Supervision shall be assessed a monthly parole programming fee during the period of time the offender is actively supervised by Nebraska parole authorities.

(10) A parolee shall pay the fees described in this section to the division. The division shall remit all fees to the State Treasurer for credit to the Parole Program Cash Fund.

(11) The board and the division shall adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2003, LB 46, § 21; Laws 2018, LB841, § 36.

Cross References

Interstate Compact for Adult Offender Supervision, see sections 29-2639 and 29-2640.

83-1,107.02 Parole Program Cash Fund; created; use; investment.

The Parole Program Cash Fund is created. All funds collected pursuant to section 83-1,107.01 shall be remitted to the State Treasurer for credit to the fund. The fund shall be utilized by the Division of Parole Supervision for the purposes stated in subdivision (8) of section 83-1,102. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2003, LB 46, § 22; Laws 2011, LB390, § 26; Laws 2018, LB841, § 37.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

83-1,107.03 Parole School; curriculum.

(1) The board shall conduct Parole School sessions in each facility on a regular and recurring basis to equip committed offenders with the knowledge, skills, and confidence needed to navigate the parole process successfully.

(2) Parole School curriculum shall include, but need not be limited to, the following areas:

(a) Understanding parole guidelines, including:

(i) Comprehensive instruction on the legal framework and regulations governing parole;

(ii) Explanation of eligibility criteria and conditions for parole release; and

(iii) Clarification on the role of the board in its decisionmaking process;

(b) Preparing for parole board hearings, including:

(i) Guidance on compiling a thorough parole packet, including personal statements, character references, and evidence of rehabilitation efforts;

(ii) Workshops on effective communication and presentation skills for the parole board hearing; and

(iii) Mock parole board hearings to simulate real-life scenarios and receive constructive feedback;

(c) Factors considered by the board, including:

(i) Factors considered under section 83-1,114;

(ii) Insight into the importance of demonstrating remorse, accountability, and rehabilitation efforts; and

(iii) Strategies for addressing past mistakes and highlighting personal growth and positive change; and

(d) Interacting with parole board and parole officers, including:

(i) Training on respectful and professional communication with board members and parole officers;

(ii) Role-playing exercises to practice answering difficult questions and addressing concerns raised by the board; and

(iii) Guidance on complying with parole conditions and navigating the reintegration process post-release.

Source: Laws 2024, LB631, § 41.

Effective date July 19, 2024.

83-1,108 Board of Parole; reduction of sentence for good conduct; provisions; forfeiture.

(1) The board shall reduce, for good conduct in conformity with the conditions of parole, a parolee's parole term by ten days for each month of such term. The total of such reductions shall be deducted from the maximum term, less good time granted pursuant to section 83-1,107, to determine the date when discharge from parole becomes mandatory.

(2) Reductions of the parole terms may be forfeited, withheld, and restored by the board after the parolee has been consulted regarding any charge of misconduct or breach of the conditions of parole.

Source: Laws 1969, c. 817, § 39, p. 3092; Laws 1972, LB 1499, § 8; Laws 1975, LB 567, § 4; Laws 1992, LB 816, § 3; Laws 2011, LB191, § 2.

Sentencing judge's announcement he considered possible effect of statutes permitting prison authorities to ameliorate sentences did not violate constitutional due process, and sentences were not excessive. *State v. Houston*, 196 Neb. 724, 246 N.W.2d 63 (1976).

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

83-1,109 Chief executive officer; good time; report; Director of Correctional Services; duties.

The chief executive officer of a facility shall regularly report all good time and all forfeitures, withholdings, and restorations of good time to the director. On the basis of such report, the director shall inform the board and the Director of Supervision and Services of all committed offenders who are expected to become eligible for release on parole within the next three months.

Source: Laws 1969, c. 817, § 40, p. 3093; Laws 1975, LB 567, § 5; Laws 1992, LB 816, § 4; Laws 2018, LB841, § 38.

Sentencing judge's announcement he considered possible effect of statutes permitting prison authorities to ameliorate sentences did not violate constitutional due process, and sentences were not excessive. *State v. Houston*, 196 Neb. 724, 246 N.W.2d 63 (1976).

Prisoner's statutory right to good time may not be taken away from him without following minimum appropriate due process procedures. *Wolff v. McDonnell*, 418 U.S. 539 (1974).

83-1,110 Committed offender; eligible for release on parole; when.

(1) Every committed offender shall be eligible for parole upon the earliest of the following:

(a) When the offender has served one-half the minimum term of his or her sentence as provided in sections 83-1,107 and 83-1,108;

(b) For a committed offender serving a maximum term of twenty years or less, two years prior to the offender's mandatory discharge date; or

(c) For a committed offender serving a maximum term of more than twenty years, when the offender has served eighty percent of the time until the offender's mandatory discharge date.

(2) The board shall conduct a parole review not later than sixty days prior to the date a committed offender becomes eligible for parole as provided in this subsection, except that if a committed offender is eligible for parole upon his or her commitment to the department, a parole review shall occur as early as is practical. No such reduction of sentence shall be applied to any sentence imposing a mandatory minimum term.

(3)(a) This subsection applies to any committed offender sentenced to consecutive terms, whether received at the same time or at any time during the original sentence.

(b) The maximum terms shall be added to compute the new maximum term which, less good time, shall determine the date when discharge from the custody of the state becomes mandatory.

(c) The committed offender shall be eligible for release on parole upon the earliest of the following:

(i) When the offender has served the total of one-half the minimum term as provided in sections 83-1,107 and 83-1,108;

(ii) For a committed offender serving a maximum term of twenty years or less, two years prior to the offender's mandatory discharge date; or

(iii) For a committed offender serving a maximum term of more than twenty years, when the offender has served eighty percent of the time until the offender's mandatory discharge date.

Source: Laws 1969, c. 817, § 41, p. 3093; Laws 1972, LB 1499, § 9; Laws 1975, LB 567, § 6; Laws 1992, LB 858, § 5; Laws 1992, LB 816, § 5; Laws 1995, LB 371, § 21; Laws 2003, LB 46, § 23; Laws 2023, LB50, § 47.

1. Good time credit
2. Consecutive sentences
3. Mandatory minimum
4. Miscellaneous

1. Good time credit

A defendant's initial incarceration for an aggregate sentence, for purposes of determining the good time law in effect at the time of the initial incarceration, is determined based on the first sentence to become final and is the date that the sentence became final. *Schaeffer v. Gable*, 314 Neb. 524, 991 N.W.2d 661 (2023).

The good time law to be applied to a defendant's sentence is the law in effect at the time the defendant's conviction became final, and a defendant's conviction and sentence become final on the date that the appellate court enters its mandate concerning the defendant's appeal from the conviction and sentence. *Schaeffer v. Gable*, 314 Neb. 524, 991 N.W.2d 661 (2023).

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

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

For purposes of good time computation, an offender's sentence is the sum of all sentences he or she receives, regardless of whether additional sentences are imposed or whether the offender is resentenced under the new Convicted Sex Offender Act after the effective date of the new good time law, July 15, 1992. *Duff v. Clarke*, 247 Neb. 345, 526 N.W.2d 664 (1995).

A defendant sentenced as a habitual criminal to the mandatory 10-year sentence under section 29-2221 is not entitled to good time credit pursuant to this section on his or her mandatory minimum sentence. *Ebert v. Nebraska Dept. of Corr. Servs.*, 11 Neb. App. 553, 656 N.W.2d 634 (2003).

2. Consecutive sentences

Although no reduction for good time is accumulated for sentences imposing a mandatory minimum term of incarceration for the duration of that term, this section does not require that all sentences carrying a mandatory minimum term be served consecutively. *State v. Lantz*, 290 Neb. 757, 861 N.W.2d 728 (2015).

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

The date of an offender's initial incarceration is the date on which service of a consolidated sentence begins. *Stewart v. Clarke*, 240 Neb. 397, 482 N.W.2d 248 (1992).

Under the statutory structures of 1975 Neb. Laws, LB 567, and 1969 Neb. Laws, LB 1307, an offender's consecutive term imposed during incarceration is consolidated with the prisoner's previous sentence so that the minimum term of the consolidated sentence is the total or sum of the minimum terms of the subsequent offense and previous offense and the maximum term is the total or sum of the maximum terms of such subsequent offense and previous offense. The consolidated sentence commences at the date of the initial incarceration. Absent approval of the Board of Pardons, good time is computed under the statutory provisions in effect at the date of initial incarceration. *Luxford v. Benson*, 216 Neb. 115, 341 N.W.2d 925 (1983).

Laws 1975, L.B. 567, made no changes in the provisions for consolidation of consecutive sentences, and the pertinent provisions of subsection (2) of this section are to be applied to consecutive sentences where one was imposed before and one after the effective date of L.B. 567. *Gochenour v. Bolin*, 208 Neb. 444, 303 N.W.2d 775 (1981).

3. Mandatory minimum

In imposing a sentence subject to a habitual criminal enhancement under this section, a court is not required to pronounce that the sentence is the "mandatory minimum" for the Department of Correctional Services to treat it as such in calculating the inmate's mandatory discharge date. *Gray v. Frakes*, 311 Neb. 409, 973 N.W.2d 166 (2022).

Good time reductions do not apply to mandatory minimum sentences. *State v. Russell*, 291 Neb. 33, 863 N.W.2d 813 (2015).

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

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

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

A defendant sentenced as a habitual criminal to the mandatory 10-year sentence under section 29-2221 is not entitled to good time credit pursuant to this section on his or her mandatory minimum sentence. *Ebert v. Nebraska Dept. of Corr. Servs.*, 11 Neb. App. 553, 656 N.W.2d 634 (2003).

4. Miscellaneous

This section, which makes a convicted offender sentenced to life imprisonment ineligible for parole until the life sentence is commuted to a term of years is a permissible condition under Neb. Const. Art. IV, sec. 13, and it does not infringe on the Board of Parole's authority to grant paroles. *Adams v. State*, 293 Neb. 612, 879 N.W.2d 18 (2016).

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

The provisions of this section are to be applied to consecutive sentences whether imposed before or after the effective date of Laws 1975, LB 567. *Whited v. Bolin*, 210 Neb. 32, 312 N.W.2d 691 (1981).

Sentencing judge's announcement he considered possible effect of statutes permitting prison authorities to ameliorate sentences did not violate constitutional due process, and sentences were not excessive. *State v. Houston*, 196 Neb. 724, 246 N.W.2d 63 (1976).

Sentences of one defendant modified to fit apparent purpose of making total less harsh than that of other defendant. *State v. Pope*, 192 Neb. 755, 224 N.W.2d 521 (1974).

Where life sentence with no minimum imposed for second degree murder, eligibility for parole same as though statutory minimum of ten years had been expressed. *State v. Thompson*, 189 Neb. 115, 201 N.W.2d 204 (1972).

One sentenced for a specific term is eligible for parole upon completion of his term less the reductions granted him. *State v. Rhodes*, 187 Neb. 332, 190 N.W.2d 623 (1971).

A committed offender is eligible for release on parole upon completion of his minimum term less reductions or upon completion of a minimum sentence provided by law less reductions if approved by the sentencing judge or his successor. *State v. McMillian*, 186 Neb. 784, 186 N.W.2d 481 (1971).

83-1,110.01 Substance abuse therapy; department; duties; waiver of requirement by board; when.

The department shall provide substance abuse therapy required by section 28-416 prior to the first parole eligibility date of the committed person. Based on the recommendations, if any, regarding psychological treatment of the committed person pursuant to section 83-179, the department shall provide the person with adequate access or availability to mental health therapy prior to the first parole eligibility date of the committed person. If the board finds that the department did not provide adequate access or availability to the committed person prior to the first parole eligibility date, the board may waive the requirement of section 28-416 only if, as a condition of parole, the committed person agrees to attend and complete therapy which is recommended by the board.

Source: Laws 1994, LB 677, § 17; R.S.1943, (1994), § 83-1,135.01; Laws 1997, LB 274, § 1.

83-1,110.02 Medical parole; eligibility; conditions; term.

(1) A committed offender who is not under sentence of death or of life imprisonment and who because of an existing medical or physical condition is determined by the department to be terminally ill or permanently incapacitated may be considered for medical parole by the board. A committed offender may be eligible for medical parole in addition to any other parole. The department shall identify committed offenders who may be eligible for medical parole based upon their medical records.

(2) The board shall decide to grant medical parole only after a review of the medical, institutional, and criminal records of the committed offender and such additional medical evidence from board-ordered examinations or investigations as the board in its discretion determines to be necessary. The decision to grant medical parole and to establish conditions of release on medical parole in addition to the conditions stated in subsection (3) of this section is within the sole discretion of the board.

(3) As conditions of release on medical parole, the board shall require that the committed offender agree to placement for medical treatment and that he or she be placed for a definite or indefinite period of time in a hospital, a hospice, or another housing accommodation suitable to his or her medical condition, including, but not limited to, his or her family's home, as specified by the board.

(4) The parole term of a medical parolee shall be for the remainder of his or her sentence as reduced by any adjustment for good conduct pursuant to the Nebraska Treatment and Corrections Act.

Source: Laws 2005, LB 538, § 25; Laws 2015, LB268, § 32; Referendum 2016, No. 426; Laws 2018, LB841, § 39.

83-1,110.03 Medical parole; revocation; effect.

(1) If during the term of medical parole the medical condition of a medical parolee improves to the extent that he or she is no longer eligible for medical parole, the board may order that he or she be returned to the custody of the department to await a hearing to determine whether the medical parole should be revoked.

(2) If medical parole is revoked due to improvement in the medical condition of the parolee, he or she shall serve the balance of his or her sentence with credit for time served on medical parole and without forfeiture of any credits accrued for good conduct pursuant to the Nebraska Treatment and Corrections Act prior to medical parole.

(3) If a medical parolee whose medical parole is revoked due to improvement in his or her medical condition would otherwise be eligible for parole or any other release program, he or she may be considered for such release program.

(4) In addition to revocation of medical parole pursuant to subsection (1) of this section, medical parole may also be revoked for violation of any condition of the medical parole established by the board.

Source: Laws 2005, LB 538, § 26.

83-1,110.04 Offender under eighteen years of age when offense committed; denied parole; considered for release every year; Board of Parole; duties.

(1) Any offender who was under the age of eighteen years when he or she committed the offense for which he or she was convicted and incarcerated shall, if the offender is denied parole, be considered for release on parole by the Board of Parole every year after the denial.

(2) During each hearing before the Board of Parole for the offender, the board shall consider and review, at a minimum:

- (a) The offender's educational and court documents;
- (b) The offender's participation in available rehabilitative and educational programs while incarcerated;
- (c) The offender's age at the time of the offense;
- (d) The offender's level of maturity;
- (e) The offender's ability to appreciate the risks and consequences of his or her conduct;
- (f) The offender's intellectual capacity;
- (g) The offender's level of participation in the offense;
- (h) The offender's efforts toward rehabilitation; and
- (i) Any other mitigating factor or circumstance submitted by the offender.

Source: Laws 2013, LB44, § 3.

83-1,110.05 Geriatric parole; eligibility; conditions; term.

(1) A committed offender may be eligible for geriatric parole if the committed offender:

- (a) Is not serving a sentence for a Class I, IA, or IB felony; is not serving a sentence for an offense that includes as an element sexual contact or sexual penetration; and is not otherwise serving a sentence of life imprisonment;

- (b) Is seventy-five years of age or older; and
 - (c) Has served at least fifteen years of the sentence for which currently incarcerated.
- (2) A committed offender may be eligible for geriatric parole in addition to any other parole. The department shall identify committed offenders who may be eligible for geriatric parole.
- (3) The board shall decide to grant geriatric parole only after a review of the decision guidelines as set forth in the board's rules and regulations and the factors set forth in section 83-1,114.
- (4) The parole term of a geriatric parolee shall be for the remainder of the parolee's sentence as reduced by any adjustment for good conduct pursuant to the Nebraska Treatment and Corrections Act.
- (5) The board shall require as a condition of geriatric parole that the parolee wear or use an electronic monitoring device for a period of at least eighteen months. For purposes of this subsection, electronic monitoring device means a device worn by or affixed to a person which is used to track the physical location of such person.

Source: Laws 2023, LB50, § 48.

83-1,111 Committed offender; eligible for parole; streamlined parole contract, when; release on parole; review procedures; release date set; case deferred; reconsideration.

- (1)(a) A committed offender serving an indeterminate sentence under which he or she may become eligible for parole shall be interviewed and have his or her record reviewed by two or more members of the board or a person designated by the board within sixty days before the expiration of his or her minimum term less any reductions as provided in section 83-1,110.
- (b) If the committed offender is a qualified offender as defined in section 83-1,111.01, the committed offender shall enter into a streamlined parole contract as provided in such section.
- (2) If the committed offender is a qualified offender, the review shall be limited to verifying that the committed offender is a qualified offender and whether the committed offender has already fulfilled the streamlined parole contract. If the committed offender has not yet fulfilled the streamlined parole contract, a subsequent review shall be set for the date the committed offender will fulfill the streamlined parole contract, assuming the committed offender will meet the requirements of subsection (3) of section 83-1,111.01.
- (3)(a) This subsection applies if the committed offender is not a qualified offender or has been found at a review under subsection (2) of this section to have not fulfilled the terms of the streamlined parole contract. If, in the opinion of the reviewers, the review indicates the offender is reasonably likely to be granted parole and has a potential parole term of no less than one month, the board shall schedule a public hearing before a majority of its members. At such hearing the offender may present evidence, call witnesses, and be represented by counsel. If, in the opinion of the reviewers, the review indicates the offender should be denied parole, the offender may request an additional review by a majority of the members of the board. A review by the majority of the members of the board may be conducted not more than once annually. Any hearing and

review shall be conducted in an informal manner, but a complete record of the proceedings shall be made and preserved.

(b) The board shall render its decision regarding the committed offender's release on parole within a reasonable time after the hearing or review. The decision shall be by majority vote of the board. The decision shall be based on the entire record before the board which shall include the opinion of the person who conducted the review. If the board denies parole, written notification listing the reasons for such denial and the recommendations for correcting deficiencies which cause the denial shall be given to the committed offender within thirty days following the hearing.

(c) If the board fixes the release date, such date shall be not more than six months from the date of the committed offender's parole hearing or from the date of last reconsideration of his or her case, unless there are special reasons for fixing a later release date.

(d) If the board defers the case for later reconsideration, the committed offender shall be afforded a parole review at least once a year until a release date is fixed. The board may order a reconsideration or a rehearing of the case at any time.

(4) The release of a committed offender on parole shall not be upon the application of the offender but by the initiative of the board. No application for release on parole made by a committed offender or on his or her behalf shall be entertained by the board. This subsection does not prohibit the Director of Correctional Services from recommending to the board that it consider an individual offender for release on parole.

Source: Laws 1969, c. 817, § 42, p. 3093; Laws 1972, LB 1499, § 10; Laws 1973, LB 524, § 4; Laws 1975, LB 567, § 7; Laws 1986, LB 1242, § 1; Laws 2003, LB 46, § 24; Laws 2018, LB841, § 40; Laws 2023, LB50, § 49.

Under subsection (4) of this section, annual public hearings must be afforded only to those offenders whose cases have been deferred for later reconsideration and not to those offenders for whom parole has been denied. *Van Ackeren v. Nebraska Bd. of Parole*, 251 Neb. 477, 558 N.W.2d 48 (1997).

Sentencing judge's announcement he considered possible effect of statutes permitting prison authorities to ameliorate sentences did not violate constitutional due process, and sentences were not excessive. *State v. Houston*, 196 Neb. 724, 246 N.W.2d 63 (1976).

When after defendant's conviction, a statutory change is made in the law governing parole and the defendant thereafter violates his parole, the amended law is applicable and is not ex post facto in its application. *Berry v. Wolff*, 193 Neb. 717, 228 N.W.2d 885 (1975).

One who violates parole within three months of date his release would be mandatory hereunder permits exclusion of such offender from the benefits of subsection (5) of this section. *Von Bokelman v. Sigler*, 186 Neb. 378, 183 N.W.2d 267 (1971).

This section was amended to provide a prisoner, whose eligibility for parole was previously deferred for later consideration, with an annual parole review and a parole hearing if it is determined in the review that the prisoner is reasonably likely to be granted parole. This section, prior to the amendments, provided a prisoner, whose eligibility for parole was previously deferred for consideration, with an annual parole hearing. Implementation of the amendments does not violate the Ex Post Facto Clause, because the amendments merely alter the method to be followed in fixing a parole release date under identical substantive standards as previously established, do not create a sufficient risk of increasing the measure of punishment attached to a sentence, and do not modify the statutory punishment imposed for any offenses or alter the standards for determining the initial date for parole eligibility or an inmate's suitability for parole. The amendments merely change the process by which the parole board reviews prisoners' parole possibilities, and implementation of the amendments will not result in a longer period of incarceration for prisoners. *Moore v. Nebraska Bd. of Parole*, 12 Neb. App. 525, 679 N.W.2d 427 (2004).

83-1,111.01 Qualified offender; streamlined parole contract; effect on release.

(1) A qualified offender serving a sentence imposed prior to September 2, 2023, who has not yet received a review from the board shall, at the review, enter into a streamlined parole contract under this section.

(2) A qualified offender serving a sentence imposed on or after September 2, 2023, shall, at the qualified offender's first review from the board, enter into a streamlined parole contract under this section.

(3) Under a streamlined parole contract, a qualified offender shall be released on parole on the qualified offender's parole eligibility date, without a hearing before the board, if:

(a) In the twenty-four-month period prior to the eligibility date, the qualified offender has not committed a Class I offense under the department's disciplinary code; and

(b) The qualified offender has completed all diagnostic evaluations provided by the department and any programming or treatment required by the department for substance abuse, sex offenses, and violence reduction.

(4) If a qualified offender does not meet the requirements of subsection (3) of this section, the board shall consider the offender's parole eligibility as provided for nonqualified offenders under section 83-1,111.

(5) For purposes of this section:

(a) Qualified offender means a committed offender who is serving an indeterminate sentence under which the committed offender may become eligible for parole and who is not serving a sentence for a violent felony;

(b) Serious bodily injury has the same meaning as in section 28-109;

(c) Sexual contact and sexual penetration have the same meanings as in section 28-318; and

(d) Violent felony means an offense which is a Class IIIA felony or higher which:

(i) Includes, as an element of the offense:

(A) Sexual contact or sexual penetration;

(B) The threat to inflict serious bodily injury or death on another person, the infliction of serious bodily injury on another person, or causing the death of another person; or

(C) The use of physical force against another person; or

(ii) Consists of attempt, conspiracy, being an accessory to, or aiding and abetting a felony with any of the offenses described in subdivision (5)(d)(i) of this section as the underlying offense.

Source: Laws 2023, LB50, § 50.

83-1,112 Committed offender; eligible for parole; parole plan of offender.

(1) Each committed offender eligible for parole shall, in advance of his or her parole hearing, have a parole plan in accordance with the rules of the Board of Parole. Whenever the board determines that it will facilitate the parole hearing, it may furnish the offender with any information and records to be considered by it at the hearing.

(2) An offender shall be permitted to advise with any person whose assistance he or she desires, including his or her own legal counsel, in preparing for a hearing before the Board of Parole.

Source: Laws 1969, c. 817, § 43, p. 3095; Laws 2018, LB841, § 41.

83-1,112.01 Person convicted of multiple violations of driving under influence of alcoholic liquor or drugs; parole eligibility.

The board shall require any person who is incarcerated pursuant to subdivision (9) or (10) of section 60-6,197.03 to complete all diagnostic evaluations

provided by the department and all programming required by the department prior to being considered eligible for parole. If the programming required by the department cannot be completed during the person's period of incarceration but can be provided in the community, and the board in its discretion believes the incarcerated person will participate in programming available in the community, the board may waive the programming requirement of this section and, as a condition of parole, require that such programming be completed by the person during his or her parole term.

Source: Laws 2011, LB675, § 12; Laws 2018, LB841, § 42.

83-1,113 Board of Parole and employees; access to offender; reports on conduct and character.

The Board of Parole and its employees shall have access at all reasonable times to any committed offender over whom the board may have jurisdiction and shall have means provided for communication with and observing the committed offender. The board shall be furnished such reports as it may require concerning the conduct and character of any committed offender and any other information deemed pertinent by the board in determining whether a committed offender should be paroled.

Source: Laws 1969, c. 817, § 44, p. 3095; Laws 1992, Third Spec. Sess., LB 13, § 5; Laws 1994, LB 677, § 9.

83-1,114 Board; deferment of parole; grounds.

(1) Whenever the board considers the release of a committed offender who is eligible for release on parole, it shall order his or her release unless it is of the opinion that his or her release should be deferred because:

(a) There is a substantial risk that he or she will not conform to the conditions of parole; or

(b) Subject to subsection (3) of this section, his or her continued correctional treatment, medical care, or vocational or other training in the facility will substantially enhance his or her capacity to lead a law-abiding life when released at a later date.

(2) In making its determination regarding a committed offender's release on parole, the board shall give consideration to the decision guidelines as set forth in its rules and regulations and shall take into account each of the following factors:

(a) The adequacy of the offender's parole plan, including sufficiency of residence, employment history, and employability;

(b) The offender's institutional behavior;

(c) The offender's previous experience on parole and how recent such experience is;

(d) Whether the offender has completed a risk and needs assessment completed pursuant to section 83-192; and

(e) Any testimony or written statement by a victim as provided in section 81-1848.

(3) Parole shall not be denied for a committed offender solely because the department did not offer or delayed programming due to operational issues, including staffing shortages, maintenance issues, or lack of funding.

(4) If the board denies or defers parole, the board shall select a single primary reason for such denial or deferral.

Source: Laws 1969, c. 817, § 45, p. 3095; Laws 2006, LB 1113, § 51; Laws 2018, LB841, § 43; Laws 2023, LB50, § 51; Laws 2024, LB631, § 35.
Effective date July 19, 2024.

The expectancy of release created by this section is not entitled to constitutional protection. *Greenholtz v. Inmates of Nebraska Penal & Correctional Complex*, 442 U.S. 1 (1979).

The procedure in use under this section, which requires at least one hearing per year for each inmate, provides all necessary due process with respect to the discretionary parole deci-

sion. *Greenholtz v. Inmates of Nebraska Penal & Correctional Complex*, 442 U.S. 1 (1979).

The argument that a facially neutral parole policy has a racially disproportionate impact, and is unconstitutional, is without merit. *Inmates of Nebraska Penal & Correctional Complex v. Greenholtz*, 436 F.Supp. 432 (D. Neb. 1976).

83-1,115 Board of Parole; determination regarding committed offender's parole; factors considered.

Before making a determination regarding a committed offender's release on parole, the Board of Parole shall consider the following:

- (1) A report prepared by the institutional caseworkers relating to his or her personality, social history, and adjustment to authority, and including any recommendations which the staff of the facility may make;
- (2) All official reports of his or her prior criminal record, including reports and records of earlier probation and parole experiences;
- (3) The presentence investigation report;
- (4) Recommendations regarding his or her parole made at the time of sentencing by the sentencing judge;
- (5) The reports of any physical, mental, and psychiatric examinations of the offender;
- (6) Any relevant information which may be submitted by the offender, his or her attorney, the victim of his or her crime, or other persons;
- (7) The risk and needs assessment completed pursuant to section 83-192; and
- (8) Such other relevant information concerning the offender as may be reasonably available.

Source: Laws 1969, c. 817, § 46, p. 3097; Laws 2006, LB 1113, § 52.

83-1,116 Committed offender; release on parole; conditions of parole.

(1) When a committed offender is released on parole, the board shall require as a condition of parole that the offender refrain from engaging in criminal conduct and may require the offender to submit to periodic testing for drug and alcohol use. The board may also require, either at the time of the offender's release on parole or at any time while the offender remains on parole, that the offender conform to any of the following conditions of parole:

- (a) Meet specified family responsibilities;
- (b) Devote himself or herself to an approved employment;
- (c) Remain in the geographic limits fixed in the certificate of parole unless granted written permission to leave such limits;
- (d) Report, as directed, to his or her district parole officer;
- (e) Reside at the place fixed in the certificate of parole and notify his or her district parole officer of any change in address or employment;

- (f) Submit himself or herself to available medical, psychological, psychiatric, or other treatment;
 - (g) Refrain from associating with persons known to him or her to be engaged in criminal activities or, without permission of his or her district parole officer, with persons known to him or her to have been convicted of a crime; and
 - (h) Satisfy any other conditions specially related to the cause of his or her offense and not unduly restrictive of his or her liberty or conscience.
- (2) Before release on parole, a parolee shall be provided with a certificate of parole setting forth the conditions of the parole.

Source: Laws 1969, c. 817, § 47, p. 3097; Laws 1995, LB 371, § 22.

83-1,117 Parolee; conditions of parole.

The Board of Parole may in appropriate cases require a parolee, as a condition of his parole, either at the time of his release on parole or at any time while he remains under parole supervision, to reside in a community guidance center, boarding facility, halfway house, hospital, or other special residence facility, for such period and under such supervision or treatment as the board may deem appropriate.

Source: Laws 1969, c. 817, § 48, p. 3098.

83-1,118 Board; parolee; discharge from parole; when; department; discharge from custody; notice of civil rights.

- (1) If, in the opinion of the board, upon receipt of information from the Director of Supervision and Services, a parolee has shown suitable compliance with his or her parole programming plan, the board may reduce the level of supervision for a parolee that is commensurate with the best interests of the parolee and is compatible with the protection of the public.
- (2) The board shall discharge a parolee from parole when the time served in the custody of the department and the time served on parole equal the maximum term less good time.
- (3) The department shall discharge a committed offender from the custody of the department when the time served in the facility equals the maximum term less good time.
- (4) Upon completion of the lawful requirements of the sentence, the department shall provide the parolee or committed offender with a written notice regarding his or her civil rights. The notice shall inform the parolee or committed offender that voting rights are restored upon completion of the sentence. The notice shall also include information on restoring other civil rights through the pardon process, including application to and hearing by the Board of Pardons.
- (5) The Board of Parole may discharge a parolee from parole when such parolee is under the supervision of another state's correctional institution and such offender has reached the expiration date of his or her Nebraska parole term.

Source: Laws 1969, c. 817, § 49, p. 3098; Laws 1975, LB 567, § 8; Laws 1992, LB 816, § 6; Laws 1994, LB 677, § 10; Laws 2002, LB

1054, § 28; Laws 2003, LB 46, § 25; Laws 2005, LB 53, § 7;
Laws 2018, LB841, § 44; Laws 2024, LB20, § 7.
Effective date July 19, 2024.

The Department of Correctional Services acted beyond its authority when, due to a miscalculation of good-time credit, it discharged the defendant before completion of the defendant's lawful sentence. *Evans v. Frakes*, 293 Neb. 253, 876 N.W.2d 626 (2016).

Applies retroactively to prisoners who receive Board of Pardons approval. *Johnson & Cunningham v. Exon*, 199 Neb. 154, 256 N.W.2d 869 (1977).

83-1,119 Parolee; violation of parole; parole officer; administrative sanction; report to Board of Parole; action of board.

(1) For purposes of this section:

(a) Absconding parole supervision means a parolee has purposely avoided supervision for a period of at least two weeks and reasonable efforts by a parole officer and staff to locate the parolee in person have proven unsuccessful;

(b) Administrative sanction means additional parole requirements imposed upon a parolee by his or her parole officer, with the full knowledge and consent of the parolee, designed to hold the parolee accountable for substance abuse or technical violations of conditions of parole, including, but not limited to:

(i) Counseling or reprimand by the Division of Parole Supervision;

(ii) Increased supervision contact requirements;

(iii) Increased substance abuse testing;

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

(v) Imposition of a designated curfew for a period to be determined by the division; and

(vi) Travel restrictions to stay within his or her county of residence or employment unless otherwise permitted by the division;

(c) Contract facility means a county jail that contracts with the department to house parolees or other offenders under the jurisdiction of the department;

(d) Substance abuse violation means a parolee's activities or behaviors associated with the use of chemical substances or related treatment services resulting in a violation of an original condition of parole, including:

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

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

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

(iv) Failure to appear for or complete substance abuse or mental health treatment evaluations or inpatient or outpatient treatment; and

(e) Technical violation means a parolee's activities or behaviors which create the opportunity for re-offending or diminish the effectiveness of parole supervision resulting in a violation of an original condition of parole and includes:

(i) Moving traffic violations;

(ii) Failure to report to his or her parole officer;

(iii) Leaving the state without the permission of the Board of Parole;

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

(v) Failure to notify his or her parole officer of change of address or employment;

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

(vii) Failure to pay fines, court costs, restitution, or any fees imposed pursuant to section 83-1,107.01 as directed.

Technical violation does not include absconding parole supervision.

(2) The division shall develop a matrix of rewards for compliance and positive behaviors and graduated administrative sanctions and custodial sanctions for use in responding to and deterring substance abuse violations and technical violations. A custodial sanction of thirty days in a correctional facility or a contract facility shall be designated as the most severe response to a violation in lieu of revocation.

(3) Whenever a parole officer has reasonable cause to believe that a parolee has committed or is about to commit a substance abuse violation or technical violation while on parole, but that the parolee will not attempt to leave the jurisdiction and will not place lives or property in danger, the parole officer shall either:

(a) Impose one or more administrative sanctions based upon the parolee's risk level, the severity of the violation, and the parolee's response to the violation. If administrative sanctions are to be imposed, the parolee shall acknowledge in writing the nature of the violation and agree upon the administrative sanction. The parolee has the right to decline to acknowledge the violation. If he or she declines to acknowledge the violation, the parole officer shall take action pursuant to subdivision (3)(b) of this section. A copy of the report shall be submitted to the Board of Parole; or

(b) Submit a written report to the Board of Parole, outlining the nature of the parole violation, and request the imposition of a custodial sanction of up to thirty days in a correctional facility or a contract facility. On the basis of the report and such further investigation as the board may deem appropriate, the board shall determine whether and how the parolee violated the conditions of parole and may:

(i) Dismiss the charge of violation; or

(ii) If the board finds a violation justifying a custodial sanction, issue a warrant if necessary and impose a custodial sanction of up to thirty days in a correctional facility or a contract facility.

(4) Whenever a parole officer has reasonable cause to believe that a parolee has violated or is about to violate a condition of parole by a violation other than a substance abuse violation or a technical violation and the parole officer has reasonable cause to believe that the parolee will not attempt to leave the jurisdiction and will not place lives or property in danger, the parole officer shall submit a written report to the Board of Parole which may, on the basis of such report and such further investigation as it may deem appropriate:

(a) Dismiss the charge of violation;

(b) Determine whether the parolee violated the conditions of his or her parole;

(c) Impose a custodial sanction of up to thirty days in a correctional facility or a contract facility;

(d) Revoke his or her parole in accordance with the Nebraska Treatment and Corrections Act; or

(e) Issue a warrant for the arrest of the parolee.

(5) Whenever a parole officer has reasonable cause to believe that a parolee has violated or is about to violate a condition of parole and that the parolee will attempt to leave the jurisdiction or will place lives or property in danger, the parole officer shall arrest the parolee without a warrant and call on any peace officer to assist him or her in doing so.

(6) Whenever a parolee is arrested with or without a warrant, he or she shall be detained in a local jail or other detention facility operated by the Department of Correctional Services pending completion of review of parole proceedings by the Board of Parole. Immediately after such arrest and detention, the parole officer shall notify the Board of Parole and submit a written report of the reason for such arrest. A complete investigation shall be made by the Division of Parole Supervision and submitted to the board. After prompt consideration of such written report, the board shall order the parolee's release from detention or continued confinement to await a final decision on imposition of a custodial sanction or the revocation of parole.

(7) The Board of Parole shall adopt and promulgate rules and regulations necessary to carry out this section.

Source: Laws 1969, c. 817, § 50, p. 3099; Laws 1973, LB 524, § 5; Laws 1997, LB 396, § 25; Laws 2014, LB907, § 18; Laws 2015, LB605, § 102; Laws 2016, LB1094, § 37; Laws 2018, LB841, § 45.

83-1,120 Parolee; violation of parole; hearing.

Whenever a parolee is charged with a violation of parole, he or she shall be entitled to a prompt hearing on such charge by the Board of Parole, which hearing in no event shall occur more than thirty days after receipt of the parole officer's written report. At such hearing, the parolee shall be permitted to be present, to testify, to produce witnesses, to cross-examine adverse witnesses, and to introduce such other evidence as may be pertinent. The parolee shall be informed of his or her right to request counsel at such hearing, and if the parolee thereafter makes such request, based on a timely and colorable claim (1) that he or she has not committed the alleged violation of the conditions upon which he or she is at liberty, or (2) that, even if the violation is a matter of public record or is uncontested, there are substantial reasons which justified or mitigated the violation and make revocation inappropriate and that the reasons are complex or otherwise difficult to develop or present, and upon consideration of whether or not the parolee appears to be capable of speaking effectively for himself or herself, the board in the exercise of sound discretion may provide counsel unless retained counsel is available to the parolee. In every case in which a request for counsel is refused, the grounds for refusal shall be stated in the record.

Source: Laws 1969, c. 817, § 51, p. 3099; Laws 1972, LB 1499, § 11; Laws 1973, LB 524, § 6; Laws 2018, LB841, § 46.

83-1,121 Parolee; legal custody of Board of Parole; action of board.

A committed offender while on parole shall remain in the legal custody and control of the Board of Parole. The board may at any time revoke the parole of

an offender or recommit him or her to the custody of the Department of Correctional Services, with or without cause.

Source: Laws 1969, c. 817, § 52, p. 3100; Laws 2018, LB841, § 47.

The Nebraska Board of Parole retained custody over a parolee and was empowered to revoke his parole for violating parole condition barring him from using social media. *Tyrrell v. Frakes*, 309 Neb. 85, 958 N.W.2d 673 (2021).

does it require appointment of counsel for indigent parolees nor compulsory process. *Brown v. Sigler*, 186 Neb. 800, 186 N.W.2d 735 (1971).

Constitutional due process does not require the Board of Parole to conduct an adversary hearing to revoke parole nor

83-1,122 Parolee; violation of parole; action of Board of Parole.

(1) If the board finds that the parolee has engaged in criminal conduct, the board may order revocation of the parolee's parole.

(2) If the board finds that the parolee did violate a condition of parole but is of the opinion that revocation of parole is not appropriate, the board may order that:

- (a) The parolee receive a reprimand and warning;
- (b) Parole supervision and reporting be intensified;
- (c) Good time granted pursuant to section 83-1,108 be forfeited or withheld;
- (d) The parolee serve a custodial sanction of up to thirty days in a correctional facility or a contract facility as defined in section 83-1,119; or
- (e) The parolee be required to conform to one or more additional conditions of parole which may be imposed in accordance with the Nebraska Treatment and Corrections Act.

(3) Cumulative custodial sanctions in a correctional facility or a contract facility under this section and section 83-1,119 shall not exceed sixty days. If a parolee has previously received sixty days of cumulative custodial sanctions before the current violation, the board shall either order revocation of the parolee's parole or one or more of the other sanctions described in subsection (2) of this section.

(4) Time spent in custodial sanctions under this section and section 83-1,119 shall be credited to the parolee's sentence.

Source: Laws 1969, c. 817, § 53, p. 3100; Laws 1992, LB 816, § 7; Laws 1995, LB 371, § 23; Laws 2015, LB605, § 103; Laws 2016, LB1094, § 38.

83-1,122.01 Board of Parole; jurisdiction.

(1) Except as provided in subsection (3) of this section, the board does not have jurisdiction over a person who is committed to the department in accordance with section 29-2204.02 for a Class III, IIIA, or IV felony committed on or after August 30, 2015, unless the person is also committed to the department in accordance with section 29-2204 for (a) a sentence of imprisonment for a Class III, IIIA, or IV felony committed prior to August 30, 2015, or (b) a sentence of imprisonment for a Class I, IA, IB, IC, ID, II, or IIA felony.

(2) Except as provided in subsection (3) of this section, the board does not have jurisdiction over a person committed to the department for a misdemeanor sentence imposed consecutively or concurrently with a Class III, IIIA, or IV felony sentence for an offense committed on or after August 30, 2015, unless the person is also committed to the department in accordance with section 29-2204 for (a) a sentence of imprisonment for a Class III, IIIA, or IV felony

committed prior to August 30, 2015, or (b) a sentence of imprisonment for a Class I, IA, IB, IC, ID, II, or IIA felony.

(3) This section does not apply to medical parole under section 83-1,110.02 or geriatric parole under section 83-1,110.05.

Source: Laws 2015, LB605, § 104; Laws 2016, LB1094, § 40; Laws 2018, LB841, § 48; Laws 2023, LB50, § 52.

83-1,122.02 Technical parole violation residential housing program; pilot program; participants; placement; requirements; report.

(1) The Division of Parole Supervision shall create a pilot program to establish a technical parole violation residential housing program. The purpose of the program is to provide accountability and intensive support for individuals on parole who commit technical violations, without revoking them fully back to prison.

(2) The program shall provide a structured environment for selected individuals on parole who have committed technical violations. The program shall be based upon a therapeutic community model. Participants in the program shall, at a minimum, be required to take part in counseling, educational, and other programs as the Division of Parole Supervision deems appropriate, to provide community service, and to submit to drug and alcohol screening.

(3) An individual on parole shall not be placed in the pilot program until the Division of Parole Supervision has determined the individual is a suitable candidate in accordance with policies and guidelines developed by the division.

(4) On or before June 1, 2024, the Division of Parole Supervision shall electronically submit a report to the Judiciary Committee of the Legislature regarding the pilot program. The report shall evaluate effects of the pilot program on recidivism and make recommendations regarding expansion of or changes to the program.

(5) For purposes of this section, technical violation has the same meaning as in section 83-1,119.

Source: Laws 2023, LB50, § 55; Laws 2024, LB631, § 36.
Effective date July 19, 2024.

83-1,123 Parole; revoked; action of Board of Parole.

(1) A parolee whose parole is revoked shall be recommitted to the department until discharge from the custody of the state becomes mandatory or until reparaoled by the board.

(2) The time from the date of the parolee's declared delinquency until the date of arrest for the custody of the board shall not be counted as any portion of the time served.

(3) A parolee whose parole has been revoked shall be considered by the board for reparole at any time in the same manner as any other committed offender eligible for parole.

(4) Except in the case of a parolee who has left the jurisdiction or his or her place of residence, action revoking a parolee's parole and recommitting the parolee for violation of the conditions of parole must be taken before the expiration of the parole term less good time. A parolee who has left the jurisdiction or his or her place of residence shall be treated as a parole violator

and, when apprehended, shall be subject to recommitment or to supervision for the balance of the parole term as of the date of the violation.

Source: Laws 1969, c. 817, § 54, p. 3100; Laws 1972, LB 1499, § 12; Laws 1992, LB 816, § 8; Laws 1995, LB 371, § 24; Laws 2003, LB 46, § 26.

A Nebraska parole violator who is serving an Iowa sentence imposed for a subsequent offense does not recommence serving his Nebraska sentence until he has been released from custody by Iowa and arrested for the custody of the Nebraska Board of Parole. *Falkner v. Neb. Board of Parole*, 213 Neb. 474, 330 N.W.2d 141 (1983).

Before a writ of mandamus may properly issue, an official's duty must be clearly expressed. Under this statute the board has no duty to recommit a parolee until he is in legal custody of the board. *State ex rel. Jakes v. Nebraska Board of Parole*, 212 Neb. 181, 322 N.W.2d 394 (1982).

83-1,124 Repealed. Laws 2018, LB841, § 58.

83-1,125 Warrant or detainer; Director of Supervision and Services; board; duties.

(1) If a warrant or detainer is placed against a committed offender by a court, parole agency, or other authority of this or any other jurisdiction, the Director of Supervision and Services shall inquire before such offender becomes eligible for parole whether the authority concerned intends to execute or withdraw the warrant or detainer when the offender is released.

(2) If the authority notifies the Director of Supervision and Services that it intends to execute the warrant or detainer when the offender is released, the Director of Supervision and Services shall advise the authority concerned of the sentence under which the offender is held, the time of parole eligibility, any decision of the board relating to the offender, and the nature of the offender's adjustment during imprisonment and shall give reasonable notice to such authority of the offender's release date.

(3) The board may parole an offender who is eligible for release to a warrant or detainer. If an offender is paroled to such a warrant or detainer, the board may provide, as a condition of release, that if the charge or charges on which the warrant or detainer is based are dismissed, or are satisfied after conviction and sentence, prior to the expiration of the offender's parole term, the authority to whose warrant or detainer the offender is released shall return the offender to serve the remainder of the parole term or such part as the board may determine.

(4) If a person paroled to a warrant or detainer is thereafter sentenced and placed on probation, or released on parole in another jurisdiction, prior to the expiration of the parole term less good time in this state, the board may permit the person to serve the remainder of the parole term or such part as the board may determine concurrently with the person's new probation or parole term. Such concurrent terms may be served in either of the two jurisdictions, and supervision shall be administered in accordance with the Interstate Compact for Adult Offender Supervision.

Source: Laws 1969, c. 817, § 56, p. 3101; Laws 1992, LB 816, § 9; Laws 2003, LB 46, § 27; Laws 2018, LB841, § 49.

Cross References

Interstate Compact for Adult Offender Supervision, see section 29-2639.

83-1,125.01 Person under jurisdiction of Board of Parole; file; contents; confidential; access by Public Counsel; information accessible through criminal justice information system.

(1) The Board of Parole and the Division of Parole Supervision may maintain an individual file for each person who is under the jurisdiction of the Board of Parole. Such file may be maintained electronically and shall include, when available and appropriate, the following information on such person:

- (a) Admission summary;
- (b) Presentence investigation report;
- (c) Classification reports and recommendations;
- (d) Official records of conviction and commitment along with any earlier criminal records;
- (e) Progress reports and admission-orientation reports;
- (f) Reports of any disciplinary infractions and their disposition;
- (g) Risk and needs assessments;
- (h) Parole plan and parole placement and investigation worksheets;
- (i) Decision guideline scores;
- (j) Parole case plan;
- (k) Parole progress reports and contact notes;
- (l) Arrest and violation reports, including disposition;
- (m) Parole proceedings orders and notices;
- (n) Other documents related to parole supervision;
- (o) Correspondence; and
- (p) Other pertinent data concerning his or her background, conduct, associations, and family relationships.

(2) Any decision concerning release on or revocation of parole or imposition of sanctions shall be made only after the individual file has been reviewed. The contents of the individual file shall be confidential unless disclosed in connection with a public hearing and shall not be subject to public inspection except by court order for good cause shown. The contents of the file shall not be accessible to any person under the jurisdiction of the Board of Parole. A person under the jurisdiction of the board may obtain access to his or her medical records by request to the provider pursuant to sections 71-8401 to 71-8407 notwithstanding the fact that such medical records may be a part of his or her parole file. The board and the Division of Parole Supervision have the authority to withhold decision guideline scores, risk and needs assessment scores, and mental health and psychological records of a person under the jurisdiction of the board when appropriate.

(3) Nothing in this section limits in any manner the authority of the Public Counsel to inspect and examine the records and documents of the board and the Division of Parole Supervision pursuant to sections 81-8,240 to 81-8,254, except that the Public Counsel's access to the medical or mental health records of a person under the jurisdiction of the board shall be subject to his or her consent. The office of Public Counsel shall not disclose the medical or mental health records of a person under the jurisdiction of the board to anyone else, including any other person under the jurisdiction of the board, except as authorized by law.

(4) For any person under the jurisdiction of the Board of Parole, the board shall provide such person's (a) name, (b) parole officer, and (c) conditions of parole to the Nebraska Commission on Law Enforcement and Criminal Justice

which shall provide access to such information to law enforcement agencies through the state's criminal justice information system.

Source: Laws 2018, LB841, § 50; Laws 2023, LB50, § 53.

83-1,126 Board of Pardons; created; members; secretary.

There is hereby created the Board of Pardons which shall consist of the Governor, Attorney General, and Secretary of State. The Governor shall be chairperson of the board. The Secretary of State shall be secretary of the board and keep its records or designate such a record keeper.

Source: Laws 1969, c. 817, § 57, p. 3102; Laws 1994, LB 677, § 11.

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

83-1,126.01 Persons subject to act.

Any person in the custody of the Department of Correctional Services or under supervision of the Board of Parole shall be subject to the provisions of the Nebraska Treatment and Corrections Act.

Source: Laws 1975, LB 567, § 9; Laws 1994, LB 677, § 12.

Approval of the Board of Pardons to apply this provision was required where the petitioner would be released from custodial confinement under this provision at an earlier date than he would have been under the prior law in effect at the time of his sentencing. Actions of the Board of Pardons in allowing or denying the benefits of this provision are an exercise of its power to grant clemency, and not subject to ordinary due

process requirements. *Whited v. Bolin*, 210 Neb. 32, 312 N.W.2d 691 (1981).

This section means prisoners need the approval of the Board of Pardons before the provisions of Laws 1975, L.B. 567, apply retroactively. *Johnson & Cunningham v. Exon*, 199 Neb. 154, 256 N.W.2d 869 (1977).

83-1,127 Board of Pardons; duties.

The Board of Pardons shall:

- (1) Exercise the pardon authority as defined in section 83-170 for all criminal offenses except treason and cases of impeachment;
- (2) Adopt and promulgate rules and regulations for its own administration and operation;
- (3) Appoint and remove its employees as prescribed by the State Personnel System and delegate appropriate powers and duties to them;
- (4) Consult with the Board of Parole concerning applications for the exercise of pardon authority;
- (5) Consult with the Department of Motor Vehicles concerning applications received from the department pursuant to section 60-6,209 for the exercise of pardon authority; and
- (6) Exercise all powers and perform all duties necessary and proper in carrying out its responsibilities under the provisions of the Nebraska Treatment and Corrections Act.

Source: Laws 1969, c. 817, § 58, p. 3102; Laws 1979, LB 322, § 66; Laws 1981, LB 545, § 44; Laws 1992, Third Spec. Sess., LB 13, § 6; Laws 1994, LB 677, § 13; Laws 1998, LB 309, § 25; Laws 2023, LB50, § 54.

Cross References

State Personnel System, see section 81-1301 et seq.

83-1,127.01 Department of Correctional Services; provide services to Board of Pardons and Board of Parole.

The department, subject to available resources, shall provide all accounting, budgeting, and payroll services to the Board of Pardons and the Board of Parole at no expense to such boards.

Source: Laws 1992, Third Spec. Sess., LB 13, § 8; Laws 1994, LB 677, § 14.

83-1,127.02 Board of Pardons; ignition interlock permit; ignition interlock device restriction; violation; penalty.

(1) The Board of Pardons may, in its sole discretion, when granting a reprieve to any person who has made application pursuant to section 60-6,209, order such person to obtain an ignition interlock permit and to operate only motor vehicles equipped with an ignition interlock device approved by the Director of Motor Vehicles. The Board of Pardons may order the person to hold the ignition interlock permit and use an ignition interlock device for a period of time not to exceed any period of revocation the applicant is subject to at the time the application for a license reinstatement is made.

(2) Any person ordered by the Board of Pardons to operate only motor vehicles equipped with such an ignition interlock device shall make application to the director for the issuance of an ignition interlock permit pursuant to section 60-4,118.06.

(3)(a) Except as provided in subdivision (3)(b) of this subsection, any such person restricted to operating a motor vehicle equipped with such an ignition interlock device is guilty of a Class I misdemeanor if he or she (i) operates upon the highways of this state a motor vehicle without such an ignition interlock device, (ii) operates a motor vehicle equipped with such an ignition interlock device which has been disabled, bypassed, or altered in any way, or (iii) operates a motor vehicle equipped with such an ignition interlock device without obtaining an ignition interlock permit.

(b) Any such person restricted to operating a motor vehicle equipped with such an ignition interlock device is guilty of a Class IV felony if he or she (i)(A) operates upon the highways of this state a motor vehicle without such an ignition interlock device, (B) operates a motor vehicle equipped with such an ignition interlock device which has been disabled, bypassed, or altered in any way, or (C) operates a motor vehicle equipped with such an ignition interlock device without obtaining an ignition interlock permit and (ii) operates the motor vehicle as described in subdivision (i)(A), (B), or (C) of this subdivision when he or she has a concentration of two-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or a concentration of two-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath.

(4) The court shall, as a part of the judgment of conviction for a violation of subdivision (3)(b) of this section, order such person not to drive any motor vehicle for any purpose for a period of fifteen years from the date ordered by the court. The court shall also order that the operator's license of such person be revoked for a like period. The revocation shall be administered upon

sentencing, upon the final judgment of any appeal or review, or upon the date that any probation is revoked.

Source: Laws 1998, LB 309, § 27; Laws 2001, LB 38, § 60; Laws 2008, LB736, § 12; Laws 2014, LB998, § 18.

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

83-1,128 Board of Pardons; issue process; service; compel attendance of witnesses; fees.

In the performance of official duties, the Board of Pardons or any member thereof shall have the power to issue subpoenas, to compel the attendance of witnesses and the production of books, papers, and other documents pertinent to the subject of an inquiry, and to administer oaths and take the testimony of persons under oath. Subpoenas so issued may be served by any sheriff, constable, police officer, parole officer, or peace officer in the same manner as similar process in the district court. Any person who knowingly testifies falsely, submits any false affidavit or deposition, fails to appear when subpoenaed, or fails or refuses to produce such material pursuant to the subpoena shall be subject to the same orders and penalties to which a person before the district court is subject. Any district court of this state, upon application by the board, may compel the attendance of such witnesses, the production of such material, and the giving of testimony before the board by an attachment for contempt or otherwise in the same manner as production of evidence may be compelled before such court. Every person shall attend as a witness when subpoenaed anywhere within the state and shall be entitled to the same fees, if requested, as a witness in the district court and mileage as provided in section 81-1176 for state employees. Fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses shall be paid by the board.

Source: Laws 1969, c. 817, § 59, p. 3102; Laws 1981, LB 204, § 203; Laws 1988, LB 864, § 65.

83-1,129 Board of Pardons; pardon authority; application; consideration.

(1) Any person desiring the Board of Pardons to exercise its pardon authority shall request an application from its secretary. The application shall be returned to the secretary and shall state the specific relief requested and such other information as is prescribed by the board.

(2) Any person whose operator's license has been revoked pursuant to a conviction for a violation of section 60-6,196 or 60-6,197 for a third or subsequent time for a period of fifteen years and who desires the Board of Pardons to exercise its pardon authority shall make application pursuant to section 60-6,209.

(3) Any application filed pursuant to subsection (1) or (2) of this section shall be considered with or without a hearing by the board at its next regular scheduled meeting. If a hearing is held, it shall be conducted in an informal manner and a record of the proceedings shall be made and preserved according to the guidelines of the board.

Source: Laws 1969, c. 817, § 60, p. 3103; Laws 1994, LB 677, § 15; Laws 1998, LB 309, § 26; Laws 2003, LB 209, § 17; Laws 2004, LB 208, § 23.

There are no provisions in Nebraska's Constitution or its statutes creating a liberty interest in commutation hearings other than the right to file an application for commutation. *Otey v. State*, 240 Neb. 813, 485 N.W.2d 153 (1992).

83-1,130 Board of Pardons; pardon authority; application; limitation; relief granted or denied.

(1) After consideration of the application and after such further investigations as it may deem appropriate, the Board of Pardons shall either grant or deny the relief requested or grant such other relief as may be justified. The board may decline to accept further applications after the initial application for pardon from an offender for any prescribed amount of time, but in no case shall such time exceed two years. The board shall notify the offender in writing of any restriction for subsequent applications after the hearing on the initial application.

(2) The Board of Pardons may, in appropriate cases when a person has been convicted of a felony and has been granted a pardon by the appropriate authority of this state or is hereafter granted a pardon for a conviction occurring prior to, on, or subsequent to August 25, 1969, empower the Governor to expressly authorize such person to receive, possess, or transport in commerce a firearm.

(3) All actions of the Board of Pardons shall be by majority vote and shall be filed in the office of the Secretary of State or the office designated by the Secretary of State.

Source: Laws 1969, c. 817, § 61, p. 3103; Laws 1994, LB 677, § 16.

With regard to the actions of the Board of Pardons in the exercise of its power to grant commutations, the exercise or nonexercise of a discretionary power to grant clemency is not subject to ordinary due process requirements. The Nebraska Board of Pardons has the unfettered discretion to grant or deny a commutation of a lawfully imposed sentence for any reason or for no reason at all. *Otey v. State*, 240 Neb. 813, 485 N.W.2d 153 (1992).

83-1,131 Offender; granted a reprieve; commit to Department of Correctional Services.

An offender who has been granted a reprieve may be committed by the Board of Pardons to the Department of Correctional Services. The costs of transporting the offender to the department shall be allowed and paid by the state.

Source: Laws 1969, c. 817, § 62, p. 3104.

83-1,132 Committed offender under sentence of death; application for exercise of pardon authority by Board of Pardons; denial; date of execution; fix.

Whenever an application for exercise of the pardon authority is filed with the secretary of the Board of Pardons by a committed offender who is under a sentence of death, the sentence shall not be carried out until the board rules upon such application. If the board denies the relief requested it may set the time and date of execution and refuse to accept for filing further applications from such offender.

Source: Laws 1969, c. 817, § 63, p. 3104; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 83-1,132 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

The Board of Pardons may set the time and date of execution only when it denies an application for the exercise of pardon authority. An application filed under this section results in an automatic stay of execution until a ruling by the pardons board. *Otey v. State*, 240 Neb. 813, 485 N.W.2d 153 (1992).

83-1,133 Prohibited acts; threat of harm to member of Board of Pardons; penalty.

A person shall be guilty of a Class IV felony if he threatens or attempts to threaten harm to a member of the Board of Pardons with the purpose to influence his decision, opinion, recommendation, vote, or other exercise of discretion as member of the board or if he purposely or knowingly privately addresses to any member of the board any representation, entreaty, argument or other communication designed to influence the outcome of any application which is or may come before the board on the basis of considerations other than those authorized by law.

Source: Laws 1969, c. 817, § 64, p. 3104; Laws 1977, LB 39, § 311; Laws 1978, LB 748, § 47.

83-1,134 Administrative procedure provisions; not applicable.

The provisions of the Administrative Procedure Act shall not apply to the Board of Pardons or to the exercise of its functions.

Source: Laws 1969, c. 817, § 65, p. 3104.

Cross References

Administrative Procedure Act, see section 84-920.

83-1,135 Act, how cited.

Sections 83-170 to 83-1,135.05 shall be known and may be cited as the Nebraska Treatment and Corrections Act.

Source: Laws 1969, c. 817, § 85, p. 3112; Laws 1992, Third Spec. Sess., LB 13, § 9; Laws 1995, LB 371, § 25; Laws 1997, LB 274, § 2; Laws 1997, LB 364, § 21; Laws 1998, LB 309, § 28; Laws 2003, LB 46, § 28; Laws 2005, LB 538, § 24; Laws 2006, LB 1199, § 99; Laws 2011, LB675, § 11; Laws 2013, LB44, § 4; Laws 2015, LB598, § 32; Laws 2015, LB605, § 105; Laws 2016, LB867, § 2; Laws 2016, LB1094, § 41; Laws 2018, LB841, § 51; Laws 2023, LB50, § 56; Laws 2024, LB631, § 44.

Effective date July 19, 2024.

83-1,135.01 Transferred to section 83-1,110.01.

83-1,135.02 Changes under Laws 2003, LB 46; changes under Laws 2015, LB605; changes under Laws 2016, LB1094; changes under Laws 2018, LB841; changes under Laws 2023, LB50; applicability; legislative intent.

(1) It is the intent of the Legislature that the changes made to the Nebraska Treatment and Corrections Act by Laws 2003, LB 46, with respect to parole eligibility apply to all committed offenders under sentence and not on parole on May 24, 2003, and to all persons sentenced on and after such date.

(2) It is the intent of the Legislature that the changes made to sections 29-2262, 29-2266, 29-2281, 83-182.01, 83-183, 83-183.01, 83-184, 83-1,119, and 83-1,122 by Laws 2015, LB605, and sections 83-184.01, 83-1,100.02, and 83-1,100.03 apply to all committed offenders under sentence, on parole, or on probation on August 30, 2015, and to all persons sentenced on and after such date.

(3) It is the intent of the Legislature that the changes made to sections 28-105, 29-2204.02, 29-2260, 29-2262, 29-2263, 29-2266, 29-2267, 29-2268, 47-401, 47-502, 83-187, 83-1,119, 83-1,122, and 83-1,122.01 by Laws 2016,

LB1094, and sections 29-2266.01 to 29-2266.03 and 83-1,135.03 apply to all committed offenders under sentence, on parole, or on probation on or after April 20, 2016, and to all persons sentenced on and after such date.

(4) It is the intent of the Legislature that the changes made to sections 83-1,110.02 and 83-1,122.01 by Laws 2018, LB841, apply to all committed offenders under sentence or on parole on or after July 19, 2018, and to all persons sentenced on and after such date.

(5) Except as otherwise provided in section 83-1,111.01, it is the intent of the Legislature that the changes made to sections 83-1,100.02, 83-1,110, 83-1,110.05, 83-1,111, 83-1,111.01, 83-1,114, and 83-1,122.02 by Laws 2023, LB50, apply to all committed offenders under sentence or on parole on or after September 2, 2023, and to all persons sentenced on and after such date.

Source: Laws 2003, LB 46, § 50; Laws 2015, LB605, § 106; Laws 2016, LB1094, § 42; Laws 2018, LB841, § 52; Laws 2023, LB50, § 57.

83-1,135.03 Parolee; permission to leave; when.

A parolee serving a custodial sanction in a correctional facility or contract facility may be granted the privilege of leaving the facility during necessary and reasonable hours for any of the following purposes:

- (1) Seeking employment;
- (2) Working at his or her employment;
- (3) Conducting such person's own business or other self-employed occupation, including housekeeping and attending to the needs of such person's family;
- (4) Attending any high school, college, university, or other educational or vocational training program or institution;
- (5) Serious illness or death of a member of such person's immediate family;
- (6) Medical treatment;
- (7) Outpatient or inpatient treatment for alcohol or substance abuse; or
- (8) Engaging in other rehabilitative activities.

Source: Laws 2016, LB1094, § 39.

83-1,135.04 Rules and regulations; guidance documents and internal procedural documents; availability; notice; contents.

Rules and regulations may authorize the Director of Correctional Services to issue guidance documents and internal procedural documents not inconsistent with law and rules and regulations. Such guidance documents and internal procedural documents shall be made available to the public at one public location and on the department's website unless the safety and security of a correctional institution would be placed at imminent and substantial risk by such publication. If any guidance document or internal procedural document is not made available to the public, notice shall be given to the deputy public counsel for corrections and to the Inspector General of the Nebraska Correctional System. The notice shall identify all documents not publicly available by title, number of pages, and date adopted. All guidance documents and internal procedural documents shall be made available to any member of the Legislature upon request. Security manuals shall be made available to the Legislature

for inspection upon request, but shall not be copied or removed from secure locations as designated by the director.

Source: Laws 2016, LB867, § 17.

83-1,135.05 Rules and regulations; inmate outside correctional facility.

The Department of Correctional Services shall adopt and promulgate rules and regulations pursuant to the Administrative Procedure Act regarding any procedures or policies used by the department for any situation where an inmate, under the authority of the department, is outside a correctional facility operated by the department or a contract facility as defined in section 83-1,119 unless the safety and security of a correctional institution would be placed at imminent and substantial risk by such publication.

Source: Laws 2016, LB867, § 18.

Cross References

Administrative Procedure Act, see section 84-920.

(g) DIVISION OF JUVENILE DELINQUENCY

83-1,136 Transferred to section 83-925.

83-1,137 Transferred to section 83-927.

83-1,138 Transferred to section 83-928.

83-1,139 Transferred to section 83-929.

83-1,140 Transferred to section 83-930.

(h) MENTAL RETARDATION

83-1,141 Repealed. Laws 1991, LB 830, § 36.

83-1,142 Repealed. Laws 1991, LB 830, § 36.

83-1,143 Repealed. Laws 1991, LB 830, § 36.

83-1,143.01 Repealed. Laws 1991, LB 830, § 36.

83-1,143.02 Repealed. Laws 1991, LB 830, § 36.

83-1,143.03 Repealed. Laws 1991, LB 830, § 36.

83-1,143.04 Repealed. Laws 1991, LB 703, § 81; Laws 1991, LB 830, § 36.

83-1,143.05 Repealed. Laws 1991, LB 830, § 36.

83-1,143.06 Developmental disability regions; enumerated.

There are hereby created six developmental disability regions in the state. Each region shall consist of the following counties:

Region 1 shall consist of Sioux, Dawes, Sheridan, Box Butte, Scotts Bluff, Morrill, Garden, Kimball, Banner, Cheyenne, and Deuel counties;

Region 2 shall consist of Grant, Hooker, Thomas, Arthur, McPherson, Logan, Keith, Lincoln, Perkins, Dawson, Chase, Hayes, Frontier, Gosper, Dundy, Hitchcock, and Red Willow counties;

Region 3 shall consist of Blaine, Loup, Garfield, Wheeler, Custer, Valley, Greeley, Sherman, Howard, Merrick, Buffalo, Hall, Hamilton, Phelps, Kearney, Adams, Clay, Furnas, Harlan, Franklin, Webster, and Nuckolls counties;

Region 4 shall consist of Cherry, Keya Paha, Boyd, Brown, Rock, Holt, Knox, Cedar, Dixon, Antelope, Pierce, Wayne, Dakota, Thurston, Madison, Stanton, Cuming, Burt, Boone, Platte, Colfax, and Nance counties;

Region 5 shall consist of Saunders, York, Seward, Lancaster, Otoe, Polk, Butler, Fillmore, Saline, Gage, Johnson, Nemaha, Thayer, Jefferson, Pawnee, and Richardson counties; and

Region 6 shall consist of Dodge, Washington, Douglas, Sarpy, and Cass counties.

Source: Laws 1973, LB 311, § 8; Laws 1974, LB 302, § 16; Laws 1991, LB 830, § 34.

83-1,143.07 Repealed. Laws 1991, LB 830, § 36.

83-1,144 Repealed. Laws 1991, LB 830, § 36.

83-1,144.01 Repealed. Laws 1991, LB 830, § 36.

83-1,145 Repealed. Laws 1973, LB 311, § 10.

83-1,146 Repealed. Laws 1991, LB 830, § 36.

(i) DIVISION OF MEDICAL SERVICES

83-1,147 Transferred to section 83-101.06.

83-1,148 Transferred to section 83-125.

83-1,149 Repealed. Laws 1996, LB 1155, § 121.

83-1,150 Repealed. Laws 1996, LB 1155, § 121.

83-1,151 Repealed. Laws 1996, LB 1155, § 121.

83-1,152 Repealed. Laws 1996, LB 1155, § 121.

ARTICLE 2

SCHOOLS

Cross References

Commission for the Blind and Visually Impaired Act, see section 71-8601.

Nebraska Center for the Education of Children who are Blind or Visually Impaired, see section 79-11,109 et seq.

(a) VOCATIONAL REHABILITATION

Section	
83-201.	Repealed. Laws 1959, c. 419, § 13.
83-202.	Repealed. Laws 1959, c. 419, § 13.
83-203.	Transferred to section 79-11,111.
83-204.	Transferred to section 79-11,100.
83-205.	Repealed. Laws 1959, c. 419, § 13.
83-206.	Repealed. Laws 1959, c. 419, § 13.
83-207.	Transferred to section 79-1906.
83-208.	Repealed. Laws 1959, c. 419, § 13.
83-209.	Repealed. Laws 1959, c. 419, § 13.

SCHOOLS

Section

- 83-210. Repealed. Laws 1976, LB 674, § 7.
- 83-210.01. Transferred to section 71-8612.
- 83-210.02. Transferred to section 71-8610.
- 83-210.03. Transferred to section 71-8611.
- 83-210.04. Repealed. Laws 2000, LB 352, § 24.
- 83-210.05. Repealed. Laws 2000, LB 352, § 24.
- 83-210.06. Repealed. Laws 2000, LB 352, § 24.
- 83-210.07. Repealed. Laws 2000, LB 352, § 24.
- 83-211. Transferred to section 71-8605.
- 83-211.01. Repealed. Laws 1988, LB 810, § 3.
- 83-211.02. Transferred to section 71-8606.
- 83-212. Repealed. Laws 2000, LB 352, § 24.
- 83-213. Repealed. Laws 1947, c. 332, § 5.
- 83-214. Repealed. Laws 1947, c. 332, § 5.
- 83-215. Repealed. Laws 1947, c. 332, § 5.
- 83-216. Repealed. Laws 1947, c. 332, § 5.

(b) BEATRICE STATE DEVELOPMENTAL CENTER

- 83-217. Beatrice State Developmental Center; designation.
- 83-217.01. Repealed. Laws 1986, LB 742, § 1.
- 83-218. Beatrice State Developmental Center; purpose.
- 83-219. Repealed. Laws 1967, c. 251, § 17.
- 83-220. Repealed. Laws 1981, LB 499, § 44.
- 83-221. Repealed. Laws 1981, LB 499, § 44.
- 83-222. Repealed. Laws 1981, LB 499, § 44.
- 83-223. Order of commitment where mentally handicapped person is an inmate in a state institution.
- 83-224. Repealed. Laws 1969, c. 812, § 25.
- 83-225. Repealed. Laws 1969, c. 812, § 25.
- 83-226. Repealed. Laws 1969, c. 812, § 25.
- 83-227. Repealed. Laws 1969, c. 812, § 25.
- 83-227.01. Beatrice State Developmental Center; patients transferred to temporary surplus space in regional centers at Lincoln and Norfolk; care, custody, and treatment.
- 83-227.02. Inmates; transfer; care; cost; exception.
- 83-228. Repealed. Laws 1951, c. 324, § 1.
- 83-229. Repealed. Laws 1951, c. 324, § 1.
- 83-230. Repealed. Laws 1951, c. 324, § 1.
- 83-231. Repealed. Laws 1951, c. 324, § 1.
- 83-232. Repealed. Laws 1951, c. 324, § 1.
- 83-233. Repealed. Laws 1951, c. 324, § 1.
- 83-234. Repealed. Laws 1951, c. 324, § 1.
- 83-235. Repealed. Laws 1951, c. 324, § 1.
- 83-236. Repealed. Laws 1951, c. 324, § 1.
- 83-237. Repealed. Laws 1951, c. 324, § 1.
- 83-238. Repealed. Laws 1951, c. 324, § 1.

(c) HOME FOR CHILDREN

- 83-239. Transferred to section 43-901.
- 83-240. Transferred to section 43-902.
- 83-241. Transferred to section 43-903.
- 83-242. Transferred to section 43-904.
- 83-243. Transferred to section 43-905.
- 83-244. Repealed. Laws 1961, c. 415, § 38.
- 83-245. Transferred to section 43-906.

(d) MENTALLY RETARDED CHILDREN

- 83-246. Transferred to section 43-617.
- 83-247. Transferred to section 43-618.

(a) VOCATIONAL REHABILITATION

- 83-201 Repealed. Laws 1959, c. 419, § 13.
- 83-202 Repealed. Laws 1959, c. 419, § 13.
- 83-203 Transferred to section 79-11,111.
- 83-204 Transferred to section 79-11,100.
- 83-205 Repealed. Laws 1959, c. 419, § 13.
- 83-206 Repealed. Laws 1959, c. 419, § 13.
- 83-207 Transferred to section 79-1906.
- 83-208 Repealed. Laws 1959, c. 419, § 13.
- 83-209 Repealed. Laws 1959, c. 419, § 13.
- 83-210 Repealed. Laws 1976, LB 674, § 7.
- 83-210.01 Transferred to section 71-8612.
- 83-210.02 Transferred to section 71-8610.
- 83-210.03 Transferred to section 71-8611.
- 83-210.04 Repealed. Laws 2000, LB 352, § 24.
- 83-210.05 Repealed. Laws 2000, LB 352, § 24.
- 83-210.06 Repealed. Laws 2000, LB 352, § 24.
- 83-210.07 Repealed. Laws 2000, LB 352, § 24.
- 83-211 Transferred to section 71-8605.
- 83-211.01 Repealed. Laws 1988, LB 810, § 3.
- 83-211.02 Transferred to section 71-8606.
- 83-212 Repealed. Laws 2000, LB 352, § 24.
- 83-213 Repealed. Laws 1947, c. 332, § 5.
- 83-214 Repealed. Laws 1947, c. 332, § 5.
- 83-215 Repealed. Laws 1947, c. 332, § 5.
- 83-216 Repealed. Laws 1947, c. 332, § 5.

(b) BEATRICE STATE DEVELOPMENTAL CENTER

83-217 Beatrice State Developmental Center; designation.

The Nebraska institution for persons with intellectual disabilities who require residential care shall be known and designated as the Beatrice State Developmental Center.

Source: Laws 1885, c. 52, § 1, p. 255; R.S.1913, § 7220; Laws 1921, c. 241, § 1, p. 843; C.S.1922, § 6878; C.S.1929, § 83-401; R.S.1943,

§ 83-217; Laws 1967, c. 251, § 4, p. 663; Laws 1969, c. 816, § 13, p. 3068; Laws 1976, LB 974, § 2; Laws 1986, LB 1177, § 44; Laws 2013, LB23, § 50.

Cross References

Administration of Beatrice State Developmental Center, see section 83-1209.
Rights of persons admitted, see sections 83-381 to 83-390.

83-217.01 Repealed. Laws 1986, LB 742, § 1.**83-218 Beatrice State Developmental Center; purpose.**

The Beatrice State Developmental Center shall provide residential care and humane treatment for those persons with intellectual disabilities who require residential care, shall study to improve their condition, shall classify them, and shall furnish such training in industrial, mechanical, agricultural, and academic subjects as they may be capable of learning. Whenever the Department of Health and Human Services determines that continued residence in the Beatrice State Developmental Center is no longer necessary for the welfare, care, treatment, or training of such person, it shall have authority to discharge or transfer such person as provided in section 83-387. The Department of Health and Human Services shall discharge any person from the Beatrice State Developmental Center without requiring sterilization of such person, if the discharge satisfies the requirements of this section, notwithstanding any court order, judgment, or decree rendered prior to December 25, 1969, requiring sterilization as a condition of discharge.

Source: Laws 1885, c. 52, § 2, p. 255; R.S.1913, § 7221; Laws 1921, c. 241, § 1, p. 843; C.S.1922, § 6879; C.S.1929, § 83-402; R.S.1943, § 83-218; Laws 1967, c. 251, § 5, p. 663; Laws 1969, c. 816, § 14, p. 3068; Laws 1986, LB 1177, § 45; Laws 1996, LB 1044, § 937; Laws 2013, LB23, § 51.

Cross References

Rights of persons admitted, see sections 83-381 to 83-390.

83-219 Repealed. Laws 1967, c. 251, § 17.**83-220 Repealed. Laws 1981, LB 499, § 44.****83-221 Repealed. Laws 1981, LB 499, § 44.****83-222 Repealed. Laws 1981, LB 499, § 44.****83-223 Order of commitment where mentally handicapped person is an inmate in a state institution.**

Where the person named in the petition for commitment is a resident, patient, or inmate of a state institution, the court may commit the person to the care and custody of the Department of Health and Human Services. The department may, in its discretion, detain the resident, patient, or inmate in the institution in which he or she is a resident, patient, or inmate at the time of the hearing, subject to the rules of that institution, or may transfer him or her to the Beatrice State Developmental Center.

Source: Laws 1921, c. 241, § 3, p. 844; C.S.1922, § 6881; C.S.1929, § 83-404; R.S.1943, § 83-223; Laws 1967, c. 251, § 9, p. 666; Laws 1996, LB 1044, § 938.

83-224 Repealed. Laws 1969, c. 812, § 25.

83-225 Repealed. Laws 1969, c. 812, § 25.

83-226 Repealed. Laws 1969, c. 812, § 25.

83-227 Repealed. Laws 1969, c. 812, § 25.

83-227.01 Beatrice State Developmental Center; patients transferred to temporary surplus space in regional centers at Lincoln and Norfolk; care, custody, and treatment.

The Department of Health and Human Services is authorized to utilize space which is temporarily surplus to the needs of the Lincoln Regional Center and the Norfolk Regional Center facilities under their jurisdiction for patients committed to or lawfully confined in the Beatrice State Developmental Center. Patients so transferred to the Lincoln Regional Center or the Norfolk Regional Center shall be housed in facilities separate and apart from facilities used to house patients committed to such hospital, and after their transfer such patients shall receive the same type of care, custody, and treatment as they would have received had they remained at the Beatrice State Developmental Center, and the charges for their care and maintenance shall be the same as though they were housed at the Beatrice State Developmental Center, and the charges shall be collected in the manner provided in this section and sections 83-227.02, 83-350, and 83-363 to 83-380.

Source: Laws 1961, c. 444, § 1, p. 1365; Laws 1969, c. 812, § 19, p. 3056; Laws 1969, c. 818, § 10, p. 3118; Laws 1996, LB 1155, § 84; Laws 1997, LB 307, § 221.

83-227.02 Inmates; transfer; care; cost; exception.

(1) The Department of Health and Human Services is authorized to use space which is temporarily surplus to the needs of any institution under its control, except as provided in subsection (2) of this section, for the care, custody, and treatment of the inmates of any other such institution when space at such latter institution is inadequate and the facilities of the institution to which transfer is made are suitable to the needs of the inmate. Inmates so transferred shall receive the same care, custody, and treatment as they would have received had they not been transferred. If the cost of the care, custody, and treatment of such inmate is recoverable by the institution from which the transfer was made, it shall be recovered in the manner provided in sections 83-363 to 83-380.

(2) Subsection (1) of this section shall not be construed to permit the transfer of inmates to or from any Department of Correctional Services facility unless expressly authorized by law.

Source: Laws 1965, c. 559, § 1, p. 1843; Laws 1969, c. 812, § 20, p. 3056; Laws 1993, LB 31, § 33; Laws 1996, LB 1044, § 939.

83-228 Repealed. Laws 1951, c. 324, § 1.

83-229 Repealed. Laws 1951, c. 324, § 1.

83-230 Repealed. Laws 1951, c. 324, § 1.

83-231 Repealed. Laws 1951, c. 324, § 1.

- 83-232 Repealed. Laws 1951, c. 324, § 1.
- 83-233 Repealed. Laws 1951, c. 324, § 1.
- 83-234 Repealed. Laws 1951, c. 324, § 1.
- 83-235 Repealed. Laws 1951, c. 324, § 1.
- 83-236 Repealed. Laws 1951, c. 324, § 1.
- 83-237 Repealed. Laws 1951, c. 324, § 1.
- 83-238 Repealed. Laws 1951, c. 324, § 1.

(c) HOME FOR CHILDREN

- 83-239 Transferred to section 43-901.
- 83-240 Transferred to section 43-902.
- 83-241 Transferred to section 43-903.
- 83-242 Transferred to section 43-904.
- 83-243 Transferred to section 43-905.
- 83-244 Repealed. Laws 1961, c. 415, § 38.
- 83-245 Transferred to section 43-906.

(d) MENTALLY RETARDED CHILDREN

- 83-246 Transferred to section 43-617.
- 83-247 Transferred to section 43-618.

ARTICLE 3 HOSPITALS

Cross References

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

(a) NEBRASKA ORTHOPEDIC HOSPITAL

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| Section | |
| 83-301. | Repealed. Laws 1979, LB 80, § 116. |
| 83-302. | Repealed. Laws 1979, LB 80, § 116. |
| 83-303. | Repealed. Laws 1979, LB 80, § 116. |
| 83-304. | Repealed. Laws 1979, LB 80, § 116. |
| 83-304.01. | Repealed. Laws 1979, LB 80, § 116. |

(b) STATE HOSPITALS FOR THE MENTALLY ILL

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| 83-305. | State hospitals for the mentally ill; official titles. |
| 83-305.01. | Psychiatric services; administration. |
| 83-305.02. | Psychiatric services; operation; laws governing. |
| 83-305.03. | University of Nebraska Medical Center; temporary transfers of individuals from other institutions; procedure; responsibility; expense. |
| 83-305.04. | Regional centers; rehabilitation model. |
| 83-305.05. | Hastings Correctional Behavioral Health Treatment Center; feasibility study; program statement. |

STATE INSTITUTIONS

Section	
83-306.	Repealed. Laws 2004, LB 1083, § 149.
83-307.	Repealed. Laws 2004, LB 1083, § 149.
83-307.01.	Repealed. Laws 2004, LB 1083, § 149.
83-307.02.	Repealed. Laws 1969, c. 821, § 1.
83-307.03.	Repealed. Laws 1969, c. 821, § 1.
83-308.	Repealed. Laws 2004, LB 1083, § 149.
83-308.01.	Repealed. Laws 1996, LB 1155, § 121.
83-308.02.	Transferred to section 83-1071.
83-309.	Repealed. Laws 1947, c. 335, § 47.
83-310.	Repealed. Laws 1947, c. 335, § 47.
83-311.	Repealed. Laws 2004, LB 1083, § 149.
83-312.	Repealed. Laws 2004, LB 1083, § 149.
83-313.	Department of Health and Human Services; trustee for state hospitals for the mentally ill.
83-314.	State hospitals for the mentally ill; patients' correspondence; supplies; mailing; exception.
83-315.	Repealed. Laws 1976, LB 806, § 91.
83-316.	Repealed. Laws 1947, c. 335, § 47.
83-317.	Repealed. Laws 1976, LB 806, § 91.
83-318.	Repealed. Laws 2004, LB 1083, § 149.
83-319.	Repealed. Laws 1976, LB 806, § 91.
83-320.	Repealed. Laws 1976, LB 806, § 91.
83-321.	Repealed. Laws 2004, LB 1083, § 149.
83-322.	Repealed. Laws 1976, LB 806, § 91.
83-322.01.	Repealed. Laws 1976, LB 806, § 91.
83-323.	Repealed. Laws 1976, LB 806, § 91.
83-323.01.	Repealed. Laws 1976, LB 806, § 91.
83-324.	Department; voluntary application for admission.
83-324.01.	Repealed. Laws 1953, c. 347, § 1.
83-325.	Repealed. Laws 1976, LB 806, § 91.
83-325.01.	Repealed. Laws 1976, LB 806, § 91.
83-325.02.	Repealed. Laws 1976, LB 806, § 91.
83-325.03.	Repealed. Laws 1976, LB 806, § 91.
83-325.04.	Repealed. Laws 1976, LB 806, § 91.
83-326.	Repealed. Laws 1976, LB 806, § 91.
83-327.	Repealed. Laws 1976, LB 806, § 91.
83-328.	Repealed. Laws 1976, LB 806, § 91.
83-328.01.	Repealed. Laws 1976, LB 806, § 91.
83-328.02.	Repealed. Laws 1976, LB 806, § 91.
83-328.03.	Repealed. Laws 1976, LB 806, § 91.
83-329.	Repealed. Laws 1969, c. 812, § 25.
83-329.01.	Repealed. Laws 1969, c. 812, § 25.
83-329.02.	Repealed. Laws 1969, c. 812, § 25.
83-329.03.	Repealed. Laws 1969, c. 812, § 25.
83-329.04.	Repealed. Laws 1969, c. 812, § 25.
83-330.	Repealed. Laws 1947, c. 335, § 47.
83-331.	Repealed. Laws 1947, c. 335, § 47.
83-332.	Repealed. Laws 1976, LB 806, § 91.
83-333.	Repealed. Laws 1976, LB 806, § 91.
83-334.	Repealed. Laws 1976, LB 806, § 91.
83-335.	Repealed. Laws 1976, LB 806, § 91.
83-336.	Department; mental health board; forms; rules and regulations.
83-337.	Repealed. Laws 2004, LB 1083, § 149.
83-337.01.	Repealed. Laws 1959, c. 266, § 1.
83-337.02.	Repealed. Laws 1959, c. 266, § 1.
83-337.03.	Repealed. Laws 1959, c. 266, § 1.
83-338.	State hospitals for the mentally ill; order of admission when facilities are limited; Lincoln Regional Center; minimum number of beds; state-operated mental health facilities; weekly report.
83-339.	Repealed. Laws 2004, LB 1083, § 149.
83-340.	State hospitals for the mentally ill; voluntary patient; discharge; when.

HOSPITALS

- Section
- 83-340.01. Transferred to section 71-936.
- 83-341. Repealed. Laws 1976, LB 806, § 91.
- 83-342. Repealed. Laws 1981, LB 95, § 30.
- 83-343. Repealed. Laws 1976, LB 806, § 91.
- 83-344. Repealed. Laws 1996, LB 1155, § 121.
- 83-345. Repealed. Laws 1969, c. 812, § 25.
- 83-346. Repealed. Laws 1947, c. 335, § 47.
- 83-347. Repealed. Laws 1969, c. 812, § 25.
- 83-348. State hospitals for the mentally ill; patients whose legal settlement has not been ascertained; state to bear expense.
- 83-349. State hospitals for the mentally ill; adjustment of expense between counties; notice; inquiry; effect of delay.
- 83-350. State hospitals for the mentally ill; legal settlement of patient in another county; treatment.
- 83-351. Expenses; adjustment between counties; patients transferred from a state institution.
- 83-352. Repealed. Laws 1969, c. 812, § 25.
- 83-352.01. Repealed. Laws 1969, c. 812, § 25.
- 83-352.02. Repealed. Laws 2004, LB 1083, § 149.
- 83-353. Repealed. Laws 1947, c. 335, § 47.
- 83-354. State hospitals for the mentally ill; equal treatment; special care at private expense.
- 83-355. State hospitals for the mentally ill; admission of nonresidents; expenses paid quarterly in advance.
- 83-356. Mentally ill persons; mistreatment; liability; penalty.
- 83-357. Persons supposed mentally ill; liberty not to be restricted; exception.
- 83-358. Repealed. Laws 1969, c. 817, § 87.
- 83-359. Repealed. Laws 1963, c. 528, § 12.
- 83-360. Repealed. Laws 1963, c. 528, § 12.
- 83-360.01. Repealed. Laws 1969, c. 821, § 1.
- 83-360.02. Repealed. Laws 1969, c. 821, § 1.
- 83-360.03. Repealed. Laws 1969, c. 821, § 1.
- 83-360.04. Repealed. Laws 1969, c. 821, § 1.

(c) NEBRASKA HOSPITAL FOR THE TUBERCULOUS

- 83-361. Repealed. Laws 1972, LB 1492, § 8.
- 83-362. Repealed. Laws 1972, LB 1492, § 8.

(d) COST OF PATIENT CARE

- 83-363. Terms, defined.
- 83-364. Cost of patient care; liability of patient and relatives.
- 83-365. Cost of patient care; department; determine.
- 83-366. Cost of patient care; assess against patient or relatives; limitations.
- 83-367. Cost of patient care; relatives; limitation.
- 83-368. Cost of patient care; ability to pay; factors.
- 83-369. Cost of patient care; Department of Health and Human Services; determination of ability to pay; factors considered.
- 83-370. Cost of patient care; failure to furnish information; effect.
- 83-371. Department; rules and regulations; adopt.
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§ 83-301

STATE INSTITUTIONS

Section

83-380.01. Indigent outpatient; prescription medicine; Department of Health and Human Services; pay costs; when.

(e) RESIDENTIAL FACILITIES

83-381. Terms, defined.

83-382. Residential facilities; admission; department; jurisdiction.

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(f) SKILLED NURSING CARE AND INTERMEDIATE CARE

83-391. Terms, defined.

83-392. Skilled nursing care; intermediate care; facilities; establish; operate; administered; license.

83-393. Persons needing care; admission.

(a) NEBRASKA ORTHOPEDIC HOSPITAL

83-301 Repealed. Laws 1979, LB 80, § 116.

83-302 Repealed. Laws 1979, LB 80, § 116.

83-303 Repealed. Laws 1979, LB 80, § 116.

83-304 Repealed. Laws 1979, LB 80, § 116.

83-304.01 Repealed. Laws 1979, LB 80, § 116.

(b) STATE HOSPITALS FOR THE MENTALLY ILL

83-305 State hospitals for the mentally ill; official titles.

The state hospital established in Lancaster County for the treatment of mental illnesses shall be known as the Lincoln Regional Center. The state hospital established in Madison County shall be known as the Norfolk Regional Center.

Source: Laws 1921, c. 162, § 1, p. 656; C.S.1922, § 6950; C.S.1929, § 83-755; Laws 1935, c. 185, § 3, p. 686; C.S.Supp.,1941, § 83-755; R.S.1943, § 83-305; Laws 1953, c. 345, § 1, p. 1120; Laws 1969, c. 818, § 11, p. 3119; Laws 1973, LB 536, § 4; Laws 1975, LB 466, § 2; Laws 1996, LB 1155, § 85; Laws 2004, LB 1083, § 129; Laws 2021, LB401, § 1.

Cross References

Convicted sex offenders, evaluation and treatment, see section 29-2925 et seq.

Mentally ill veterans, care and treatment of, see sections 80-601 to 80-606.

Mentally incompetent persons:

Becoming incompetent after commission of crime, procedure, see section 29-1822.

Insanity as defense in criminal cases, procedure, see section 29-2203.

State institutions, official names, see section 83-107.01.

All hospitals for the insane of the state are governed by same general provisions. State v. Gage County, 100 Neb. 753, 161 N.W. 267 (1917).

83-305.01 Psychiatric services; administration.

Psychiatric services under the control of the Board of Regents of the University of Nebraska shall be under the jurisdiction of the Chancellor of the University of Nebraska Medical Center, who shall report to the Board of Regents through the President of the University of Nebraska. The chancellor or his or her designee shall be responsible for the administration and preparation of the psychiatric services budget and shall have the same powers, authority, and duties as prescribed for the chief executive officers of the state hospitals described in section 83-305.

Source: Laws 1953, c. 345, § 4, p. 1122; Laws 1975, LB 466, § 3; Laws 1987, LB 112, § 2; Laws 2004, LB 1083, § 130.

The transfer of control of the Nebraska Psychiatric Institute from the Department of Public Institutions did not impliedly repeal county liability under section 83-376 for patients treated at the Nebraska Psychiatric Institute. County of Douglas v. Board of Regents, 210 Neb. 573, 316 N.W.2d 62 (1982).

83-305.02 Psychiatric services; operation; laws governing.

The psychiatric services at the University of Nebraska Medical Center shall operate and be subject to sections 83-305 to 83-357.

Source: Laws 1953, c. 345, § 5, p. 1122; Laws 1987, LB 112, § 3.

83-305.03 University of Nebraska Medical Center; temporary transfers of individuals from other institutions; procedure; responsibility; expense.

The Department of Health and Human Services or the Director of Correctional Services may order the temporary transfer of any person committed to the Department of Health and Human Services or the Department of Correctional Services to the University of Nebraska Medical Center with the concurrence of the chancellor thereof for special diagnosis and treatment of any illness such person may suffer which cannot be properly diagnosed or treated by the medical facilities of the institution of which he or she is a patient or inmate. The responsibility of guarding any such patient or inmate transferred shall remain with the institution of which he or she is a patient or inmate. The Department of Health and Human Services or the Department of Correctional Services shall pay, out of the proper account, all expenses incurred by the University of Nebraska Medical Center on behalf of any patient or inmate so transferred by the respective department.

Source: Laws 1957, c. 389, § 1, p. 1348; Laws 1963, c. 528, § 5, p. 1657; Laws 1969, c. 817, § 75, p. 3109; Laws 1975, LB 466, § 4; Laws 1987, LB 112, § 4; Laws 1996, LB 1044, § 940; Laws 2007, LB296, § 786.

83-305.04 Regional centers; rehabilitation model.

The Department of Health and Human Services shall utilize a rehabilitation model when appropriate for services provided at the regional centers under the jurisdiction of the department. For purposes of this section, rehabilitation model means a comprehensive approach to treatment and rehabilitation of a person with a disability caused by a mental illness in order to assure that such

person can perform those physical, emotional, social, and intellectual skills needed to live and work in the community.

Source: Laws 1996, LB 1155, § 81; Laws 1997, LB 307, § 222.

83-305.05 Hastings Correctional Behavioral Health Treatment Center; feasibility study; program statement.

(1) The Legislature finds that a need exists for additional behavioral health treatment beds for inmates in the state correctional system. In order to follow an orderly and reasonable process based upon defined and documented need and an analysis of the utilization of existing facilities, the Legislature authorizes the Division of Behavioral Health of the Department of Health and Human Services to study the feasibility of the establishment of a Hastings Correctional Behavioral Health Treatment Center at the Hastings Regional Center.

(2)(a) The Division of Behavioral Health of the Department of Health and Human Services shall prepare a complete program statement for the Hastings Correctional Behavioral Health Treatment Center, prepared in accordance with the Procedural Manual for Capital Construction Projects, as approved by the state building division of the Department of Administrative Services. The state building division shall assist the Department of Health and Human Services in the preparation and submission of the program statement.

(b) The program statement shall plan for the long-term needs of the mentally ill inmates in the correctional system as well as inmates who have drug and alcohol addictions. The intent is to provide a facility for up to two hundred inmates in one or more buildings at the Hastings Regional Center renovated or constructed to meet the needs of the program. The program statement shall identify the classification of inmates to be placed in the center, the programs needed to provide mental health and substance abuse treatment, and the capital cost of renovation needed to fully support the program objectives. The program statement shall estimate building renovation costs, staffing costs, and operational costs for the center along with a proposed project schedule.

(c) The completed program statement shall be submitted electronically to the Governor and Legislature by December 15, 2014.

Source: Laws 2014, LB999, § 1.

83-306 Repealed. Laws 2004, LB 1083, § 149.

83-307 Repealed. Laws 2004, LB 1083, § 149.

83-307.01 Repealed. Laws 2004, LB 1083, § 149.

83-307.02 Repealed. Laws 1969, c. 821, § 1.

83-307.03 Repealed. Laws 1969, c. 821, § 1.

83-308 Repealed. Laws 2004, LB 1083, § 149.

83-308.01 Repealed. Laws 1996, LB 1155, § 121.

83-308.02 Transferred to section 83-1071.

83-309 Repealed. Laws 1947, c. 335, § 47.

83-310 Repealed. Laws 1947, c. 335, § 47.

83-311 Repealed. Laws 2004, LB 1083, § 149.

83-312 Repealed. Laws 2004, LB 1083, § 149.

83-313 Department of Health and Human Services; trustee for state hospitals for the mentally ill.

The Department of Health and Human Services shall hold in trust, for the state hospitals for the mentally ill, all real or personal property given or bequeathed, to be applied for any purpose connected with the institutions.

Source: G.S.1873, c. 31, § 7, p. 412; R.S.1913, § 7240; C.S.1922, § 6897; C.S.1929, § 83-702; R.S.1943, § 83-313; Laws 1947, c. 335, § 5, p. 1057; Laws 1996, LB 1044, § 943.

83-314 State hospitals for the mentally ill; patients' correspondence; supplies; mailing; exception.

Every patient in any state hospital for the mentally ill shall be allowed to write whenever the patient desires and to whomever the patient may choose, and the chief executive officer of the hospital, upon request, shall supply each patient, not otherwise supplied, with suitable writing materials and postage, at the expense of the state, sufficient for writing at least one letter per week. Such letters shall be regularly and promptly collected and shall be placed in the United States mail for delivery unless the chief executive officer of the hospital has on file a written request from a recipient or potential recipient that letters shall not be mailed to such recipient or unless there is reasonable cause to believe that the contents of any letter are threatening.

Source: Laws 1883, c. 49, § 1, p. 235; R.S.1913, § 7292; Laws 1915, c. 135, § 1, p. 300; C.S.1922, § 6947; C.S.1929, § 83-752; R.S.1943, § 83-314; Laws 1947, c. 335, § 6, p. 1057; Laws 1976, LB 806, § 21; Laws 2004, LB 1083, § 131.

83-315 Repealed. Laws 1976, LB 806, § 91.

83-316 Repealed. Laws 1947, c. 335, § 47.

83-317 Repealed. Laws 1976, LB 806, § 91.

83-318 Repealed. Laws 2004, LB 1083, § 149.

83-319 Repealed. Laws 1976, LB 806, § 91.

83-320 Repealed. Laws 1976, LB 806, § 91.

83-321 Repealed. Laws 2004, LB 1083, § 149.

83-322 Repealed. Laws 1976, LB 806, § 91.

83-322.01 Repealed. Laws 1976, LB 806, § 91.

83-323 Repealed. Laws 1976, LB 806, § 91.

83-323.01 Repealed. Laws 1976, LB 806, § 91.

83-324 Department; voluntary application for admission.

The Department of Health and Human Services may accept patients for care and treatment upon the written application of a patient. Such written application may be made by persons desiring to receive care and treatment in one of the state hospitals for the mentally ill to the chief executive officer of the state hospital in which the patient wishes to receive treatment.

Source: Laws 1905, c. 82, § 3, p. 387; R.S.1913, § 7283; C.S.1922, § 6939; C.S.1929, § 83-744; R.S.1943, § 83-324; Laws 1947, c. 335, § 15, p. 1060; Laws 1969, c. 818, § 17, p. 3121; Laws 1976, LB 806, § 23; Laws 1996, LB 1155, § 88; Laws 1997, LB 307, § 224; Laws 2004, LB 1083, § 132; Laws 2007, LB296, § 787.

Application for admission as a dipsomaniac must be in writing in the nature of an information and verified by affidavit. In re Application of Cupita, 148 Neb. 555, 28 N.W.2d 149 (1947).

83-324.01 Repealed. Laws 1953, c. 347, § 1.

83-325 Repealed. Laws 1976, LB 806, § 91.

83-325.01 Repealed. Laws 1976, LB 806, § 91.

83-325.02 Repealed. Laws 1976, LB 806, § 91.

83-325.03 Repealed. Laws 1976, LB 806, § 91.

83-325.04 Repealed. Laws 1976, LB 806, § 91.

83-326 Repealed. Laws 1976, LB 806, § 91.

83-327 Repealed. Laws 1976, LB 806, § 91.

83-328 Repealed. Laws 1976, LB 806, § 91.

83-328.01 Repealed. Laws 1976, LB 806, § 91.

83-328.02 Repealed. Laws 1976, LB 806, § 91.

83-328.03 Repealed. Laws 1976, LB 806, § 91.

83-329 Repealed. Laws 1969, c. 812, § 25.

83-329.01 Repealed. Laws 1969, c. 812, § 25.

83-329.02 Repealed. Laws 1969, c. 812, § 25.

83-329.03 Repealed. Laws 1969, c. 812, § 25.

83-329.04 Repealed. Laws 1969, c. 812, § 25.

83-330 Repealed. Laws 1947, c. 335, § 47.

83-331 Repealed. Laws 1947, c. 335, § 47.

83-332 Repealed. Laws 1976, LB 806, § 91.

83-333 Repealed. Laws 1976, LB 806, § 91.

83-334 Repealed. Laws 1976, LB 806, § 91.

83-335 Repealed. Laws 1976, LB 806, § 91.

83-336 Department; mental health board; forms; rules and regulations.

The Department of Health and Human Services shall provide the mental health boards with blanks for warrants, certificates, and other forms, such as will enable them to comply with sections 83-313 to 83-357, and also with printed copies of the applicable rules and regulations of the department.

Source: G.S.1873, c. 31, § 55, p. 425; R.S.1913, § 7277; C.S.1922, § 6933; C.S.1929, § 83-738; R.S.1943, § 83-336; Laws 1947, c. 335, § 26, p. 1066; Laws 1969, c. 818, § 19, p. 3122; Laws 1996, LB 1155, § 89; Laws 1997, LB 307, § 225; Laws 2004, LB 1083, § 133; Laws 2007, LB296, § 788.

83-337 Repealed. Laws 2004, LB 1083, § 149.**83-337.01 Repealed. Laws 1959, c. 266, § 1.****83-337.02 Repealed. Laws 1959, c. 266, § 1.****83-337.03 Repealed. Laws 1959, c. 266, § 1.****83-338 State hospitals for the mentally ill; order of admission when facilities are limited; Lincoln Regional Center; minimum number of beds; state-operated mental health facilities; weekly report.**

(1) If at any time it becomes necessary, for lack of capacity or other cause, to establish priorities for the admission of patients into the state hospitals for the mentally ill, admission shall be limited to: (a) Patients whose care in the state hospital is necessary in order to protect the public health and safety; (b) defendants who are determined by a court to be incompetent to stand trial and who remain lodged in the county jail; (c) patients committed by a mental health board under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act, by a district court, or by a tribal court as provided in section 71-964 or 71-1226.01; (d) patients who are most likely to be benefited by treatment in the state hospitals, regardless of whether such patients are committed by a mental health board or whether such patients seek voluntary admission to one of the state hospitals; and (e) when cases are equally meritorious, in all other respects, patients who are indigent.

(2) The Lincoln Regional Center shall provide a minimum number of beds equal to the following percentages of total available capacity:

(a) Ten percent for patients entering the facility pursuant to subdivision (1)(a) of this section;

(b) Ten percent for patients entering the facility pursuant to subdivision (1)(b) of this section;

(c) Thirty percent for patients entering the facility pursuant to subdivision (1)(c) of this section;

(d) Ten percent for patients entering the facility pursuant to subdivision (1)(d) of this section;

(e) Ten percent for patients entering the facility pursuant to subdivision (1)(e) of this section; and

(f) Thirty percent to remain unallocated for the Department of Health and Human Services to allocate according to the priorities established in subsection (1) of this section as needed to reduce existing waiting lists.

(3) Beginning on or before November 1, 2022, the Department of Health and Human Services shall make available on its website a weekly report on the capacity and status of state-operated mental health facilities, including, but not limited to, the capacity and wait times associated with each priority category established in subsection (1) of this section.

Source: G.S.1873, c. 31, § 37, p. 420; R.S.1913, § 7263; C.S.1922, § 6920; C.S.1929, § 83-725; R.S.1943, § 83-338; Laws 1947, c. 335, § 28, p. 1068; Laws 2004, LB 1083, § 134; Laws 2006, LB 1199, § 100; Laws 2022, LB921, § 3; Laws 2024, LB1288, § 34.
Operative date October 1, 2024.

Cross References

Nebraska Mental Health Commitment Act, see section 71-901.
Sex Offender Commitment Act, see section 71-1201.

83-339 Repealed. Laws 2004, LB 1083, § 149.

83-340 State hospitals for the mentally ill; voluntary patient; discharge; when.

Any voluntary patient in a state hospital for the mentally ill who no longer meets the clinical and legal requirements for treatment at such hospital shall be discharged by the chief executive officer of such hospital.

Source: G.S.1873, c. 31, § 42, p. 421; R.S.1913, § 7268; C.S.1922, § 6923; C.S.1929, § 83-728; R.S.1943, § 83-340; Laws 1947, c. 335, § 30, p. 1068; Laws 1963, c. 526, § 9, p. 1652; Laws 1969, c. 818, § 21, p. 3122; Laws 1981, LB 95, § 3; Laws 1996, LB 1155, § 91; Laws 1997, LB 307, § 227; Laws 2004, LB 1083, § 135.

Any patient who is cured should be immediately discharged.
State v. Noll, 171 Neb. 831, 108 N.W.2d 108 (1961).

83-340.01 Transferred to section 71-936.

83-341 Repealed. Laws 1976, LB 806, § 91.

83-342 Repealed. Laws 1981, LB 95, § 30.

83-343 Repealed. Laws 1976, LB 806, § 91.

83-344 Repealed. Laws 1996, LB 1155, § 121.

83-345 Repealed. Laws 1969, c. 812, § 25.

83-346 Repealed. Laws 1947, c. 335, § 47.

83-347 Repealed. Laws 1969, c. 812, § 25.

83-348 State hospitals for the mentally ill; patients whose legal settlement has not been ascertained; state to bear expense.

Patients in the state hospitals for the mentally ill having no legal settlement in this state, or whose legal settlement cannot be ascertained, shall be supported at the expense of the state. This section shall apply to all such patients now in the hospitals and shall include expenses already incurred and remaining

unpaid. The Department of Health and Human Services may authorize the removal of any such patient at the expense of the state.

Source: G.S.1873, c. 31, § 27, p. 417; R.S.1913, § 7254; C.S.1922, § 6911; C.S.1929, § 83-716; R.S.1943, § 83-348; Laws 1947, c. 335, § 36, p. 1071; Laws 1969, c. 818, § 22, p. 3123; Laws 1996, LB 1044, § 944; Laws 2007, LB296, § 789.

83-349 State hospitals for the mentally ill; adjustment of expense between counties; notice; inquiry; effect of delay.

If the mental health board finds that a person committed to a state hospital for the mentally ill by the board has, or probably has, a legal settlement in some other county in the state, the board shall immediately notify the mental health board of that county of its finding and commitment. The board members so notified shall thereupon inquire and ascertain, if possible, whether the patient has a legal settlement in their county and shall immediately notify the chief executive officer of the hospital and the board members of the county from which the patient was committed of the result of their inquiry. If the legal settlement of a patient cannot for a time be ascertained and is afterwards found, the notices provided for in this section shall then be given.

Source: G.S.1873, c. 31, § 24, p. 416; R.S.1913, § 7251; C.S.1922, § 6908; C.S.1929, § 83-713; R.S.1943, § 83-349; Laws 1947, c. 335, § 37, p. 1071; Laws 2004, LB 1083, § 136.

Notice is required to be given after commitment and not before. *County of Kearney v. County of Buffalo*, 167 Neb. 117, 91 N.W.2d 304 (1958).

Legal settlement of an insane person is the political subdivision primarily liable for his support. *Clay County v. Adams County*, 69 Neb. 106, 95 N.W. 58 (1903).

83-350 State hospitals for the mentally ill; legal settlement of patient in another county; treatment.

When the chief executive officer of a state hospital for the mentally ill has been notified, as provided for in sections 83-313 to 83-357, that a patient sent to the hospital from one county has a legal settlement in another county of the state, the chief executive officer shall thereafter hold and treat such patient as from the latter county.

Source: G.S.1873, c. 31, § 25, p. 417; R.S.1913, § 7252; C.S.1922, § 6909; C.S.1929, § 83-714; R.S.1943, § 83-350; Laws 1947, c. 335, § 38, p. 1072; Laws 1969, c. 812, § 23, p. 3058; Laws 2004, LB 1083, § 137.

County of legal settlement means the county in which a person had a residence at the time of becoming incompetent.

County of Kearney v. County of Buffalo, 167 Neb. 117, 91 N.W.2d 304 (1958).

83-351 Expenses; adjustment between counties; patients transferred from a state institution.

Expenses incurred by one county, on account of a mentally ill and dangerous person or a dangerous sex offender as defined in section 83-174.01 whose legal settlement is in another county of the state, shall be refunded, with lawful interest thereon, by the county in which the mentally ill and dangerous person or dangerous sex offender has his or her legal settlement. Such expenses shall be presented to the county board of the county sought to be charged, which shall allow and pay them the same as other claims. Whenever a patient of any facility over which the Department of Health and Human Services has control

has been adjudicated a mentally ill and dangerous person or a dangerous sex offender as defined in section 83-174.01 and committed to a state hospital for the mentally ill, and the expenses of the adjudication and commitment have been paid by the county in which the institution is located, the county clerk of that county shall certify the total amount of the expenses thus incurred to the Department of Health and Human Services. The department shall audit the expenses so certified and shall file a statement of the amount found due with the Director of Administrative Services, and a warrant shall be drawn on the General Fund in favor of the county from which the mentally ill and dangerous person or dangerous sex offender was committed.

Source: G.S.1873, c. 31, § 26, p. 417; R.S.1913, § 7253; Laws 1919, c. 100, § 1, p. 252; C.S.1922, § 6910; C.S.1929, § 83-715; R.S.1943, § 83-351; Laws 1947, c. 335, § 39, p. 1072; Laws 1976, LB 806, § 26; Laws 1996, LB 1044, § 945; Laws 2004, LB 1083, § 138; Laws 2006, LB 1199, § 101.

83-352 Repealed. Laws 1969, c. 812, § 25.

83-352.01 Repealed. Laws 1969, c. 812, § 25.

83-352.02 Repealed. Laws 2004, LB 1083, § 149.

83-353 Repealed. Laws 1947, c. 335, § 47.

83-354 State hospitals for the mentally ill; equal treatment; special care at private expense.

All patients in the state hospitals for the mentally ill shall be regarded as standing on an equal footing. The patients, according to their different conditions of mind and body and their respective needs, shall be provided for and treated with equal care. If the relatives or immediate friends of any patient desire special care and pay the expenses thereof, such patient shall have special care and shall be provided with a special attendant as may be agreed upon with the chief executive officer. In such cases the charges for the special care and attendance shall be paid quarterly in advance.

Source: G.S.1873, c. 31, § 28, p. 417; R.S.1913, § 7255; C.S.1922, § 6912; C.S.1929, § 83-717; R.S.1943, § 83-354; Laws 1947, c. 335, § 41, p. 1073; Laws 2004, LB 1083, § 139.

83-355 State hospitals for the mentally ill; admission of nonresidents; expenses paid quarterly in advance.

Mentally ill persons from other states and territories may be admitted to the state hospitals for the mentally ill upon equal footing and on same conditions as private-pay patients. The sum to be paid monthly for the care, maintenance, and treatment of such patients shall be fixed by the Department of Health and Human Services and shall be collected quarterly in advance by the stewards of the hospitals and accounted for the same as other funds in their hands belonging to the State of Nebraska.

Source: G.S.1873, c. 31, § 57, p. 425; R.S.1913, § 7279; C.S.1922, § 6935; C.S.1929, § 83-740; R.S.1943, § 83-355; Laws 1947, c. 335, § 42, p. 1073; Laws 1996, LB 1044, § 946.

83-356 Mentally ill persons; mistreatment; liability; penalty.

Any person taking care of a mentally ill person, and restraining such a person, either with or without authority, who shall treat such person with wanton severity, harshness or cruelty, or shall in any way abuse such a person, shall be guilty of a Class V misdemeanor and shall also be liable in an action for all damages sustained by such mentally ill person.

Source: G.S.1873, c. 31, § 34, p. 418; R.S.1913, § 7261; C.S.1922, § 6918; C.S.1929, § 83-723; R.S.1943, § 83-356; Laws 1947, c. 335, § 43, p. 1074; Laws 1959, c. 442, § 9, p. 1490; Laws 1977, LB 39, § 312.

This section does not create a criminal offense for lack of a penalty. Redding v. State, 165 Neb. 307, 85 N.W.2d 647 (1957).

83-357 Persons supposed mentally ill; liberty not to be restricted; exception.

The liberty of any person supposed to be mentally ill shall not be restrained by any person not acting under the authority of the county board of mental health except to the extent for the period that may be necessary for the safety of persons and property, and until authority can be obtained.

Source: G.S.1873, c. 31, § 33, p. 418; R.S.1913, § 7260; C.S.1922, § 6917; C.S.1929, § 83-722; R.S.1943, § 83-357; Laws 1947, c. 335, § 44, p. 1074.

83-358 Repealed. Laws 1969, c. 817, § 87.

83-359 Repealed. Laws 1963, c. 528, § 12.

83-360 Repealed. Laws 1963, c. 528, § 12.

83-360.01 Repealed. Laws 1969, c. 821, § 1.

83-360.02 Repealed. Laws 1969, c. 821, § 1.

83-360.03 Repealed. Laws 1969, c. 821, § 1.

83-360.04 Repealed. Laws 1969, c. 821, § 1.

(c) NEBRASKA HOSPITAL FOR THE TUBERCULOUS

83-361 Repealed. Laws 1972, LB 1492, § 8.

83-362 Repealed. Laws 1972, LB 1492, § 8.

(d) COST OF PATIENT CARE

83-363 Terms, defined.

As used in sections 83-227.01, 83-227.02, 83-350, and 83-363 to 83-380, unless the context otherwise requires:

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

(2) State institution means the state hospitals at Lincoln and Norfolk, the Beatrice State Developmental Center, and such other institutions as may hereafter be established by the Legislature for the care and treatment of persons with a mental disorder or persons with an intellectual disability;

(3) Relative means the spouse of a patient or, if the patient has no spouse and is under the age of majority at the time he or she is admitted, the parents of a patient in a state institution; and

(4) Parents means either or both of a patient's natural parents unless such patient has been legally adopted by other parents, in which case parents means either or both of the adoptive parents.

Source: Laws 1969, c. 812, § 1, p. 3051; Laws 1975, LB 466, § 6; Laws 1986, LB 1177, § 46; Laws 1996, LB 1044, § 947; Laws 2007, LB296, § 790; Laws 2013, LB23, § 52; Laws 2021, LB401, § 2.

83-364 Cost of patient care; liability of patient and relatives.

When any person is admitted to a state institution or other inpatient treatment facility pursuant to an order of a mental health board under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act or receives treatment prescribed by such institution or facility following release or without being admitted as a resident patient, the patient and the patient's relatives shall be liable for the cost of the care, support, maintenance, and treatment of such person to the extent and in the manner provided by sections 83-227.01, 83-227.02, 83-350, and 83-363 to 83-380. Such sections also shall apply to persons admitted to a state institution as transferees from any state penal institution or youth rehabilitation and treatment center but only after the expiration of the time for which the transferees were originally sentenced or committed.

Source: Laws 1969, c. 812, § 2, p. 3052; Laws 1994, LB 988, § 30; Laws 2004, LB 1083, § 140; Laws 2006, LB 1199, § 102; Laws 2021, LB273, § 9.

Cross References

For other provisions relating to patient expenses, see sections 83-348 to 83-355.
Nebraska Mental Health Commitment Act, see section 71-901.
Sex Offender Commitment Act, see section 71-1201.

83-365 Cost of patient care; department; determine.

The department shall periodically determine the individual cost, exclusive of the cost of education, for the care, support, maintenance, and treatment of the patients in each state institution and for persons receiving treatment prescribed by an institution following release or without being admitted as a resident patient. In making such determinations, the department may use averaging methods for each institution if, in the judgment of the department, it is not practicable to compute the cost for each patient. The cost of capital expenditures and capital construction shall not be included in making such determinations.

Source: Laws 1969, c. 812, § 3, p. 3052; Laws 1996, LB 1044, § 948; Laws 2007, LB296, § 791.

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

83-366 Cost of patient care; assess against patient or relatives; limitations.

The department shall assess against the patient or his or her relatives all or such part of the cost determined under section 83-365 as they are able to pay, in the judgment of the department, except that a patient who is placed in a state

institution to receive appropriate special education pursuant to the Special Education Act or his or her relatives shall be assessed only for medical care and medical treatment costs as determined pursuant to rules and regulations adopted and promulgated by the department in accordance with section 83-371.

Source: Laws 1969, c. 812, § 4, p. 3052; Laws 1985, LB 518, § 8; Laws 1987, LB 367, § 73; Laws 2007, LB296, § 792.

Cross References

Special Education Act, see section 79-1110.

83-367 Cost of patient care; relatives; limitation.

The liability of each relative, except a spouse, shall cease when relatives shall have completed payments assessed pursuant to sections 83-227.01, 83-227.02, 83-350, and 83-363 to 83-380 for one hundred eighty months, or when the patient attains the age of majority, whichever shall occur first.

Source: Laws 1969, c. 812, § 5, p. 3053; Laws 1976, LB 620, § 1.

83-368 Cost of patient care; ability to pay; factors.

Except as provided in section 71-809, the department shall determine the ability of a patient to pay by consideration of the following factors: (1) Taxable income reportable under Nebraska law; (2) the patient's age; (3) the number of his or her dependents and their ages and mental and physical conditions; (4) the patient's length of care or treatment; (5) his or her liabilities; and (6) his or her assets including health insurance coverage.

Source: Laws 1969, c. 812, § 6, p. 3053; Laws 1985, LB 487, § 2; Laws 2012, LB871, § 3.

83-369 Cost of patient care; Department of Health and Human Services; determination of ability to pay; factors considered.

When the department determines that a patient is unable to pay the entire cost determined pursuant to section 83-365, the department shall then determine the ability of his relatives to pay such cost. In making this determination, the department shall consider the relative's taxable income reportable under Nebraska law, and the patient's length of care and treatment. At the request of the relative, the department also shall consider other relevant factors in the interest of avoiding undue hardship. Such factors may include the relative's age, provision for his retirement years, his assets, his liabilities, the number of his dependents, and their mental and physical condition and educational requirements.

Source: Laws 1969, c. 812, § 7, p. 3053.

83-370 Cost of patient care; failure to furnish information; effect.

When any relative willfully fails to furnish to the department, upon request, the information required by sections 83-227.01, 83-227.02, 83-350, and 83-363 to 83-380 as to his taxable income, such relative shall be deemed to have ability to pay the entire cost determined under sections 83-227.01, 83-227.02, 83-350, and 83-363 to 83-380.

Source: Laws 1969, c. 812, § 8, p. 3053.

The presumption of ability to pay under this section does not extend to a patient who fails to provide the necessary financial information. The Department of Public Institutions was without authority to fashion such a rule. *State ex rel. Spire v. Stodola*, 228 Neb. 107, 421 N.W.2d 436 (1988).

83-371 Department; rules and regulations; adopt.

Pursuant to the provisions of the Administrative Procedure Act, the department shall adopt appropriate rules and regulations for making the determinations required by sections 83-227.01, 83-227.02, 83-350, and 83-363 to 83-380.

Source: Laws 1969, c. 812, § 9, p. 3053.

Cross References

Administrative Procedure Act, see section 84-920.

83-372 Cost of patient care; county board; duties.

It shall be the duty of the county board in each county to make such investigation as the department may require with regard to the ability to pay of any patient or relative of a patient who resides within the county. In making such investigation, the county board shall act in accordance with the rules and regulations of the department and shall promptly submit the required information to the department.

Source: Laws 1969, c. 812, § 10, p. 3053; Laws 1989, LB 32, § 2.

83-373 Cost of patient care; determination; redetermination annually.

Any determination of the ability of a patient or relative to pay shall remain in effect until a redetermination is made. A redetermination shall be made annually and at such additional times when, in the judgment of the department, it is appropriate to do so, or when a request is made by the patient or relative who is liable for the payments.

Source: Laws 1969, c. 812, § 11, p. 3054; Laws 2007, LB296, § 793.

83-374 Cost of patient care; hearing; appeal.

Any patient or relative aggrieved by a determination of ability to pay may request a hearing before the department. The department shall adopt and promulgate rules and regulations to govern the conduct of such hearings. The department may appoint an examiner who shall have power to preside at such hearing, administer oaths, examine witnesses, and take testimony and shall report the same to the department. Such hearings shall be held in the county in which the person requesting the hearing resides, if such person so requests, in which event it shall be the duty of the county board to attend such hearing. The department shall deliver the decision within sixty days after the conclusion of the hearing. Any patient or relative aggrieved by a decision following a hearing may appeal such decision, and such appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1969, c. 812, § 12, p. 3054; Laws 1988, LB 352, § 183; Laws 1989, LB 32, § 3; Laws 2007, LB296, § 794.

Cross References

Administrative Procedure Act, see section 84-920.

83-375 Cost of patient care; failure to pay; action by Attorney General.

When any patient or relative fails to pay the amounts determined to be due under sections 83-227.01, 83-227.02, 83-350, and 83-363 to 83-380, the state of Nebraska may proceed against such person in the manner authorized by law for the recovery of money owed to a creditor. The Attorney General shall represent the state in such actions, but may authorize the county attorney for the county in which such person resides or owns property to investigate and prosecute the action on behalf of the state.

Source: Laws 1969, c. 812, § 13, p. 3054.

83-376 Cost of patient care; failure of patient or relative to pay; cost to be paid by county and state.

When the full cost determined to be necessary for the care, support, maintenance, and treatment of any patient is not paid by the patient or his or her relatives within thirty days of receipt of such care, (1) the county in which the patient resides shall pay (a) the first fifteen dollars per day of the unpaid cost for each of the first thirty days at the Hastings Regional Center, the Lincoln Regional Center, the Norfolk Regional Center, or other inpatient treatment facility where the patient is receiving inpatient treatment pursuant to an order of a mental health board under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act, (b) the first ten dollars per day of the unpaid cost for each of the first thirty days at the Beatrice State Developmental Center, and (c) the first three dollars per day of the unpaid costs for each day after the first thirty days at any such institution, (2) the balance of the unpaid cost shall be borne by the state, and (3) the county in which the patient resides shall be credited by the department for amounts collected from such patient or his or her relatives in excess of the portion of such costs borne by the state.

Source: Laws 1969, c. 812, § 14, p. 3055; Laws 1971, LB 1012, § 1; Laws 1987, LB 112, § 5; Laws 1996, LB 1044, § 949; Laws 2004, LB 1083, § 141; Laws 2006, LB 1199, § 103; Laws 2007, LB296, § 795.

Cross References

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

Sex Offender Commitment Act, see section 71-1201.

The transfer of control of the Nebraska Psychiatric Institute from the Department of Public Institutions did not impliedly repeal county liability under section 83-376 for patients treated at the Nebraska Psychiatric Institute. County of Douglas v. Board of Regents, 210 Neb. 573, 316 N.W.2d 62 (1982).

83-377 Cost of patient care; guardian; duties; liability.

In all cases in which a guardian has been named for any person liable for payments under sections 83-227.01, 83-227.02, 83-350, and 83-363 to 83-380, the guardian shall represent such person in all matters arising under sections 83-227.01, 83-227.02, 83-350, and 83-363 to 83-380 and shall be liable in the same manner as he would be on any other matters arising from the guardianship.

Source: Laws 1969, c. 812, § 15, p. 3055.

83-378 Cost of patient care; claim against estate; voluntary payments.

No person shall be liable for the cost of the care, support, maintenance, and treatment of any patient except as provided in sections 83-363 to 83-380, but the amounts determined to be due and unpaid at the time of the death of a

patient or relative shall constitute a claim against the estate of such patient or relative. The department may accept voluntary payments on behalf of any patient from any person who is not liable for payments.

Source: Laws 1969, c. 812, § 16, p. 3055; Laws 1992, LB 858, § 6.

83-379 Cost of patient care; fraudulent transfers; effect.

In the absence of fraud, a patient and his relatives shall be liable only to the extent of assessments actually made against them respectively, in accordance with sections 83-227.01, 83-227.02, 83-350, and 83-363 to 83-380. For the purposes of sections 83-227.01, 83-227.02, 83-350, and 83-363 to 83-380, it shall be deemed fraudulent for any patient or his relatives to transfer any assets or property to another person for the purpose of affecting the determination of ability to pay. When it is determined that such a fraudulent transfer has been made, the department shall consider the value of such assets or property transferred in determining the ability to pay under section 83-368 or 83-369.

Source: Laws 1969, c. 812, § 17, p. 3055; Laws 2007, LB296, § 796.

83-380 Cost of patient care; Director of Administrative Services; notify county clerk of amount due; levy; disbursement; withholding of funds by state.

Within thirty days after June 30, 1971, and each year thereafter, the department shall certify to the Director of Administrative Services all amounts not previously certified due to each state institution from the several counties having patients chargeable thereto. The Director of Administrative Services shall thereupon notify the county clerk of each county of the amount each county owes. The county board shall add to its next levy an amount sufficient to raise the amount certified as due. The county shall pay the amount certified into the state treasury on or before the next June 1 following such certification.

Source: Laws 1969, c. 812, § 18, p. 3056; Laws 1971, LB 1012, § 2; Laws 1996, LB 1044, § 950; Laws 2007, LB296, § 797; Laws 2009, LB218, § 10; Laws 2011, LB383, § 6.

83-380.01 Indigent outpatient; prescription medicine; Department of Health and Human Services; pay costs; when.

Upon the discharge from a treatment facility, an indigent person who has received mental-health-board-ordered treatment may file an affidavit with the Department of Health and Human Services or the mental health board requesting that prescription medicine which the regional center treating psychiatrist or the patient's treating physician has prescribed as necessary for the patient's mental health treatment be provided to him or her. Such affidavit shall include the following: (1) That the patient qualifies as an indigent person who is unable to pay under the same standards of ability to pay as set forth in sections 83-363 to 83-380; and (2) that such prescription medicine has been prescribed by the regional center's treatment psychiatrist or the patient's treating physician as necessary for the patient's mental health treatment. The mental health board shall refer such requests it receives to the Department of Health and Human Services and the department shall provide such prescription medicine as may be necessary for such former patient's mental health treatment so long as he or she remains an outpatient and his or her treating physician continues to prescribe and certify that such prescription medicine is necessary for the patient's mental health treatment and he or she continues to be an indigent

person as determined under the same standards of ability to pay as set forth in sections 83-363 to 83-380. The Department of Health and Human Services may adopt and promulgate rules and regulations to carry out the provisions of this section in accordance with the Administrative Procedure Act, including, but not limited to, hearings necessary to determine whether such person is qualified to receive such medications and whether such medication is necessary for the patient's mental health treatment.

Source: Laws 1981, LB 95, § 25; Laws 1996, LB 1044, § 951.

Cross References

Administrative Procedure Act, see section 84-920.

(e) RESIDENTIAL FACILITIES

83-381 Terms, defined.

As used in sections 83-217, 83-218, and 83-381 to 83-390, unless the context otherwise requires:

(1) Person with an intellectual disability means any person of significant subaverage general intellectual functioning which is associated with significant impairments in adaptive functioning manifested before the age of twenty-two years. Significant subaverage general intellectual functioning shall refer to a score of seventy or below on a properly administered and valid intelligence quotient test;

(2) Department means the Department of Health and Human Services or such person or agency within the Department of Health and Human Services as the chief executive officer of the department may designate; and

(3) Residential facility means an institution specified under section 83-217 to provide residential care by the State of Nebraska for persons with an intellectual disability.

Source: Laws 1969, c. 816, § 1, p. 3064; Laws 1986, LB 1177, § 47; Laws 1996, LB 1044, § 952; Laws 2007, LB296, § 798; Laws 2013, LB23, § 53; Laws 2016, LB1039, § 2.

83-382 Residential facilities; admission; department; jurisdiction.

Except as provided in sections 79-1148 and 79-1149, the department shall have jurisdiction of the admission of persons with an intellectual disability to a residential facility. Applications for admission to a residential facility shall be filed with the department.

Source: Laws 1969, c. 816, § 2, p. 3064; Laws 1981, LB 499, § 42; Laws 1986, LB 1177, § 48; Laws 1987, LB 367, § 74; Laws 1996, LB 900, § 1067; Laws 1996, LB 1044, § 953; Laws 2007, LB296, § 799; Laws 2013, LB23, § 54.

83-383 Residential facilities; admission; application; by whom; appointment of guardian.

(1) An application for admission shall be made in writing by one of the following persons:

(a) If the person applying for admission has a court-appointed guardian, the application shall be made by the guardian; and

(b) If the person applying for admission does not have a court-appointed guardian and has not reached the age of majority, as established by section 43-2101, as such section may from time to time be amended, the application shall be made by both parents if they are living together or by the parent having custody of such person if both parents are not then living or are not then living together.

(2) The county court of the county of residence of any person with an intellectual disability or the county court of the county in which a state residential facility is located shall have authority to appoint a guardian for any person with an intellectual disability upon the petition of the husband, wife, parent, person standing in loco parentis to such person, a county attorney, or any authorized official of the department. If the guardianship proceedings are initiated by an official of the department, the costs thereof may be taxed to and paid by the department if the person with an intellectual disability is without means to pay the costs. The department shall pay such costs upon presentation of a proper claim by the judge of the county court in which the proceedings were initiated. The costs of such proceedings shall include court costs, attorneys' fees, sheriffs' fees, psychiatric fees, and other necessary expenses of the guardianship.

Source: Laws 1969, c. 816, § 3, p. 3064; Laws 1982, LB 264, § 1; Laws 1986, LB 1177, § 49; Laws 1988, LB 790, § 36; Laws 1996, LB 1044, § 954; Laws 2007, LB296, § 800; Laws 2013, LB23, § 55.

83-384 Residential facilities; application for admission; contents.

An application for admission to a residential facility shall contain the name, age, and place of residence of the person for whom admission is requested. The application shall set forth the name of the person submitting the application and the capacity in which he or she makes the application. The application shall contain authorization for the department to obtain all relevant medical records and information concerning the person for whom admission is requested.

Source: Laws 1969, c. 816, § 4, p. 3065; Laws 2007, LB296, § 801.

83-385 Residential facilities; application for admission; referral; return of findings.

Upon receipt of an application for admission, the department shall refer the person for whom admission is requested to an agency or person specially qualified in the diagnosis of mental or related conditions for examination and evaluation. Within fourteen days of referral, the agency or person making such examination and evaluation shall return the findings of the examination and evaluation to the department. The findings and evaluation may also include recommendations with respect to the placement of the person for whom admission is requested in a residential facility. The department may require further examination of the person for whom admission is requested.

Source: Laws 1969, c. 816, § 5, p. 3065; Laws 2007, LB296, § 802.

83-386 Residential facilities; admission; selection by department; priority.

The department shall examine all information concerning the person for whom admission is requested and shall determine therefrom whether the person is a person with an intellectual disability and whether residence in the

residential facility is necessary for the welfare, care, treatment, or training of such person. Such determination shall be made in writing and shall set forth the reasons for the determination. If at any time it shall become necessary, for want of room or other cause, to discriminate in the admission of persons with an intellectual disability to residential facilities, the selection shall be made as follows: (1) Persons whose care is necessary in order to protect themselves or the public health and safety; (2) persons who are most likely to be benefited thereby; (3) persons shall next be admitted in the order in which their applications for admission have been filed with the department; and (4) when cases are equally meritorious in all other respects, an indigent person or a person from an indigent family shall be given preference.

Source: Laws 1969, c. 816, § 6, p. 3065; Laws 1986, LB 1177, § 50; Laws 2007, LB296, § 803; Laws 2013, LB23, § 56.

83-387 Residential facilities; patient; discharge or transfer; notice; responsibility of department.

At such time as the department determines that continued residence in a residential facility will no longer benefit a person with an intellectual disability, the department shall arrange for the discharge or transfer of such person from the residential facility. The department shall give reasonable notice to the person authorized to make an application for admission for such person under subsection (1) of section 83-383 that the department intends to discharge or transfer such person. The department shall also be responsible for the placement of such person in any other available program or facility and in the development of other methods for the care, treatment, and training of such person.

Source: Laws 1969, c. 816, § 7, p. 3066; Laws 1986, LB 1177, § 51; Laws 2007, LB296, § 804; Laws 2013, LB23, § 57.

83-388 Residential facilities; detention after the age of majority.

No person admitted to a residential facility upon the application of his or her parent or parents shall be detained in a residential facility after attaining the age of majority as established by section 43-2101, as such section may from time to time be amended, unless a guardian for such person makes an application for continued residence for such person in the facility under section 83-383 or such person is committed as provided by law for involuntary commitments.

Source: Laws 1969, c. 816, § 8, p. 3066; Laws 1981, LB 499, § 43; Laws 1982, LB 264, § 2; Laws 1988, LB 790, § 37.

83-389 Residential facility; person with an intellectual disability; removal; notice; procedure.

A person admitted to a residential facility under the provisions of sections 83-217, 83-218, and 83-381 to 83-390 shall be immediately discharged from the residential facility after notice of intention to remove the person with an intellectual disability has been given by the person authorized to make an application for admission under subsection (1) of section 83-383 and the normal discharge procedures are completed.

Source: Laws 1969, c. 816, § 9, p. 3066; Laws 1986, LB 1177, § 52; Laws 2013, LB23, § 58.

83-390 Residential facilities; persons admitted; rights retained; rules and regulations.

A person shall not lose his or her rights as a citizen, his or her property rights, or his or her legal capacity by reason of being admitted to a residential facility. The department may make reasonable rules and regulations concerning the exercise of such rights within the residential facility. Every person admitted to a residential facility under sections 83-217, 83-218, and 83-381 to 83-390 shall have an absolute right to communicate with the department, any court, a member of his or her family who does not file a written objection thereto with the department, a physician, or an attorney and to be visited at any reasonable hour by a physician or attorney. The department may make reasonable rules and regulations concerning communication by letter or otherwise with any other person or agency and concerning the right to receive other visitors.

Source: Laws 1969, c. 816, § 10, p. 3067; Laws 2007, LB296, § 805.

(f) SKILLED NURSING CARE AND INTERMEDIATE CARE**83-391 Terms, defined.**

For purposes of sections 83-108 and 83-391 to 83-393, unless the context otherwise requires:

- (1) Department means the Department of Health and Human Services; and
- (2) Facility means a skilled nursing care or intermediate care facility.

Source: Laws 1973, LB 536, § 1; Laws 1996, LB 1044, § 955; Laws 1996, LB 1155, § 92.

83-392 Skilled nursing care; intermediate care; facilities; establish; operate; administered; license.

The department may establish, operate, and administer skilled nursing care and intermediate care facilities. No such facility shall be established, operated, or administered without having complied with the laws, rules, and regulations establishing standards for construction, maintenance, and operation of such facilities and the care of persons in such facilities, and no such facility shall be established, operated, or administered without a license pursuant to the Health Care Facility Licensure Act.

Source: Laws 1973, LB 536, § 5; Laws 2000, LB 819, § 159.

Cross References

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

83-393 Persons needing care; admission.

Any person who needs the care provided in a facility shall be eligible for admission to such facility, and admission shall not be restricted to persons who receive services in any other institution operated by the department at the time application is made.

Source: Laws 1973, LB 536, § 6.

ARTICLE 4**PENAL AND CORRECTIONAL INSTITUTIONS****Cross References**

Assisting in the escape of prisoners, see sections 28-912 and 28-913.

PENAL AND CORRECTIONAL INSTITUTIONS

Committal of prisoners after sentence, see sections 29-2401 and 29-2402.

Confinement of children, see Nebraska Juvenile Code, section 43-2,129.

Escaping from detention, see section 28-912.

Prisoner, where confined, see section 29-1001.

(a) GENERAL PROVISIONS

Section	
83-401.	Repealed. Laws 1963, c. 528, § 12.
83-402.	Repealed. Laws 1969, c. 817, § 87.
83-403.	Repealed. Laws 1969, c. 817, § 87.
83-404.	Repealed. Laws 1969, c. 817, § 87.
83-405.	Repealed. Laws 1969, c. 817, § 87.
83-406.	Repealed. Laws 1969, c. 817, § 87.
83-407.	Repealed. Laws 1969, c. 817, § 87.
83-408.	Repealed. Laws 1969, c. 817, § 87.
83-409.	Repealed. Laws 1980, LB 592, § 1.
83-410.	Repealed. Laws 1969, c. 817, § 87.
83-411.	Repealed. Laws 1969, c. 817, § 87.
83-412.	Repealed. Laws 1969, c. 817, § 87.
83-413.	Repealed. Laws 1969, c. 817, § 87.
83-414.	Repealed. Laws 1969, c. 817, § 87.
83-415.	Department of Correctional Services; violence; suppression.
83-416.	Repealed. Laws 1969, c. 817, § 87.
83-417.	Allow committed offender to escape or have unauthorized visitation or communication; penalty.
83-418.	Repealed. Laws 1969, c. 817, § 87.
83-419.	Repealed. Laws 1969, c. 817, § 87.
83-420.	Federal prisoners; expenses.
83-421.	Repealed. Laws 1969, c. 817, § 87.
83-422.	Delivering prisoners to chief executive officer; documents.
83-423.	Costs; transporting prisoners; returning fugitives from justice; counties to pay.
83-424.	Fees and expenses; transporting prisoners; mileage; paid by county where crime was committed; amounts.
83-425.	Repealed. Laws 1969, c. 817, § 87.
83-426.	Repealed. Laws 1969, c. 817, § 87.
83-427.	Adult facility; escapee.
83-428.	Repealed. Laws 1993, LB 31, § 83.
83-429.	Repealed. Laws 1969, c. 817, § 87.
83-430.	Repealed. Laws 1969, c. 817, § 87.
83-431.	Repealed. Laws 1969, c. 817, § 87.
83-432.	Repealed. Laws 1969, c. 817, § 87.
83-432.01.	Expiration of act.
83-432.02.	Expiration of act.
83-432.03.	Expiration of act.
83-432.04.	Expiration of act.
83-432.05.	Expiration of act.
83-433.	Repealed. Laws 1969, c. 817, § 87.
83-434.	Repealed. Laws 1969, c. 817, § 87.
83-435.	Repealed. Laws 1969, c. 817, § 87.
83-436.	Repealed. Laws 1969, c. 817, § 87.
83-437.	Repealed. Laws 1969, c. 817, § 87.
83-438.	Repealed. Laws 1969, c. 817, § 87.
83-439.	Repealed. Laws 1969, c. 817, § 87.
83-440.	Repealed. Laws 1969, c. 817, § 87.
83-440.01.	Repealed. Laws 1969, c. 817, § 87.
83-440.02.	Repealed. Laws 1969, c. 817, § 87.
83-440.03.	Repealed. Laws 1969, c. 817, § 87.
83-440.04.	Repealed. Laws 1969, c. 817, § 87.
83-440.05.	Repealed. Laws 1969, c. 817, § 87.
83-441.	Repealed. Laws 1969, c. 817, § 87.
83-442.	Repealed. Laws 1969, c. 817, § 87.

STATE INSTITUTIONS

Section	
83-443.	Financial interest in inmate labor prohibited; violation; penalty.
83-444.	Department officers and employees; interest in prison work prohibited.
83-445.	Repealed. Laws 1969, c. 817, § 87.
83-446.	Repealed. Laws 1963, c. 528, § 12.
83-447.	Repealed. Laws 1963, c. 528, § 12.
83-448.	Repealed. Laws 1969, c. 817, § 87.
83-449.	Repealed. Laws 1969, c. 817, § 87.
83-450.	Repealed. Laws 1969, c. 817, § 87.
83-451.	Repealed. Laws 1969, c. 817, § 87.
83-452.	Repealed. Laws 1969, c. 817, § 87.
83-453.	Repealed. Laws 1969, c. 817, § 87.
83-454.	Howard's Day; observance in all state penal and reformatory institutions.

(b) STATE REFORMATORY

83-455.	Repealed. Laws 1969, c. 817, § 87.
83-456.	Repealed. Laws 1963, c. 528, § 12.
83-457.	Repealed. Laws 1963, c. 528, § 12.
83-458.	Repealed. Laws 1963, c. 528, § 12.
83-459.	Repealed. Laws 1963, c. 528, § 12.
83-460.	Repealed. Laws 1963, c. 528, § 12.
83-461.	Repealed. Laws 1963, c. 528, § 12.
83-462.	Repealed. Laws 1963, c. 528, § 12.

(c) YOUTH REHABILITATION AND TREATMENT CENTERS

83-463.	Repealed. Laws 1969, c. 817, § 87.
83-464.	Repealed. Laws 1969, c. 817, § 87.
83-465.	Repealed. Laws 1998, LB 1073, § 179.
83-466.	Repealed. Laws 1993, LB 31, § 83.
83-467.	Repealed. Laws 1998, LB 1073, § 179.
83-468.	Repealed. Laws 1998, LB 1073, § 179.
83-469.	Repealed. Laws 1998, LB 1073, § 179.
83-470.	Repealed. Laws 1998, LB 1073, § 179.
83-471.	Repealed. Laws 1998, LB 1073, § 179.
83-472.	Transferred to section 43-412.
83-473.	Transferred to section 28-912.01.
83-473.01.	Repealed. Laws 1998, LB 1073, § 179.
83-474.	Repealed. Laws 1969, c. 817, § 87.
83-474.01.	Repealed. Laws 1998, LB 1073, § 179.
83-475.	Repealed. Laws 1953, c. 351, § 1.
83-476.	Repealed. Laws 1953, c. 351, § 1.
83-477.	Repealed. Laws 1953, c. 351, § 1.
83-478.	Repealed. Laws 1953, c. 351, § 1.
83-479.	Repealed. Laws 1953, c. 351, § 1.
83-480.	Repealed. Laws 1969, c. 817, § 87.
83-481.	Repealed. Laws 1969, c. 817, § 87.
83-482.	Repealed. Laws 1983, LB 44, § 1.
83-483.	Repealed. Laws 1969, c. 817, § 87.
83-484.	Repealed. Laws 1969, c. 817, § 87.
83-485.	Repealed. Laws 1969, c. 817, § 87.
83-486.	Repealed. Laws 1969, c. 817, § 87.
83-487.	Repealed. Laws 1998, LB 1073, § 179.
83-488.	Repealed. Laws 1969, c. 817, § 87.
83-489.	Repealed. Laws 1951, c. 331, § 1.
83-490.	Transferred to section 83-473.01.

(d) GENOA STATE FARM

83-491.	Repealed. Laws 1951, c. 332, § 3.
83-492.	Repealed. Laws 1949, c. 291, § 5.
83-493.	Repealed. Laws 1949, c. 291, § 5.

(e) CENTRAL RECEPTION CENTER

83-494.	Repealed. Laws 1969, c. 817, § 87.
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PENAL AND CORRECTIONAL INSTITUTIONS

Section

- 83-495. Repealed. Laws 1969, c. 817, § 87.
- 83-496. Repealed. Laws 1969, c. 817, § 87.
- 83-497. Repealed. Laws 1969, c. 817, § 87.
- 83-498. Repealed. Laws 1969, c. 817, § 87.
- 83-499. Repealed. Laws 1969, c. 817, § 87.

(f) YOUTH DIAGNOSTIC AND REHABILITATION CENTER

- 83-4,100. Repealed. Laws 1997, LB 307, § 236.
- 83-4,101. Transferred to section 43-413.
- 83-4,102. Transferred to section 43-414.
- 83-4,103. Repealed. Laws 1998, LB 1073, § 179.
- 83-4,104. Transferred to section 43-415.
- 83-4,104.01. Repealed. Laws 1996, LB 1141, § 3.

(g) COMPREHENSIVE PENAL REFORM PLAN

- 83-4,105. Repealed. Laws 1981, LB 545, § 52.
- 83-4,106. Repealed. Laws 1982, LB 592, § 2.
- 83-4,107. Repealed. Laws 1982, LB 592, § 2.
- 83-4,108. Repealed. Laws 1982, LB 592, § 2.

(h) DISCIPLINARY PROCEDURES IN ADULT INSTITUTIONS

- 83-4,109. Adult institutions; disciplinary procedures; laws governing.
- 83-4,110. Terms, defined.
- 83-4,111. Rules and regulations; purpose; contents; rights and privileges of inmates.
- 83-4,112. Rules and regulations; filed; distributed; inmates to be informed of rules and policies.
- 83-4,113. Adult disciplinary action; rules posted.
- 83-4,114. Disciplinary restrictions and punishment; degree; solitary confinement prohibited; annual report; contents.
- 83-4,114.01. Chief executive officer; responsibilities; duties; discipline of inmates.
- 83-4,114.02. Inmate; disciplinary measures; confirmation testing.
- 83-4,115. Review of disciplinary action; administrative review boards; membership.
- 83-4,116. Transferred to section 83-4,136.
- 83-4,117. Transferred to section 83-4,137.
- 83-4,118. Transferred to section 83-4,138.
- 83-4,119. Transferred to section 83-4,139.
- 83-4,120. Infraction of rules or policies; report; filed with warden.
- 83-4,121. Disciplinary proceeding; when commenced; exception.
- 83-4,122. Disciplinary procedures; director establish; principles.
- 83-4,123. Access to courts and legal assistance unrestricted.

(i) JAIL STANDARDS BOARD

- 83-4,124. Legislative intent; Jail Standards Board; created; administration by Nebraska Commission on Law Enforcement and Criminal Justice; members; qualifications; terms; expenses.
- 83-4,125. Detention and juvenile facilities; terms, defined.
- 83-4,126. Jail Standards Board; powers and duties; enumerated.
- 83-4,127. Jail Standards Board; develop and implement standards for criminal detention facilities.
- 83-4,128. Criminal detention facilities; minimum construction standards.
- 83-4,129. Criminal detention facilities; maintenance standards; enumerated.
- 83-4,130. Criminal detention facilities; operation standards; enumerated.
- 83-4,131. Detention and staff secure juvenile facility; inspection; report.
- 83-4,132. Detention and staff secure juvenile facility; inspection; failure to meet minimum standards; corrective action.
- 83-4,133. Detention and staff secure juvenile facility; governing body; failure to take corrective action; petition by Jail Standards Board; hearing; order; appeal.
- 83-4,134. Detention and staff secure juvenile facility; standards applicable; when; violation of standards; effect.

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STATE INSTITUTIONS

Section

- 83-4,134.01. Juvenile facility; legislative intent; placement in room confinement; provisions applicable; report; Inspector General of Nebraska Child Welfare; duties; disciplinary action.
- 83-4,134.02. Placement of juvenile in room confinement; restrictions on placement; conditions; release; facility; duties; monitoring.

(j) INMATE GRIEVANCES

- 83-4,135. Inmate; right to file grievance; procedure.
- 83-4,136. Grievance review procedures; records.
- 83-4,137. Grievance review procedures; grievance to go to director, Public Counsel, or other appropriate person.
- 83-4,138. Grievance procedures; inmates to be informed of procedures.
- 83-4,139. Use of grievance procedure unrestricted.

(k) REGIMENTED INMATE DISCIPLINE UNIT

- 83-4,140. Repealed. Laws 1994, LB 988, § 47.
- 83-4,141. Repealed. Laws 1994, LB 988, § 47.

(l) INCARCERATION WORK CAMPS

- 83-4,142. Department of Correctional Services; duties; legislative intent.
- 83-4,143. Eligibility for incarceration work camp; Board of Parole or Director of Correctional Services; considerations; duration.
- 83-4,144. Incarceration work camp; release on parole.
- 83-4,145. Incarceration work camp; failure to complete program; effect.
- 83-4,146. Incarceration work camp; costs.
- 83-4,147. Report; contents.

(m) SUBSTANCE ABUSE TREATMENT TASK FORCE

- 83-4,148. Repealed. Laws 2004, LB 940, § 4.
- 83-4,149. Repealed. Laws 2004, LB 940, § 4.
- 83-4,150. Repealed. Laws 2004, LB 940, § 4.
- 83-4,151. Repealed. Laws 2004, LB 940, § 4.
- 83-4,152. Repealed. Laws 2004, LB 940, § 4.

(n) NEBRASKA CORRECTIONAL HEALTH CARE SERVICES ACT

- 83-4,153. Act, how cited.
- 83-4,154. Terms, defined.
- 83-4,155. Community standard of health care.
- 83-4,156. Medical director; appointment.
- 83-4,157. Medical director; duties.
- 83-4,158. Internal credentialing program.
- 83-4,159. Health care personnel and clinics; requirements.
- 83-4,160. Medical treatment protocols.
- 83-4,161. Communicable diseases; medical treatment protocols.
- 83-4,162. Drugs; medical treatment protocols.
- 83-4,163. Surgical procedures; medical treatment protocols.
- 83-4,164. Peer review and quality assurance program.
- 83-4,165. Medical program; accreditation.

(a) GENERAL PROVISIONS

83-401 Repealed. Laws 1963, c. 528, § 12.

83-402 Repealed. Laws 1969, c. 817, § 87.

83-403 Repealed. Laws 1969, c. 817, § 87.

83-404 Repealed. Laws 1969, c. 817, § 87.

83-405 Repealed. Laws 1969, c. 817, § 87.

83-406 Repealed. Laws 1969, c. 817, § 87.

83-407 Repealed. Laws 1969, c. 817, § 87.

83-408 Repealed. Laws 1969, c. 817, § 87.

83-409 Repealed. Laws 1980, LB 592, § 1.

83-410 Repealed. Laws 1969, c. 817, § 87.

83-411 Repealed. Laws 1969, c. 817, § 87.

83-412 Repealed. Laws 1969, c. 817, § 87.

83-413 Repealed. Laws 1969, c. 817, § 87.

83-414 Repealed. Laws 1969, c. 817, § 87.

83-415 Department of Correctional Services; violence; suppression.

When any committed offender offers violence to any officer or employee of the Department of Correctional Services or to any other person or committed offender, or attempts to do any injury to the buildings, or to any workshop or to any appurtenances thereof, or disobeys or resists any reasonable command of an officer or employee, such officers and employees shall use all reasonable means to prevent such violence or injury and to enforce the observance of discipline. No officer or employee shall be liable, either civilly or criminally, for any damage to property or injury to any person, including death resulting therefrom, caused by him or his order, while performing any duty under this section, unless such act or order was manifestly beyond the scope of the authority of such officer or employee.

Source: Laws 1897, c. 75, § 23, p. 339; R.S.1913, § 7327; C.S.1922, § 6987; C.S.1929, § 83-924; R.S.1943, § 83-415; Laws 1969, c. 817, § 76, p. 3109.

83-416 Repealed. Laws 1969, c. 817, § 87.

83-417 Allow committed offender to escape or have unauthorized visitation or communication; penalty.

Any person who purposely or knowingly allows any committed offender to escape or, without the approval of the chief executive officer of the facility, allows any offender to be visited, conversed with, comforted, or relieved or conveys to or from any committed offender any communication or article shall be guilty of a Class IV felony.

Source: Laws 1897, c. 75, § 31, p. 340; R.S.1913, § 7335; C.S.1922, § 6995; C.S.1929, § 83-932; R.S.1943, § 83-417; Laws 1969, c. 817, § 77, p. 3110; Laws 1977, LB 39, § 313.

Cross References

Public servant concerned in detention permitting prisoner to escape, penalty for, see section 28-912.

Court surmised it doubtful this section was designed to reach transactions between or among inmates, but rather, between civilians and inmates. *Sell v. Parratt*, 548 F.2d 753 (8th Cir. 1977).

83-418 Repealed. Laws 1969, c. 817, § 87.

83-419 Repealed. Laws 1969, c. 817, § 87.

83-420 Federal prisoners; expenses.

The Director of Correctional Services shall receive, safely keep, and subject to the discipline of the Department of Correctional Services, any criminal convicted of any crime against the United States, and sentenced to confinement therein by any court of the United States sitting within this state, until such sentence is executed or until such offender is discharged by due course of law. The United States shall support such offender and pay the expenses of executing his sentence.

Source: Laws 1897, c. 75, § 26, p. 339; R.S.1913, § 7330; C.S.1922, § 6990; C.S.1929, § 83-927; R.S.1943, § 83-420; Laws 1969, c. 817, § 78, p. 3110.

83-421 Repealed. Laws 1969, c. 817, § 87.**83-422 Delivering prisoners to chief executive officer; documents.**

When any convicted prisoner is delivered to the chief executive officer, the officer having the prisoner in charge shall deliver to the chief executive officer a certified copy of the sentence received by the officer from the clerk of the district court and shall take from the chief executive officer a certificate of the delivery of the prisoner. The certified copy of the sentence shall be evidence of the facts contained therein.

Source: Laws 1897, c. 75, § 33, p. 341; R.S.1913, § 7338; C.S.1922, § 6998; C.S.1929, § 83-935; R.S.1943, § 83-422; Laws 1993, LB 31, § 34.

When the certified copy of judgment or sentence includes a statement of the nature of the imprisonment imposed and the duration thereof, it fulfills all purposes contemplated by this section. *Dunham v. O'Grady*, 137 Neb. 649, 290 N.W. 723 (1940).

Provisions hereof, relative to delivery of convicts to penitentiary, are equally applicable to state reformatory for men. *Myers v. Fenton*, 121 Neb. 56, 236 N.W. 143 (1931).

83-423 Costs; transporting prisoners; returning fugitives from justice; counties to pay.

Each county shall pay the costs of transporting convicted prisoners to any Department of Correctional Services adult facility and the cost of returning fugitives from justice.

Source: Laws 1915, c. 138, § 1, p. 304; C.S.1922, § 7000a; C.S.1929, § 83-938; R.S.1943, § 83-423; Laws 1993, LB 31, § 35.

83-424 Fees and expenses; transporting prisoners; mileage; paid by county where crime was committed; amounts.

The expenses and fees of sheriffs and other officers incurred in conveying convicted prisoners to any Department of Correctional Services adult facility shall be examined, adjusted, and approved by the county board and paid out of the treasury of the county in which the crime was committed. The county board shall allow expenses and fees at the following rates: (1) For the sheriff, six dollars per day for time actually necessary in conveying a prisoner to the facility and return; and (2) for each assistant or guard absolutely necessary, six dollars per day. No allowance for assistance shall be made when only one prisoner is conveyed to a facility. The county board shall allow the actual and necessary traveling expenses in going and coming. When the trip is made by automobile, mileage included in such expenses shall be computed at the rate

provided in section 33-117 for county sheriffs and deputy county sheriffs for each mile actually and necessarily traveled by the most direct route.

Source: Laws 1897, c. 75, § 36, p. 341; R.S.1913, § 7341; Laws 1915, c. 138, § 2, p. 304; C.S.1922, § 7001; C.S.1929, § 83-939; Laws 1933, c. 96, § 21, p. 399; C.S.Supp.,1941, § 83-939; R.S.1943, § 83-424; Laws 1947, c. 123, § 3, p. 361; Laws 1953, c. 348, § 1, p. 1124; Laws 1957, c. 70, § 11, p. 303; Laws 1959, c. 84, § 6, p. 389; Laws 1961, c. 162, § 2, p. 492; Laws 1965, c. 566, § 1, p. 1851; Laws 1969, c. 823, § 1, p. 3130; Laws 1974, LB 625, § 5; Laws 1978, LB 691, § 5; Laws 1980, LB 615, § 5; Laws 1981, LB 204, § 207; Laws 1993, LB 31, § 36.

Sheriff's per diem should be accounted for to county. Drexel v. Douglas County, 62 Neb. 862, 87 N.W. 1053 (1901).

83-425 Repealed. Laws 1969, c. 817, § 87.

83-426 Repealed. Laws 1969, c. 817, § 87.

83-427 Adult facility; escapee.

When any inmate escapes from any Department of Correctional Services adult facility, the chief executive officer of the facility shall use all proper means for the apprehension of the inmate.

Source: Laws 1897, c. 75, § 34, p. 341; R.S.1913, § 7339; C.S.1922, § 6999; C.S.1929, § 83-936; R.S.1943, § 83-427; Laws 1993, LB 31, § 37.

83-428 Repealed. Laws 1993, LB 31, § 83.

83-429 Repealed. Laws 1969, c. 817, § 87.

83-430 Repealed. Laws 1969, c. 817, § 87.

83-431 Repealed. Laws 1969, c. 817, § 87.

83-432 Repealed. Laws 1969, c. 817, § 87.

83-432.01 Expiration of act.

83-432.02 Expiration of act.

83-432.03 Expiration of act.

83-432.04 Expiration of act.

83-432.05 Expiration of act.

83-433 Repealed. Laws 1969, c. 817, § 87.

83-434 Repealed. Laws 1969, c. 817, § 87.

83-435 Repealed. Laws 1969, c. 817, § 87.

83-436 Repealed. Laws 1969, c. 817, § 87.

83-437 Repealed. Laws 1969, c. 817, § 87.

83-438 Repealed. Laws 1969, c. 817, § 87.

83-439 Repealed. Laws 1969, c. 817, § 87.

83-440 Repealed. Laws 1969, c. 817, § 87.

83-440.01 Repealed. Laws 1969, c. 817, § 87.

83-440.02 Repealed. Laws 1969, c. 817, § 87.

83-440.03 Repealed. Laws 1969, c. 817, § 87.

83-440.04 Repealed. Laws 1969, c. 817, § 87.

83-440.05 Repealed. Laws 1969, c. 817, § 87.

83-441 Repealed. Laws 1969, c. 817, § 87.

83-442 Repealed. Laws 1969, c. 817, § 87.

83-443 Financial interest in inmate labor prohibited; violation; penalty.

No officer or employee of the Department of Correctional Services who has charge, control, or direction of any inmates shall be in any manner whatever financially interested in the work or profit of the labor of any inmate, and no such officer or employee shall receive any pay, gift, gratuity, or favor of a valuable character from any person interested either directly or indirectly in such labor. Any person violating this section shall be guilty of a Class IV felony. The offense may be reduced to a misdemeanor upon recommendation of the jury, if the court concurs in the recommendation. In such a case, the defendant shall be summarily discharged by the Director of Correctional Services.

Source: Laws 1921, c. 285, § 2, p. 931; C.S.1922, § 6974; C.S.1929, § 83-911; R.S.1943, § 83-443; Laws 1973, LB 563, § 48; Laws 1977, LB 39, § 314; Laws 1993, LB 31, § 38.

83-444 Department officers and employees; interest in prison work prohibited.

No officer or employee of the Department of Correctional Services shall employ inmates on work in which he or she or any other officer has a personal interest. No such officer or employee shall be connected with or have any interest in the business or shops belonging to the department.

Source: Laws 1897, c. 75, § 18, p. 338; R.S.1913, § 7326; C.S.1922, § 6986; C.S.1929, § 83-923; R.S.1943, § 83-444; Laws 1993, LB 31, § 39.

83-445 Repealed. Laws 1969, c. 817, § 87.

83-446 Repealed. Laws 1963, c. 528, § 12.

83-447 Repealed. Laws 1963, c. 528, § 12.

83-448 Repealed. Laws 1969, c. 817, § 87.

83-449 Repealed. Laws 1969, c. 817, § 87.

83-450 Repealed. Laws 1969, c. 817, § 87.

83-451 Repealed. Laws 1969, c. 817, § 87.

83-452 Repealed. Laws 1969, c. 817, § 87.

83-453 Repealed. Laws 1969, c. 817, § 87.

83-454 Howard's Day; observance in all state penal and reformatory institutions.

The second day of September in each year, the birthday of John Howard, the author of prison reform throughout the world, shall be observed as a legal holiday in all the penal and reformatory institutions of this state and shall be known as "Howard's Day".

Source: Laws 1911, c. 135, § 1, p. 447; R.S.1913, § 7352; C.S.1922, § 7012; C.S.1929, § 83-950; R.S.1943, § 83-454.

(b) STATE REFORMATORY

83-455 Repealed. Laws 1969, c. 817, § 87.

83-456 Repealed. Laws 1963, c. 528, § 12.

83-457 Repealed. Laws 1963, c. 528, § 12.

83-458 Repealed. Laws 1963, c. 528, § 12.

83-459 Repealed. Laws 1963, c. 528, § 12.

83-460 Repealed. Laws 1963, c. 528, § 12.

83-461 Repealed. Laws 1963, c. 528, § 12.

83-462 Repealed. Laws 1963, c. 528, § 12.

(c) YOUTH REHABILITATION AND TREATMENT CENTERS

83-463 Repealed. Laws 1969, c. 817, § 87.

83-464 Repealed. Laws 1969, c. 817, § 87.

83-465 Repealed. Laws 1998, LB 1073, § 179.

83-466 Repealed. Laws 1993, LB 31, § 83.

83-467 Repealed. Laws 1998, LB 1073, § 179.

83-468 Repealed. Laws 1998, LB 1073, § 179.

83-469 Repealed. Laws 1998, LB 1073, § 179.

83-470 Repealed. Laws 1998, LB 1073, § 179.

83-471 Repealed. Laws 1998, LB 1073, § 179.

83-472 Transferred to section 43-412.

83-473 Transferred to section 28-912.01.

83-473.01 Repealed. Laws 1998, LB 1073, § 179.

83-474 Repealed. Laws 1969, c. 817, § 87.

- 83-474.01 Repealed. Laws 1998, LB 1073, § 179.**
- 83-475 Repealed. Laws 1953, c. 351, § 1.**
- 83-476 Repealed. Laws 1953, c. 351, § 1.**
- 83-477 Repealed. Laws 1953, c. 351, § 1.**
- 83-478 Repealed. Laws 1953, c. 351, § 1.**
- 83-479 Repealed. Laws 1953, c. 351, § 1.**
- 83-480 Repealed. Laws 1969, c. 817, § 87.**
- 83-481 Repealed. Laws 1969, c. 817, § 87.**
- 83-482 Repealed. Laws 1983, LB 44, § 1.**
- 83-483 Repealed. Laws 1969, c. 817, § 87.**
- 83-484 Repealed. Laws 1969, c. 817, § 87.**
- 83-485 Repealed. Laws 1969, c. 817, § 87.**
- 83-486 Repealed. Laws 1969, c. 817, § 87.**
- 83-487 Repealed. Laws 1998, LB 1073, § 179.**
- 83-488 Repealed. Laws 1969, c. 817, § 87.**
- 83-489 Repealed. Laws 1951, c. 331, § 1.**
- 83-490 Transferred to section 83-473.01.**

(d) GENOA STATE FARM

- 83-491 Repealed. Laws 1951, c. 332, § 3.**
- 83-492 Repealed. Laws 1949, c. 291, § 5.**
- 83-493 Repealed. Laws 1949, c. 291, § 5.**

(e) CENTRAL RECEPTION CENTER

- 83-494 Repealed. Laws 1969, c. 817, § 87.**
- 83-495 Repealed. Laws 1969, c. 817, § 87.**
- 83-496 Repealed. Laws 1969, c. 817, § 87.**
- 83-497 Repealed. Laws 1969, c. 817, § 87.**
- 83-498 Repealed. Laws 1969, c. 817, § 87.**
- 83-499 Repealed. Laws 1969, c. 817, § 87.**

(f) YOUTH DIAGNOSTIC AND REHABILITATION CENTER

- 83-4,100 Repealed. Laws 1997, LB 307, § 236.**

83-4,101 Transferred to section 43-413.

83-4,102 Transferred to section 43-414.

83-4,103 Repealed. Laws 1998, LB 1073, § 179.

83-4,104 Transferred to section 43-415.

83-4,104.01 Repealed. Laws 1996, LB 1141, § 3.

(g) COMPREHENSIVE PENAL REFORM PLAN

83-4,105 Repealed. Laws 1981, LB 545, § 52.

83-4,106 Repealed. Laws 1982, LB 592, § 2.

83-4,107 Repealed. Laws 1982, LB 592, § 2.

83-4,108 Repealed. Laws 1982, LB 592, § 2.

(h) DISCIPLINARY PROCEDURES IN ADULT INSTITUTIONS

83-4,109 Adult institutions; disciplinary procedures; laws governing.

Disciplinary procedures in adult institutions administered by the Department of Correctional Services shall be governed by the provisions of sections 83-4,109 to 83-4,123.

Source: Laws 1976, LB 275, § 1; Laws 1993, LB 31, § 51.

Sections 83-4,109 to 83-4,123 constitute a special act relating to disciplinary procedures in adult correctional institutions and control over the more general provisions which are found in the Administrative Procedure Act. *Reed v. Parratt*, 207 Neb. 796, 301 N.W.2d 343 (1981).

83-4,110 Terms, defined.

For purposes of sections 83-4,109 to 83-4,123, unless the context otherwise requires:

- (1) Director shall mean the Director of Correctional Services; and
- (2) Department shall mean the Department of Correctional Services.

Source: Laws 1976, LB 275, § 2; Laws 1993, LB 31, § 52.

83-4,111 Rules and regulations; purpose; contents; rights and privileges of inmates.

(1) The department shall adopt and promulgate rules and regulations to establish criteria for justifiably and reasonably determining which rights and privileges an inmate forfeits upon commitment and which rights and privileges an inmate retains.

(2) Such rules and regulations shall include, but not be limited to, criteria concerning (a) disciplinary procedures and a code of offenses for which discipline may be imposed, (b) disciplinary segregation, (c) grievance procedures, (d) good-time credit, (e) mail and visiting privileges, and (f) rehabilitation opportunities.

(3) The rules and regulations adopted pursuant to sections 83-4,109 to 83-4,123 shall in no manner deprive an inmate of any rights and privileges to

which he or she is entitled under other provisions of law or under policies adopted in a correctional facility.

Source: Laws 1976, LB 275, § 3; Laws 1993, LB 31, § 53.

The language of this section does not establish a right in inmates to a determination of which rights they retain upon commitment. *Meis v. Houston*, 19 Neb. App. 504, 808 N.W.2d 897 (2012).

this section has been fulfilled by the promulgation of 68 Neb. Admin. Code, chs. 1 through 9 (2008). *Meis v. Houston*, 19 Neb. App. 504, 808 N.W.2d 897 (2012).

The Nebraska Department of Correctional Services' duty to promulgate rules and regulations regarding inmate rights under

83-4,112 Rules and regulations; filed; distributed; inmates to be informed of rules and policies.

(1) Copies of all rules and regulations shall be filed pursuant to the Administrative Procedure Act and shall be distributed to all adult correctional facilities in this state.

(2) Inmates shall be informed of rules and policies concerning behavior and discipline, inmate rights and developmental opportunities, work or education programs, and complaint procedures at the facility. Such rules and policies, or significant portions thereof, shall be posted at conspicuous places throughout the facility.

Source: Laws 1976, LB 275, § 4; Laws 1993, LB 31, § 54.

Cross References

Administrative Procedure Act, see section 84-920.

83-4,113 Adult disciplinary action; rules posted.

All adult disciplinary action within the system of the department shall be pursuant to sections 83-4,109 to 83-4,123. Inmates shall be informed of rules of behavior and discipline. Such rules shall be posted or otherwise made available to the inmates.

Source: Laws 1976, LB 275, § 5; Laws 1993, LB 31, § 55.

83-4,114 Disciplinary restrictions and punishment; degree; solitary confinement prohibited; annual report; contents.

(1) There shall be no corporal punishment or disciplinary restrictions on diet.

(2) Disciplinary restrictions on clothing, bedding, mail, visitations, use of toilets, washbowls, or scheduled showers shall be imposed only for abuse of such privilege or facility and only as authorized by written directives, guidance documents, and operational manuals.

(3) No person shall be placed in solitary confinement.

(4) The director shall issue an annual report on or before September 15 to the Governor and the Clerk of the Legislature. The report to the Clerk of the Legislature shall be issued electronically. For all inmates who were held in restrictive housing during the prior year, the report shall contain the race, gender, age, and length of time each inmate has continuously been held in restrictive housing. The report shall also contain:

(a) The number of inmates held in restrictive housing;

(b) The reason or reasons each inmate was held in restrictive housing;

(c) The number of inmates held in restrictive housing who have been diagnosed with a mental illness or behavioral disorder and the type of mental illness or behavioral disorder by inmate;

(d) The number of inmates who were released from restrictive housing directly to parole or into the general public and the reason for such release;

(e) The number of inmates who were placed in restrictive housing for his or her own safety and the underlying circumstances for each placement;

(f) To the extent reasonably ascertainable, comparable statistics for the nation and each of the states that border Nebraska pertaining to subdivisions (4)(a) through (e) of this section;

(g) The mean and median length of time for all inmates held in restrictive housing; and

(h) A description of all inmate housing areas that hold inmates in a setting that is neither general population nor restrictive housing, including the purpose of each setting, data on how many inmates were held in such settings, the average length of stay in such settings, information on programs provided in each setting, data on program completions in each setting, staffing levels and types of staff in each setting, and any other information or data relevant to the operation of such settings. For the purposes of this subdivision, general population means an inmate housing area that allows out-of-cell movement without the use of restraints, a minimum of six hours per day of out-of-cell time, regular access to programming areas outside the living unit, and access to services available to the broader population.

Source: Laws 1976, LB 275, § 6; Laws 2015, LB598, § 33; Laws 2016, LB1094, § 43; Laws 2019, LB686, § 14; Laws 2023, LB157, § 16.

This statute, which provides certain limitations on the use of solitary confinement, is inapplicable to inmates under the sentence of death who are kept in administrative segregation. Anderson and Hochstein v. Gunter, 226 Neb. 724, 414 N.W.2d 281 (1987).

83-4,114.01 Chief executive officer; responsibilities; duties; discipline of inmates.

(1) The chief executive officer of each facility of the department shall be responsible for the discipline of inmates who reside in such facility. No inmate shall be punished except upon the order of the chief executive officer of the facility, and no punishment shall be imposed otherwise than in accordance with this section.

(2) Except in flagrant or serious cases, punishment for misconduct shall consist of deprivation of privileges. In cases of flagrant or serious misconduct, the chief executive officer may order that an inmate's reduction of term as provided in section 83-1,107 be forfeited or withheld and also that the inmate be confined in disciplinary segregation. During the period of disciplinary segregation, such inmate shall be put on an adequate and healthful diet. An inmate in disciplinary segregation shall be visited at least once every eight hours. No cruel, inhuman, or corporal punishment shall be used on any inmate.

(3) The chief executive officer shall maintain a record of breaches of discipline, of the disposition of each case, and of the punishment, if any, for each such breach. Each breach of discipline shall be entered in the inmate's file, together with the disposition or punishment for the breach.

(4) The chief executive officer may recommend to the director that an inmate who is considered to be incorrigible by reason of frequent intentional breaches

of discipline or who is detrimental to the discipline or the morale of the facility be transferred to another facility for stricter safekeeping and closer confinement, subject to the provisions of section 83-176.

(5) The department shall adopt and promulgate rules and regulations to define the term flagrant or serious misconduct.

Source: Laws 1969, c. 817, § 16, p. 3082; Laws 1972, LB 1499, § 1; R.S.1943, (1987), § 83-185; Laws 1993, LB 31, § 56; Laws 1995, LB 371, § 26; Laws 1997, LB 364, § 22; Laws 2015, LB598, § 34.

An administrative disciplinary proceeding in which a prisoner loses good time for escape does not place him in jeopardy so a subsequent conviction for escape does not constitute double jeopardy. *State v. Maddox*, 190 Neb. 361, 208 N.W.2d 274 (1973).

Prisoner's statutory right to good time may not be taken away from him without following minimum appropriate due process procedures. *Wolff v. McDonnell*, 418 U.S. 539 (1974).

Prison authorities had no right, absent statutory authority, to prescribe and enforce regulations authorizing forfeiture of money discovered in the possession of inmates as a punitive measure and their actions in so doing violated due process. *Sell v. Parratt*, 548 F.2d 753 (8th Cir. 1977).

Prison authorities violated rights of inmates by subjecting them to substantial penalties for relatively minor offenses; not

only was revocation of certain privileges contrary to statute, but also it was arbitrary and capricious. *McDonnell v. Wolff*, 483 F.2d 1059 (8th Cir. 1973).

Fighting and threatening an officer's life would amount to flagrant or serious misconduct for which statutory good time may be withheld. Certain activities which would not, or which are best left to judgment of adjustment committee, are outlined. *McDonnell v. Wolff*, 342 F.Supp. 616 (D. Neb. 1972).

The reduction of sentence for good behavior and faithful performance of duties is a statutory right and cannot be eliminated or withheld for failure to perform work which a prisoner is unable to do because of physical infirmity not caused by his misconduct, nor as punishment except for flagrant or serious misconduct. *Sawyer v. Sigler*, 320 F.Supp. 690 (D. Neb. 1970).

83-4,114.02 Inmate; disciplinary measures; confirmation testing.

Before disciplinary measures are taken against an inmate for drug or alcohol violations, an inmate may request and the department shall provide independent confirmation testing of positive results of urinalysis testing. If the confirmation test remains positive, the inmate may be required to pay the cost of the confirmation test.

Source: Laws 1999, LB 865, § 6.

83-4,115 Review of disciplinary action; administrative review boards; membership.

Any review of disciplinary action imposed upon any person shall be pursuant to sections 83-4,109 to 83-4,123. The director shall establish procedures to review the disciplinary actions of inmates. The director may establish one or more administrative review boards within the department to review disciplinary actions. No member of any review board shall also be a member of a disciplinary hearing board, but the same considerations for appointing members to the disciplinary hearing board may apply to appointing members to a review board.

Source: Laws 1976, LB 275, § 7; Laws 1993, LB 31, § 57.

83-4,116 Transferred to section 83-4,136.

83-4,117 Transferred to section 83-4,137.

83-4,118 Transferred to section 83-4,138.

83-4,119 Transferred to section 83-4,139.

83-4,120 Infraction of rules or policies; report; filed with warden.

A written report of any infraction shall be filed with the warden within seventy-two hours of the occurrence of such infraction or the discovery of it. Such report shall be placed in the files of the institution or facility.

Source: Laws 1976, LB 275, § 12.

Where a disciplinary misconduct report was not prepared and submitted within 72 hours of the discovery of a penal inmate's infraction and the inmate was not prejudiced by the delay, there

is no violation of due process. *Billups v. Nebraska Dept. of Corr. Servs. Appeals Bd.*, 238 Neb. 39, 469 N.W.2d 120 (1991).

83-4,121 Disciplinary proceeding; when commenced; exception.

No disciplinary proceeding shall be commenced more than eight calendar days after the infraction or the discovery of such infraction unless the committed person is unable or unavailable for any reason to participate in a disciplinary proceeding.

Source: Laws 1976, LB 275, § 13.

An inmate not prejudiced by a violation of this section's 8-day requirement has not suffered a violation of his or her due process rights. *Billups v. Nebraska Dept. of Corr. Servs. Appeals Bd.*, 238 Neb. 39, 469 N.W.2d 120 (1991).

This section requires only that disciplinary action be commenced within eight days, not that the hearing be completed

within that period. A disciplinary proceeding, under this section, commences when written notice of the alleged infraction is served upon the inmate. *Johnson v. Vitek*, 205 Neb. 745, 290 N.W.2d 190 (1980).

83-4,122 Disciplinary procedures; director establish; principles.

In disciplinary cases which may involve the imposition of disciplinary isolation or the loss of good-time credit, the director shall establish disciplinary procedures consistent with the following principles:

(1) Any person or persons who initiate a disciplinary charge against an inmate shall not determine the disposition of the charge. The director may establish one or more disciplinary boards to hear and determine charges. To the extent possible, a person representing the treatment or counseling staff of the institution or facility shall participate in determining the disposition of the disciplinary case;

(2) An inmate charged with a violation of department rules of behavior shall be given notice of the charge including a statement of the misconduct alleged and of the rules such conduct is alleged to violate. Such notice shall be given at least twenty-four hours before a hearing on the matter is held;

(3) An inmate charged with a violation of rules shall be entitled to a hearing on that charge at which time he or she shall have an opportunity to appear before and address the person or persons deciding the charge. The individual bringing the charge shall also appear at such hearing;

(4) The person or persons determining the disposition of the charge may also summon to testify any witnesses or other persons with relevant knowledge of the incident. The inmate charged shall be permitted to question any person so summoned and shall be allowed to call witnesses and present documentary evidence in his or her defense when permitting him or her to do so will not be unduly hazardous to institutional safety or correctional goals. The person or persons determining the disposition of charges shall state his, her, or their reasons in writing for refusing to call a witness;

(5) If the charge is sustained, the inmate charged shall be entitled to a written statement of the decision by the persons determining the disposition of the charge, which statement shall include the basis for the decision and the disciplinary action, if any, to be imposed;

(6) A change in work, education, or other program assignment shall not be used for disciplinary purposes;

(7) The inmate charged shall be entitled to an adequate opportunity to prepare a defense. Such opportunity shall include the right to assistance and advice in preparing and presenting a defense from any inmate in general population or staff member at the institution where the hearing is held. Such inmate or staff member may serve in such an advisory capacity for the inmate so charged;

(8) Any hearing conducted pursuant to this section shall be tape recorded, and such recording shall be preserved for a period of six months; and

(9) The standard of proof to sustain the charge shall be substantial evidence.

Source: Laws 1976, LB 275, § 14; Laws 1988, LB 673, § 1; Laws 1993, LB 31, § 58; Laws 1993, LB 455, § 1.

Notwithstanding the inmate’s claim that the corrections officer’s observations were unreliable, substantial evidence supported a disciplinary charge against the inmate where nothing in the record called into question the reliability of the officer’s observations. *Haynes v. Nebraska Dept. of Corr. Servs.*, 314 Neb. 771, 993 N.W.2d 97 (2023).

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

Pursuant to subsection (4) of this section, a charged inmate’s request to produce relevant documentary evidence should generally be permitted unless allowing the inmate to do so will be unduly hazardous to institutional safety or correctional goals. *Barnes v. Nebraska Dept. of Corr. Servs.*, 12 Neb. App. 453, 676 N.W.2d 385 (2004).

Pursuant to subsection (4) of this section, when the disciplinary committee declines a charged inmate’s request to produce relevant documentary evidence in the inmate’s defense, the committee should make a finding regarding the reasons for denial of the request. *Barnes v. Nebraska Dept. of Corr. Servs.*, 12 Neb. App. 453, 676 N.W.2d 385 (2004).

There is no due process violation when there is a “legitimate penological concern” to deny the defendant’s request for a witness to be present at an institutional disciplinary committee hearing for the defendant’s use of drugs. *Claypool v. Nebraska Dept. of Corr. Servs.*, 12 Neb. App. 87, 667 N.W.2d 267 (2003).

The specific statutes found in Chapter 83 governing prison disciplinary hearings control the factfinding procedures used in such hearings, and they do not require the use of the Nebraska rules of evidence for hearings conducted in accordance with this section. *Dailey v. Nebraska Dept. of Corr. Servs.*, 6 Neb. App. 919, 578 N.W.2d 869 (1998).

83-4,123 Access to courts and legal assistance unrestricted.

Nothing in sections 83-4,109 to 83-4,123 shall be construed as to restrict or impair an inmate’s free access to the courts and necessary legal assistance in any cause of action arising under such sections or to judicial review for disciplinary cases which involve the imposition of disciplinary isolation or the loss of good-time credit in accordance with the Administrative Procedure Act. Such judicial review may only be invoked after completion of any review of the hearing prescribed by section 83-4,122 by the department.

Source: Laws 1976, LB 275, § 15; Laws 1988, LB 673, § 2; Laws 1993, LB 31, § 59.

Cross References

Administrative Procedure Act, see section 84-920.

An inmate’s right of access to the courts in Nebraska is no greater than those rights of access to the federal courts under the U.S. Constitution. *Jacob v. Nebraska Dept. of Corr. Servs.*, 294 Neb. 735, 884 N.W.2d 687 (2016).

Judicial review of a disciplinary case in an adult institution is permitted only when the disciplinary action imposed on the inmate involves the imposition of disciplinary isolation or the

loss of good-time credit. *Dittrich v. Nebraska Dept. of Corr. Servs.*, 248 Neb. 818, 539 N.W.2d 432 (1995).

Judicial review of disciplinary cases is limited to those cases which involve the imposition of the penalties enumerated in this section. *Abdullah v. Nebraska Dept. of Corr. Servs.*, 245 Neb. 545, 513 N.W.2d 877 (1994).

(i) JAIL STANDARDS BOARD

83-4,124 Legislative intent; Jail Standards Board; created; administration by Nebraska Commission on Law Enforcement and Criminal Justice; members; qualifications; terms; expenses.

(1) It is hereby declared to be the policy of the State of Nebraska that all criminal detention facilities in this state shall conform to certain minimum standards of construction, maintenance, and operation and that all juvenile detention facilities and staff secure juvenile facilities in this state shall conform to certain minimum standards relating to the operation and physical structure of such facilities and the care of, programs for, and discipline of juveniles at such facilities.

(2) To further such policy, the Jail Standards Board is hereby created. For administrative and budgetary purposes such board shall be within the Nebraska Commission on Law Enforcement and Criminal Justice. The board shall consist of the Director of Correctional Services or, if the Director of Correctional Services chooses not to serve on the board, a person appointed by the director to serve in lieu of the director, the State Fire Marshal or his or her designee, and ten appointive members, three of whom shall be from each of the three congressional districts, to be appointed by the Governor. The appointive members of the board shall be appointed from recommendation lists containing at least three names submitted by the Nebraska Association of County Officials, the Nebraska County Sheriffs Association, the Nebraska State Bar Association, and the Police Officers Association of Nebraska. The appointive members of the board shall consist of: (a) Two county commissioners or supervisors; (b) one county sheriff; (c) one municipal police chief; (d) one member of the Nebraska State Bar Association; (e) two lay people; (f) one person who at the time of his or her appointment is serving as an administrator responsible for the operation and maintenance of a juvenile detention facility; (g) one person who at the time of his or her appointment is serving as an administrator responsible for the operation and maintenance of a staff secure juvenile facility; and (h) one person who at the time of his or her appointment is serving as an administrator or jailer responsible for the operation and maintenance of a criminal detention facility having an average daily population of greater than fifty persons.

(3) The terms of office for all members initially appointed shall be three years. Upon completion of the initial term of the board, the Governor shall appoint one member from each congressional district for a term of one year, one member from each congressional district for a term of two years, and one member from each congressional district for a term of three years. Succeeding appointees shall be representative of the same congressional district and shall be appointed for terms of three years. An appointee to a vacancy occurring from an unexpired term shall serve out the term of his or her predecessor. Members whose terms have expired shall continue to serve until their successors have been appointed. The member authorized by Laws 2013, LB561, shall be appointed by the Governor within ninety days after May 30, 2013.

(4) The members of the board shall serve without compensation, but they shall be reimbursed for expenses while engaged in the performance of their official duties as provided in sections 81-1174 to 81-1177.

Source: Laws 1975, LB 417, § 25; Laws 1978, LB 212, § 1; Laws 1980, LB 700, § 1; R.S.Supp.,1980, § 83-945; Laws 1981, LB 204, § 208; Laws 1981, LB 328, § 9; Laws 1992, LB 1184, § 17; Laws 1994, LB 461, § 1; Laws 1994, LB 925, § 1; Laws 2002, LB 93, § 25; Laws 2013, LB561, § 64; Laws 2020, LB381, § 131.

83-4,125 Detention and juvenile facilities; terms, defined.

For purposes of sections 83-4,124 to 83-4,134.02:

(1) Criminal detention facility means any institution operated by a political subdivision or a combination of political subdivisions for the careful keeping or rehabilitative needs of adult or juvenile criminal offenders or those persons being detained while awaiting disposition of charges against them. Criminal detention facility does not include any institution operated by the Department of Correctional Services. Criminal detention facilities shall be classified as follows:

(a) Type I Facilities means criminal detention facilities used for the detention of persons for not more than twenty-four hours, excluding nonjudicial days;

(b) Type II Facilities means criminal detention facilities used for the detention of persons for not more than ninety-six hours, excluding nonjudicial days; and

(c) Type III Facilities means criminal detention facilities used for the detention of persons beyond ninety-six hours;

(2) Juvenile detention facility means an institution operated by a political subdivision or political subdivisions for the secure detention and treatment of persons younger than eighteen years of age, including persons under the jurisdiction of a juvenile court, who are serving a sentence pursuant to a conviction in a county or district court or who are detained while waiting disposition of charges against them. Juvenile detention facility does not include any institution operated by the department;

(3) Juvenile facility means a residential child-caring agency as defined in section 71-1926, a juvenile detention facility or staff secure juvenile facility as defined in this section, a facility operated by the Department of Correctional Services that houses youth under the age of majority, or a youth rehabilitation and treatment center;

(4) Room confinement means the involuntary restriction of a juvenile placed alone in a cell, alone in a room, or alone in another area, including a juvenile's own room, except during normal sleeping hours, whether or not such cell, room, or other area is subject to video or other electronic monitoring; and

(5) Staff secure juvenile facility means a juvenile residential facility operated by a political subdivision (a) which does not include construction designed to physically restrict the movements and activities of juveniles who are in custody in the facility, (b) in which physical restriction of movement or activity of juveniles is provided solely through staff, (c) which may establish reasonable rules restricting ingress to and egress from the facility, and (d) in which the movements and activities of individual juvenile residents may, for treatment purposes, be restricted or subject to control through the use of intensive staff supervision. Staff secure juvenile facility does not include any institution operated by the department.

Source: Laws 1975, LB 417, § 26; Laws 1978, LB 212, § 2; R.S.Supp.,1980, § 83-946; Laws 1992, LB 1184, § 18; Laws 1994, LB 461, § 2; Laws 2000, LB 1167, § 51; Laws 2003, LB 760, § 19; Laws 2013, LB561, § 65; Laws 2016, LB894, § 20; Laws 2018, LB670, § 16; Laws 2020, LB230, § 1.

83-4,126 Jail Standards Board; powers and duties; enumerated.

(1) Except as provided in subsection (2) of this section, the Jail Standards Board shall have the authority and responsibility:

(a) To develop minimum standards for the construction, maintenance, and operation of criminal detention facilities;

(b) To perform other duties as may be necessary to carry out the policy of the state regarding criminal detention facilities, juvenile detention facilities, and staff secure juvenile facilities as stated in sections 83-4,124 to 83-4,134.02; and

(c) Consistent with the purposes and objectives of the Juvenile Services Act, to develop standards for juvenile detention facilities and staff secure juvenile facilities, including, but not limited to, standards for physical facilities, care, programs, and disciplinary procedures, and to develop guidelines pertaining to the operation of such facilities.

(2) The Jail Standards Board shall not have authority over or responsibility for correctional facilities that are accredited by a nationally recognized correctional association. A correctional facility that is accredited by a nationally recognized correctional association shall show proof of accreditation annually to the Jail Standards Board. For purposes of this subsection, nationally recognized correctional association includes, but is not limited to, the American Correctional Association or its successor.

Source: Laws 1975, LB 417, § 28; Laws 1978, LB 212, § 3; R.S.Supp.,1980, § 83-948; Laws 1990, LB 663, § 17; Laws 1992, LB 1184, § 19; Laws 2011, LB390, § 27; Laws 2013, LB561, § 66; Laws 2016, LB894, § 21; Laws 2020, LB230, § 2.

Cross References

Juvenile Services Act, see section 43-2401.

83-4,127 Jail Standards Board; develop and implement standards for criminal detention facilities.

On or before July 1, 1979, the Jail Standards Board shall study, develop, and implement minimum standards for the construction, maintenance, and operation of criminal detention facilities pursuant to sections 83-4,128 to 83-4,130.

Source: Laws 1978, LB 212, § 4; R.S.Supp.,1980, § 83-948.01.

83-4,128 Criminal detention facilities; minimum construction standards.

The minimum standards for the construction of criminal detention facilities shall include but not be limited to standards for the planning, design, or actual construction of new, modified, or renovated facilities, in excess of five thousand dollars.

Source: Laws 1978, LB 212, § 5; R.S.Supp.,1980, § 83-948.02.

83-4,129 Criminal detention facilities; maintenance standards; enumerated.

The standards for the maintenance of criminal detention facilities shall include but not be limited to standards for:

- (1) The staffing, training, and demeanor of personnel;
- (2) The procedures for the admission and release of prisoners;
- (3) The assignment procedures for assigning prisoners to housing, programs, and related activities;

- (4) The establishment of a standardized records and statistical system for criminal detention facilities;
- (5) The establishment of systems and procedures for the handling of prisoner mail, visits, and telephone services;
- (6) The procedures for prisoner access to the media, general library, exercise, and recreation;
- (7) The procedures for prisoner access to legal material, legal counsel, and religion;
- (8) The supervision and uses of the facility arsenal, firearms, and key room;
- (9) Food services;
- (10) Health services; and
- (11) Prisoner conduct.

Source: Laws 1978, LB 212, § 6; R.S.Supp.,1980, § 83-948.03.

83-4,130 Criminal detention facilities; operation standards; enumerated.

The standards for the operation of criminal detention facilities shall include but not be limited to standards for:

- (1) The classification and reclassification of prisoners;
- (2) The rehabilitative services required for prisoners;
- (3) The disciplinary procedures for prisoners;
- (4) The grievance procedure for prisoners; and
- (5) The search and admission of visitors.

Source: Laws 1978, LB 212, § 7; R.S.Supp.,1980, § 83-948.04.

83-4,131 Detention and staff secure juvenile facility; inspection; report.

Personnel of the Nebraska Commission on Law Enforcement and Criminal Justice shall visit and inspect each criminal detention facility, juvenile detention facility, and staff secure juvenile facility in the state, except correctional facilities accredited by a nationally recognized correctional association pursuant to subsection (2) of section 83-4,126, for the purpose of determining the conditions of confinement, the treatment of persons confined in the facilities, and whether such facilities comply with the minimum standards established by the Jail Standards Board. A written report of each inspection shall be made within thirty days following such inspection to the appropriate governing body responsible for the criminal detention facility, juvenile detention facility, or staff secure juvenile facility involved. The report shall specify those areas in which the facility does not comply with the required minimum standards.

Source: Laws 1975, LB 417, § 30; Laws 1978, LB 212, § 8; R.S.Supp.,1980, § 83-950; Laws 1981, LB 328, § 10; Laws 1992, LB 1184, § 20; Laws 1996, LB 233, § 18; Laws 2011, LB390, § 28; Laws 2013, LB561, § 67.

83-4,132 Detention and staff secure juvenile facility; inspection; failure to meet minimum standards; corrective action.

If an inspection under sections 83-4,124 to 83-4,134.02 discloses that the criminal detention facility, juvenile detention facility, or staff secure juvenile facility does not meet the minimum standards established by the Jail Standards

Board, the board shall send notice, together with the inspection report, to the governing body responsible for the facility. The appropriate governing body shall promptly meet to consider the inspection report, and the inspection personnel shall appear before the governing body to advise and consult concerning appropriate corrective action. The governing body shall then initiate appropriate corrective action within six months after the receipt of such inspection report or may voluntarily close the facility or the objectionable portion thereof.

Source: Laws 1975, LB 417, § 31; Laws 1978, LB 212, § 9; R.S.Supp.,1980, § 83-951; Laws 1992, LB 1184, § 21; Laws 1996, LB 233, § 19; Laws 2013, LB561, § 68; Laws 2016, LB894, § 22; Laws 2020, LB230, § 3.

83-4,133 Detention and staff secure juvenile facility; governing body; failure to take corrective action; petition by Jail Standards Board; hearing; order; appeal.

If the governing body of the juvenile detention facility, criminal detention facility, or staff secure juvenile facility fails to initiate corrective action within six months after the receipt of such inspection report, fails to correct the disclosed conditions, or fails to close the criminal detention facility, juvenile detention facility, or staff secure juvenile facility or the objectionable portion thereof, the Jail Standards Board may petition the district court within the judicial district in which such facility is located to close the facility. Such petition shall include the inspection report regarding such facility. The local governing body shall then have thirty days to respond to such petition and shall serve a copy of the response on the Jail Standards Board by certified mail, return receipt requested. Thereafter, a hearing shall be held on the petition before the district court, and an order shall be rendered by such court which either:

- (1) Dismisses the petition of the Jail Standards Board;
- (2) Directs that corrective action be initiated in some form by the local governing body of the facility in question; or
- (3) Directs that the facility be closed. An appeal from the decision of the district court may be taken to the Court of Appeals.

Source: Laws 1975, LB 417, § 32; Laws 1978, LB 212, § 10; R.S.Supp.,1980, § 83-952; Laws 1991, LB 732, § 154; Laws 1992, LB 1184, § 22; Laws 1998, LB 695, § 6; Laws 2009, LB218, § 11; Laws 2013, LB561, § 69.

83-4,134 Detention and staff secure juvenile facility; standards applicable; when; violation of standards; effect.

Sections 83-4,124 to 83-4,134.01 shall be implemented upon completion of the development of minimum standards by the Jail Standards Board. Thereafter, inspections shall begin, but no criminal detention facility, juvenile detention facility, or staff secure juvenile facility shall be closed within one year of the date of first filing of the minimum standards in the office of the Secretary of State. After one year from the date of first filing of the minimum standards, a facility may be closed for any violation of the minimum standards. Those standards relating to the construction of the facility itself and its plumbing, heating, and wiring systems shall not be enforced so as to require the closing of

any facility for a period of two years from the date of the first filing of the minimum standards unless such violations are of immediate danger to the safety of the persons confined in the facility or facility personnel, in which case such period shall be one year.

Source: Laws 1975, LB 417, § 33; Laws 1978, LB 212, § 11; R.S.Supp.,1980, § 83-953; Laws 1992, LB 1184, § 23; Laws 2013, LB561, § 70; Laws 2016, LB894, § 23.

83-4,134.01 Juvenile facility; legislative intent; placement in room confinement; provisions applicable; report; Inspector General of Nebraska Child Welfare; duties; disciplinary action.

(1) It is the intent of the Legislature to establish a system of investigation and performance review in order to provide increased accountability and oversight regarding the use of room confinement for juveniles in a juvenile facility.

(2) The following shall apply regarding placement in room confinement of a juvenile in a juvenile facility:

(a) Room confinement of a juvenile for longer than one hour during a twenty-four-hour period shall be documented and approved in writing by a supervisor in the juvenile facility. Documentation of the room confinement shall include the date of the occurrence; the race, ethnicity, age, and gender of the juvenile; the reason for placement of the juvenile in room confinement; an explanation of why less restrictive means were unsuccessful; the ultimate duration of the placement in room confinement; facility staffing levels at the time of confinement; and any incidents of self-harm or suicide committed by the juvenile while he or she was isolated;

(b) If any physical or mental health clinical evaluation was performed during the time the juvenile was in room confinement for longer than one hour, the results of such evaluation shall be considered in any decision to place a juvenile in room confinement or to continue room confinement;

(c) The juvenile facility shall submit a report quarterly to the Legislature on the juveniles placed in room confinement; the length of time each juvenile was in room confinement; the race, ethnicity, age, and gender of each juvenile placed in room confinement; facility staffing levels at the time of confinement; and the reason each juvenile was placed in room confinement. The report shall specifically address each instance of room confinement of a juvenile for more than four hours, including all reasons why attempts to return the juvenile to the general population of the juvenile facility were unsuccessful. The report shall also detail all corrective measures taken in response to noncompliance with this section. The report shall redact all personal identifying information but shall provide individual, not aggregate, data. The report shall be delivered electronically to the Legislature. The initial quarterly report shall be submitted within two weeks after the quarter ending on September 30, 2016. Subsequent reports shall be submitted for the ensuing quarters within two weeks after the end of each quarter; and

(d) The Inspector General of Nebraska Child Welfare shall review all data collected pursuant to this section in order to assess the use of room confinement for juveniles in each juvenile facility and prepare an annual report of his or her findings, including, but not limited to, identifying changes in policy and practice which may lead to decreased use of such confinement as well as model evidence-based criteria to be used to determine when a juvenile should be

placed in room confinement. The report shall be delivered electronically to the Legislature on an annual basis.

(3) The use of consecutive periods of room confinement to avoid the intent or purpose of this section is prohibited.

(4) Any juvenile facility which is not a residential child-caring agency which fails to comply with the requirements of this section is subject to disciplinary action as provided in section 83-4,134. Any juvenile facility which is a residential child-caring agency which fails to comply with the requirements of this section is subject to disciplinary action as provided in section 71-1940.

Source: Laws 2016, LB894, § 24; Laws 2018, LB670, § 17; Laws 2020, LB230, § 4.

83-4,134.02 Placement of juvenile in room confinement; restrictions on placement; conditions; release; facility; duties; monitoring.

(1) This section applies to placement of a juvenile in room confinement in the following facilities: A juvenile detention facility, staff secure juvenile facility, facility operated by the Department of Correctional Services, or youth rehabilitation and treatment center operated by the Department of Health and Human Services.

(2) A juvenile shall not be placed in room confinement for any of the following reasons:

- (a) As a punishment or a disciplinary sanction;
- (b) As a response to a staffing shortage; or
- (c) As retaliation against the juvenile by staff.

(3) A juvenile shall not be placed in room confinement unless all other less-restrictive alternatives have been exhausted and the juvenile poses an immediate and substantial risk of harm to self or others.

(4) A juvenile may only be held in room confinement according to the following conditions:

(a) A juvenile shall not be held in room confinement longer than the minimum time required to eliminate the substantial and immediate risk of harm to self or others and shall be released from room confinement as soon as the substantial and immediate risk of harm to self or others is resolved; and

(b) A juvenile shall only be held in room confinement for a period that does not compromise or harm the mental or physical health of the juvenile.

(5) Any juvenile placed in room confinement shall be released immediately upon regaining sufficient control so as to no longer engage in behavior that threatens substantial and immediate risk of harm to self or others.

(6) Not later than one business day after the date on which a facility places a juvenile in room confinement, the facility shall provide notice of the placement in room confinement to the juvenile's parent or guardian and the attorney of record for the juvenile.

(7) All rooms used for room confinement shall have adequate and operating lighting, heating and cooling, and ventilation for the comfort of the juvenile. Rooms shall be clean and resistant to suicide and self-harm. Juveniles in room confinement shall have access to drinking water, toilet facilities, hygiene supplies, and reading materials approved by a licensed mental health professional.

(8) Juveniles in room confinement shall have the same access as provided to juveniles in the general population of the facility to meals, contact with parents or legal guardians, legal assistance, and access to educational programming.

(9) Juveniles in room confinement shall have access to appropriate medical and mental health services. Mental health staff shall promptly provide mental health services as needed.

(10) Juveniles in room confinement shall be continuously monitored by staff of the facility. Continuous monitoring may be accomplished through regular in-person visits to the confined juvenile which may also be supplemented by electronic video monitoring.

(11) The use of consecutive periods of room confinement to avoid the intent and purpose of this section is prohibited.

(12) Nothing in this section shall be construed to authorize or require the construction or erection of fencing or similar structures at any facility, nor the imposition of nonrehabilitative approaches to behavior management within any facility.

Source: Laws 2020, LB230, § 5.

(j) INMATE GRIEVANCES

83-4,135 Inmate; right to file grievance; procedure.

An inmate shall have the right to file a grievance on any subject except disciplinary actions and matters over which the Department of Correctional Services has no control. Grievance procedures shall provide for the review of grievances by a person or persons other than the person or persons directly responsible for the conditions or actions against which the grievance is filed.

Source: Laws 1993, LB 31, § 60.

83-4,136 Grievance review procedures; records.

Grievance review procedures shall provide that a record of grievances and any decision made with respect to such grievances shall be preserved for a period of one year.

Source: Laws 1976, LB 275, § 8; R.S.1943, (1987), § 83-4,116; Laws 1993, LB 31, § 61.

83-4,137 Grievance review procedures; grievance to go to director, Public Counsel, or other appropriate person.

Grievance review procedures shall allow inmates to communicate grievances directly to the Director of Correctional Services, the office of the Public Counsel, or any other appropriate person outside the Department of Correctional Services.

Source: Laws 1976, LB 275, § 9; R.S.1943, (1987), § 83-4,117; Laws 1993, LB 31, § 62.

83-4,138 Grievance procedures; inmates to be informed of procedures.

All inmates shall be informed of the grievance procedures established by the department and copies of such procedures shall be available to all inmates.

Source: Laws 1976, LB 275, § 10; R.S.1943, (1987), § 83-4,118; Laws 1993, LB 31, § 63.

83-4,139 Use of grievance procedure unrestricted.

Discipline shall not be imposed because of use of the grievance procedure.

Source: Laws 1976, LB 275, § 11; R.S.1943, (1987), § 83-4,119; Laws 1993, LB 31, § 64.

(k) REGIMENTED INMATE DISCIPLINE UNIT

83-4,140 Repealed. Laws 1994, LB 988, § 47.

83-4,141 Repealed. Laws 1994, LB 988, § 47.

(l) INCARCERATION WORK CAMPS

83-4,142 Department of Correctional Services; duties; legislative intent.

The Department of Correctional Services shall develop and implement an incarceration work camp for placement of felony offenders as a transitional phase prior to release on parole or as assigned by the Director of Correctional Services pursuant to subsection (2) of section 83-176. As part of the incarceration work camp, an intensive residential drug treatment program may be developed and implemented for felony offenders.

It is the intent of the Legislature that the incarceration work camp serve to reduce prison overcrowding and to make prison bed space available for violent offenders. It is the further intent of the Legislature that the incarceration work camp serve the interests of society by addressing the criminogenic needs of certain designated offenders and by deterring such offenders from engaging in further criminal activity. To accomplish these goals, the incarceration work camp shall provide regimented, structured, disciplined programming, including all of the following: Work programs; vocational training; behavior management and modification; money management; substance abuse awareness, counseling, and treatment; and education, programming needs, and aftercare planning, which will increase the offender's abilities to lead a law-abiding, productive, and fulfilling life as a contributing member of a free society.

Source: Laws 1997, LB 882, § 2; Laws 2005, LB 538, § 27; Laws 2007, LB83, § 1; Laws 2009, LB274, § 1; Laws 2019, LB340, § 2.

83-4,143 Eligibility for incarceration work camp; Board of Parole or Director of Correctional Services; considerations; duration.

(1) It is the intent of the Legislature that the Board of Parole may recommend placement of felony offenders at the incarceration work camp. The offenders recommended by the board shall be offenders currently housed at other Department of Correctional Services adult correctional facilities and shall complete the incarceration work camp programming prior to release on parole.

(2) When the Board of Parole is of the opinion that a felony offender currently incarcerated in a Department of Correctional Services adult correctional facility may benefit from a brief and intensive period of regimented, structured, and disciplined programming immediately prior to release on parole, the board may direct placement of such an offender in an incarceration work camp for a period not to exceed one hundred eighty days as a condition of release on parole. The board may consider such placement if the felony offender (a) is medically and mentally fit to participate, with allowances given

for reasonable accommodation as determined by medical and mental health professionals, and (b) has not previously been incarcerated for a violent felony crime. Offenders convicted of a crime under sections 28-319 to 28-322.05 or of any capital crime are not eligible to be placed in an incarceration work camp.

(3) The Director of Correctional Services may assign a felony offender to an incarceration work camp if he or she believes it is in the best interests of the felony offender and of society, except that offenders convicted of a crime under sections 28-319 to 28-322.05 or of any capital crime are not eligible to be assigned to an incarceration work camp pursuant to this subsection.

Source: Laws 1997, LB 882, § 3; Laws 2000, LB 288, § 1; Laws 2005, LB 538, § 28; Laws 2006, LB 1199, § 104; Laws 2007, LB83, § 2; Laws 2009, LB97, § 29; Laws 2009, LB274, § 2; Laws 2015, LB268, § 33; Referendum 2016, No. 426; Laws 2019, LB340, § 3; Laws 2019, LB519, § 16.

83-4,144 Incarceration work camp; release on parole.

An offender placed in an incarceration work camp pursuant to a recommendation of the Board of Parole shall be released on parole upon successful completion, as determined by the board, of the incarceration work camp program.

Source: Laws 1997, LB 882, § 4; Laws 2007, LB83, § 3; Laws 2019, LB340, § 4.

83-4,145 Incarceration work camp; failure to complete program; effect.

An offender placed at the incarceration work camp pursuant to a recommendation of the Board of Parole who fails to successfully complete the incarceration work camp program shall be returned to the board for a rescission hearing. Credit shall be given for time actually served in the incarceration work camp program.

Source: Laws 1997, LB 882, § 5; Laws 2007, LB83, § 4; Laws 2019, LB340, § 5.

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

83-4,146 Incarceration work camp; costs.

All costs incurred during the period the offender is committed to an incarceration work camp shall be the responsibility of the state, including the cost of transporting the offender to the incarceration work camp and for returning the offender to the appropriate Department of Correctional Services adult correctional facility if the offender is discharged for unsatisfactory performance from the incarceration work camp.

Source: Laws 1997, LB 882, § 6; Laws 2003, LB 46, § 29; Laws 2007, LB83, § 5; Laws 2019, LB340, § 6.

83-4,147 Report; contents.

An annual progress report shall be provided electronically to the Legislature ensuring that all programmatic objectives are being met. The report shall include an evaluation of the impact of the multi-treatment programs, including

program costs, educational achievement, inmate disciplinary activity, probation release decisionmaking, and community reintegration on November 1 of the year following implementation.

Source: Laws 1997, LB 882, § 7; Laws 2012, LB782, § 217.

(m) SUBSTANCE ABUSE TREATMENT TASK FORCE

83-4,148 Repealed. Laws 2004, LB 940, § 4.

83-4,149 Repealed. Laws 2004, LB 940, § 4.

83-4,150 Repealed. Laws 2004, LB 940, § 4.

83-4,151 Repealed. Laws 2004, LB 940, § 4.

83-4,152 Repealed. Laws 2004, LB 940, § 4.

(n) NEBRASKA CORRECTIONAL HEALTH CARE SERVICES ACT

83-4,153 Act, how cited.

Sections 83-4,153 to 83-4,165 shall be known and may be cited as the Nebraska Correctional Health Care Services Act.

Source: Laws 2001, LB 154, § 1.

83-4,154 Terms, defined.

For purposes of the Nebraska Correctional Health Care Services Act:

(1) Community standard of health care means medical care of the type, quality, and amount that any individual residing within the community in question could expect to receive in that community;

(2) Department means the Department of Correctional Services;

(3) Health care services means all medical care provided by or on behalf of the department to inmates and includes the practice of medicine and surgery, the practice of pharmacy, nursing care, dental care, optometric care, audiological care, physical therapy, mental health care, and substance abuse counseling and treatment;

(4) Inmate means an individual in the custody of the department; and

(5) Medical doctor means a person licensed to practice medicine and surgery in this state.

Source: Laws 2001, LB 154, § 2.

83-4,155 Community standard of health care.

In administering health care services, the department shall provide a community standard of health care to all inmates.

Source: Laws 2001, LB 154, § 3.

83-4,156 Medical director; appointment.

The Director of Correctional Services shall appoint a medical director for the department who shall be a medical doctor. The medical director shall be a person familiar with principles of quality assurance and internal credentialing

procedures and shall be under the sole immediate supervision of the Director of Correctional Services.

Source: Laws 2001, LB 154, § 4.

83-4,157 Medical director; duties.

The medical director shall:

- (1) Coordinate all clinical services;
- (2) Participate in the selection and supervision of all clinical staff employed by or under contract with the department, including medical doctors, physician assistants, pharmacists, pharmacy technicians, registered nurses, licensed practical nurses, advanced practice registered nurses practicing under and in accordance with their respective certification acts, mental health practitioners, alcohol and drug counselors, laboratory technicians, physical therapists, optometrists, audiologists, dentists, dental assistants, and dental hygienists;
- (3) Maintain and preserve the medical records of health care services;
- (4) Approve the purchasing of all necessary medical supplies and medical equipment for the department;
- (5) Recommend all necessary programs for the preservice, inservice, and continuing medical training and education of the health care staff and other relevant staff of the department, including training specifically designed to promote prompt and effective responses by all staff of the department to medical emergencies;
- (6) Develop and implement condition-specific medical treatment protocols that ensure compatibility with a community standard of health care, including protocols addressing the: (a) Treatment of gastrointestinal bleeds; (b) detection and treatment of all communicable diseases; (c) treatment of gender-specific problems; (d) treatment of diabetes; (e) treatment of hypertension; (f) treatment of headaches; (g) utilization of surgical procedures; (h) control of infection; (i) provision of dental care; (j) provision of age-specific and gender-specific routine health maintenance; (k) means by which inmates obtain access to health care services; (l) use of prescribed drugs, devices, or biologicals for the purpose of pain management; (m) referral of patients to medical specialists not in the employ of the department; and (n) initiation, observance, and termination of do not resuscitate orders initiated pursuant to the Rights of the Terminally Ill Act;
- (7) Develop and implement a system of general discharge planning for the health care services to be received by inmates who are soon to be released from the custody of the department and who have chronic health care problems, including establishment of a protocol to determine whether or not an inmate soon to be released should be prescribed and dispensed a medication-assisted treatment that could assist in reducing or eliminating the inmate's use of opiates;
- (8) Develop and implement a comprehensive health care services plan;
- (9) Develop and implement an internal credentialing program for the employment and retention of the health care staff of the department based on a community standard of health care; and

(10) Develop and implement an internal peer review and quality assurance program based upon a community standard of health care.

Source: Laws 2001, LB 154, § 5; Laws 2004, LB 1083, § 142; Laws 2005, LB 256, § 98; Laws 2018, LB841, § 53.

Cross References

Rights of the Terminally Ill Act, see section 20-401.

83-4,158 Internal credentialing program.

The internal credentialing program shall include for each health care staff member being considered for employment or retention (1) an investigation of the history of the health care staff member using (a) when possible, the national practitioner data bank under the federal Health Care Quality Improvement Act of 1986, 42 U.S.C. 11101 et seq., as such act existed on September 1, 2001, and (b) contacts with prior employers of the health care staff member and (2) confirmation of all professional permits, licenses, or other authorizations to practice of the health care staff member. The medical director shall maintain a credentialing file for all health care staff members employed by the department. The medical director shall ensure the recredentialing of each health care staff member employed by the department every two years.

Source: Laws 2001, LB 154, § 6.

83-4,159 Health care personnel and clinics; requirements.

(1) In assigning health care staff to the correctional facilities under the control of the department, the medical director shall ensure that each facility has at least one designated medical doctor on call at all times and that each facility housing more than five hundred inmates has at least one full-time medical doctor assigned to that facility as his or her primary employment location.

(2) The medical director shall establish an acute care clinic in each of the correctional facilities and ensure that each clinic is staffed by at least one medical doctor, physician assistant, or advanced practice registered nurse practicing under and in accordance with his or her respective certification act.

(3) The medical director shall establish chronic care clinics to provide health care services to inmates with chronic disease conditions, including diabetes and hypertension.

(4) The medical director shall establish a human immunodeficiency virus infection and acquired immunodeficiency syndrome chronic care clinic which shall provide for the relevant treatment, counseling, and education of inmates who are known to be infected with the human immunodeficiency virus.

Source: Laws 2001, LB 154, § 7; Laws 2005, LB 256, § 99.

83-4,160 Medical treatment protocols.

All medical treatment protocols developed, approved, and implemented by the department shall be based upon a community standard of health care. When applicable, these medical treatment protocols shall emphasize the need to maintain the continuity of any previously prescribed drugs, devices, or biologicals and treatment regimens that inmates are subject to when they enter the custody of the department. The medical director shall establish a mechanism for the periodic systematic review of all existing medical treatment

protocols. All deviations from the approved medical treatment protocols shall be thoroughly documented by the department's health care staff and shall be systematically reviewed by the department's peer review and quality assurance panel.

Source: Laws 2001, LB 154, § 8.

83-4,161 Communicable diseases; medical treatment protocols.

In developing medical treatment protocols for the clinics, the medical director shall define the circumstances under which chronically ill inmates should return to the chronic care clinics for check-ups and when appointments should be made for chronically ill inmates to next be examined by health care staff. In developing and implementing medical treatment protocols for clinics for the detection and treatment of communicable diseases, the medical director shall ensure that the medical treatment protocols include:

(1) Provisions allowing for the routine immunization against communicable diseases of all inmates upon entering the custody of the department;

(2) Provisions requiring each inmate to be screened for communicable diseases, including (a) human immunodeficiency virus, (b) hepatitis A virus, (c) hepatitis B virus, (d) hepatitis C virus, (e) tuberculosis, and (f) sexually transmitted diseases, when the inmate enters into the custody of the department;

(3) Provisions requiring each inmate to be screened for (a) human immunodeficiency virus, unless previously tested positive, (b) hepatitis B virus, unless previously tested positive, (c) hepatitis C virus, unless previously tested positive, (d) tuberculosis, unless tested within the immediately preceding year or previously tested positive, and (e) sexually transmitted diseases, when the inmate leaves the custody of the department. No such screening shall be conducted without inmate consent;

(4) Provisions requiring any inmate in the custody of the department found to be infected with any of the diseases referenced in subdivision (2) of this section, when medically indicated, to be immediately referred to an infectious disease specialist for appropriate treatment;

(5) Provisions describing in detail those circumstances when it is medically desirable, because of risk to other noninfected inmates, to segregate, on an individual basis, any inmate found to be infected with the human immunodeficiency virus and also describing those circumstances when there is no longer a perceived medical need to continue the segregation of such an inmate;

(6) Provisions requiring that all health care staff who provide health care services be screened for communicable diseases, including (a) human immunodeficiency virus, (b) hepatitis A virus, (c) hepatitis B virus, and (d) hepatitis C virus, upon their entry into the employment of the department, and that all health care staff also be screened annually for tuberculosis; and

(7) Provisions allowing for employees of the department who come into immediate personal contact with the inmates to be immunized for hepatitis B virus.

Source: Laws 2001, LB 154, § 9; Laws 2005, LB 320, § 1.

83-4,162 Drugs; medical treatment protocols.

The medical director shall develop and implement medical treatment protocols regarding the use of drugs, devices, or biologicals for the treatment of

inmates and shall ensure that those protocols are consistent with a community standard of health care. In developing these protocols, the medical director shall ensure that the medical treatment protocols include:

- (1) Provisions requiring that only the relevant health care staff is involved in determining the number and dosages of the drugs, devices, or biologicals to be received by inmates under their care;
- (2) Provisions establishing a system for monitoring the administration of drugs, devices, or biologicals to ensure that all prescribed drugs, devices, or biologicals are made available to the inmates; and
- (3) Provisions establishing a system for monitoring and removing expired drugs, devices, or biologicals within the department's medication inventory which conforms with the requirements of section 71-2413.

Source: Laws 2001, LB 154, § 10.

83-4,163 Surgical procedures; medical treatment protocols.

The medical director shall develop and implement medical treatment protocols for common surgical procedures. In developing these protocols, the medical director shall ensure that the medical treatment protocols include:

- (1) Provisions defining procedures that are considered to be major surgery;
- (2) Provisions requiring that all inmates needing major surgery are referred to appropriate specialists and facilities outside of the department for that surgery;
- (3) Provisions requiring the implementation of pain management measures within an appropriate time after the completion of surgical procedures;
- (4) Provisions requiring that all decisions by the health care staff regarding whether or not surgery should be performed are based on a community standard of health care; and
- (5) Provisions requiring the health care staff to carefully document the rationale for each of their decisions to resort to surgery or to refrain from surgery as a treatment option.

Source: Laws 2001, LB 154, § 11.

83-4,164 Peer review and quality assurance program.

The peer review and quality assurance program developed and implemented by the medical director shall provide for the ongoing review of the quality of health care services. This peer review and quality assurance program shall be carried out by a peer review and quality assurance panel comprised of medical doctors providing health care services and such other health care staff as the department designates. The peer review and quality assurance program shall be conducted through regular periodic meetings of the peer review and quality assurance panel for the purpose of examining issues pertaining to the quality of health care services. The peer review and quality assurance panel shall also conduct a regular review of selected cases arising in order to identify, critique, and correct errors in the practices and procedures of the health care staff. The peer review and quality assurance panel shall also review (1) all cases in which there has been a death of an inmate and (2) all cases in which there have been deviations from the approved medical treatment protocols of the department. The medical director shall develop and implement a procedure for the direct

feedback to the peer review and quality assurance panel of inmate complaints and other information from inmates pertaining to health care services. A permanent record of the meetings and deliberations of the peer review and quality assurance panel shall be maintained, but the records and all other evidence pertaining directly to the deliberations of the peer review and quality assurance panel are not subject to discovery in any civil action arising out of the health care services provided by or on behalf of the department.

Source: Laws 2001, LB 154, § 12.

83-4,165 Medical program; accreditation.

The department shall seek accreditation of its medical program by the American Correctional Association Commission on Accreditation for Corrections.

Source: Laws 2001, LB 154, § 13.

ARTICLE 5

STERILIZATION OF INMATES OF BEATRICE STATE HOME

Section

- 83-501. Repealed. Laws 1969, c. 825, § 1.
- 83-502. Repealed. Laws 1969, c. 825, § 1.
- 83-503. Repealed. Laws 1969, c. 825, § 1.
- 83-504. Repealed. Laws 1969, c. 825, § 1.
- 83-505. Repealed. Laws 1969, c. 825, § 1.
- 83-506. Repealed. Laws 1969, c. 825, § 1.
- 83-507. Repealed. Laws 1969, c. 825, § 1.
- 83-508. Repealed. Laws 1969, c. 825, § 1.
- 83-509. Repealed. Laws 1957, c. 391, § 8.

83-501 Repealed. Laws 1969, c. 825, § 1.

83-502 Repealed. Laws 1969, c. 825, § 1.

83-503 Repealed. Laws 1969, c. 825, § 1.

83-504 Repealed. Laws 1969, c. 825, § 1.

83-505 Repealed. Laws 1969, c. 825, § 1.

83-506 Repealed. Laws 1969, c. 825, § 1.

83-507 Repealed. Laws 1969, c. 825, § 1.

83-508 Repealed. Laws 1969, c. 825, § 1.

83-509 Repealed. Laws 1957, c. 391, § 8.

ARTICLE 6

EMINENT DOMAIN BY THE STATE

Section

- 83-601. Transferred to section 76-725.
- 83-602. Repealed. Laws 1951, c. 101, § 127.
- 83-603. Repealed. Laws 1951, c. 101, § 127.
- 83-604. Repealed. Laws 1951, c. 101, § 127.
- 83-605. Repealed. Laws 1951, c. 101, § 127.

Section

- 83-606. Repealed. Laws 1951, c. 101, § 127.
- 83-607. Repealed. Laws 1951, c. 101, § 127.

83-601 Transferred to section 76-725.

83-602 Repealed. Laws 1951, c. 101, § 127.

83-603 Repealed. Laws 1951, c. 101, § 127.

83-604 Repealed. Laws 1951, c. 101, § 127.

83-605 Repealed. Laws 1951, c. 101, § 127.

83-606 Repealed. Laws 1951, c. 101, § 127.

83-607 Repealed. Laws 1951, c. 101, § 127.

**ARTICLE 7
DRUG USERS**

Section

- 83-701. Repealed. Laws 1985, LB 252, § 7.
- 83-702. Repealed. Laws 1985, LB 252, § 7.
- 83-703. Repealed. Laws 1985, LB 252, § 7.
- 83-704. Repealed. Laws 1985, LB 252, § 7.
- 83-705. Repealed. Laws 1985, LB 252, § 7.
- 83-706. Repealed. Laws 1985, LB 252, § 7.
- 83-707. Repealed. Laws 1985, LB 252, § 7.

83-701 Repealed. Laws 1985, LB 252, § 7.

83-702 Repealed. Laws 1985, LB 252, § 7.

83-703 Repealed. Laws 1985, LB 252, § 7.

83-704 Repealed. Laws 1985, LB 252, § 7.

83-705 Repealed. Laws 1985, LB 252, § 7.

83-706 Repealed. Laws 1985, LB 252, § 7.

83-707 Repealed. Laws 1985, LB 252, § 7.

**ARTICLE 8
INTERSTATE COMPACT ON MENTAL HEALTH**

Section

- 83-801. Interstate Compact on Mental Health; contents.
- 83-802. Chief executive officer of Department of Health and Human Services; duties.
- 83-803. Compact administrator; powers.
- 83-804. Compact administrator; arrange for payments to discharge financial obligations.
- 83-805. Compact administrator; consult with family of proposed transferee; transfer; approval of court.
- 83-806. Secretary of State; authorized copies; distribution.

83-801 Interstate Compact on Mental Health; contents.

The Interstate Compact on Mental Health is hereby enacted into law and entered into by this state with all other states legally joining therein, in the form substantially as follows:

INTERSTATE COMPACT ON MENTAL HEALTH

Article I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

Article II

As used in this compact:

(a) "Sending state" shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(b) "Receiving state" shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(c) "Institution" shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

(d) "Patient" shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

(e) "After-care" shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

(f) "Mental illness" shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

(g) "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

(h) "State" shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Article III

(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that

the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

Article IV

(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive after-care or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such after-care in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving state.

(c) In supervising, treating, or caring for a patient on after-care pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

Article V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate

authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

Article VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

Article VII

(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a non-party state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

Article VIII

(a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term “guardian” as used in paragraph (a) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

Article IX

(a) No provision of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

Article X

(a) Each party state shall appoint a “compact administrator” who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

Article XI

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

Article XII

This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

Article XIII

(a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(b) Withdrawal from any agreement permitted by Article VII (b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

Article XIV

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Source: Laws 1969, c. 556, § 1, p. 2263.

83-802 Chief executive officer of Department of Health and Human Services; duties.

Pursuant to the compact as provided in section 83-801, the chief executive officer of the Department of Health and Human Services or such person as the chief executive officer may designate shall be the compact administrator and shall have the power to promulgate rules and regulations to carry out more effectively the terms of the compact. The compact administrator is hereby authorized, empowered, and directed to cooperate with all departments, agencies, and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state thereunder.

Source: Laws 1969, c. 556, § 2, p. 2271; Laws 1996, LB 1044, § 957; Laws 2007, LB296, § 806.

83-803 Compact administrator; powers.

The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of the compact. In the event that such supplementary agreements shall require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, no such agreement shall have force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service.

Source: Laws 1969, c. 556, § 3, p. 2271.

83-804 Compact administrator; arrange for payments to discharge financial obligations.

The compact administrator, with the approval of the state budget officer and the Governor, may make or arrange for any payments necessary to discharge

any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder.

Source: Laws 1969, c. 556, § 4, p. 2271.

83-805 Compact administrator; consult with family of proposed transferee; transfer; approval of court.

The compact administrator is hereby directed to consult with the immediate family of any proposed transferee and, in the case of a proposed transferee from an institution in this state to an institution in another party state, to take no final action without the approval of the court of commitment if the proposed transferee is in a state institution or facility pursuant to an order of a court.

Source: Laws 1969, c. 556, § 5, p. 2271.

83-806 Secretary of State; authorized copies; distribution.

Duly authorized copies of sections 83-801 to 83-806 shall, upon their approval be transmitted by the Secretary of State to the Governor of each state, the Attorney General and the Administrator of General Services of the United States, and the Council of State Governments.

Source: Laws 1969, c. 556, § 6, p. 2272.

ARTICLE 9

DEPARTMENT OF CORRECTIONAL SERVICES

Cross References

Facilities for committed persons, see section 83-108.02.

For other provisions relating to the Department of Correctional Services, see Chapter 81, article 1, and Chapter 83, article 1.

Incarceration work camps, see sections 83-4,142 to 83-4,147.

Nebraska Treatment and Corrections Act, see section 83-1,135.

(a) GENERAL PROVISIONS

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83-901.	Sections; purpose.
83-902.	Department of Correctional Services; seal; certification of documents.
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83-910.	Director; employees; inquiries to determine fitness for duties; investigation and report to Governor.
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- 83-915. Trust funds; investment; income; use.
- 83-915.01. Inmate Welfare and Club Accounts Fund; created; use; investment.
- 83-916. Buildings; erection; repair and improvement; contracts; bidding; procedure; exceptions; bond.
- 83-917. Reentry Cash Fund; created; use; investment.
- 83-918. Strategic plan; contents; report; appear at hearing.
- 83-919. Correctional officer; protective vest; required.
- 83-920. Reentry service center pilot programs; report.
- 83-921. Repealed. Laws 1987, LB 11, § 1.
- 83-922. Department of Correctional Services; duties; divisions enumerated.
- 83-923. Repealed. Laws 1993, LB 31, § 83.
- 83-924. Assistant director; duties, powers, and responsibilities.
- 83-924.01. Repealed. Laws 1987, LB 12, § 1.

(b) OFFICE OF JUVENILE SERVICES

- 83-925. Repealed. Laws 1994, LB 988, § 47.
- 83-925.01. Transferred to section 43-402.
- 83-925.02. Transferred to section 43-404.
- 83-925.03. Repealed. Laws 1998, LB 1073, § 179.
- 83-925.04. Repealed. Laws 1998, LB 1073, § 179.
- 83-925.05. Repealed. Laws 1998, LB 1073, § 179.
- 83-925.06. Transferred to section 43-407.
- 83-925.07. Transferred to section 43-406.
- 83-925.08. Repealed. Laws 1998, LB 1073, § 179.
- 83-925.09. Repealed. Laws 1998, LB 1073, § 179.
- 83-925.10. Repealed. Laws 1998, LB 1073, § 179.
- 83-925.11. Repealed. Laws 1998, LB 1073, § 179.
- 83-925.12. Transferred to section 43-408.
- 83-925.13. Transferred to section 43-411.
- 83-926. Repealed. Laws 1994, LB 988, § 47.
- 83-927. Repealed. Laws 1994, LB 988, § 47.
- 83-928. Repealed. Laws 1994, LB 988, § 47.
- 83-929. Repealed. Laws 1994, LB 988, § 47.
- 83-930. Repealed. Laws 1994, LB 988, § 47.

(c) DIVISION OF COMMUNITY-CENTERED SERVICES

- 83-931. Assistant director of the Division of Community-Centered Services; qualifications.
- 83-932. Division of Community-Centered Services; duties.
- 83-933. Repealed. Laws 2024, LB631, § 52.
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(d) DIVISION OF ADULT SERVICES

- 83-935. Repealed. Laws 1993, LB 31, § 83.
- 83-936. Adult Diagnostic and Evaluation Services Program; duties.
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- 83-938. Division of Adult Services; assistant director; qualifications.
- 83-939. Division of Adult Services; duties.
- 83-940. Repealed. Laws 1993, LB 31, § 83.
- 83-941. Repealed. Laws 1993, LB 31, § 83.

(e) DIVISION OF ADMINISTRATIVE SERVICES

- 83-942. Division of Administrative Services; assistant director; qualifications.
- 83-943. Division of Administrative Services; duties.
- 83-944. Repealed. Laws 1992, LB 1184, § 25.

(f) CRIMINAL DETENTION FACILITIES

- 83-945. Transferred to section 83-4,124.
- 83-946. Transferred to section 83-4,125.
- 83-947. Repealed. Laws 1978, LB 212, § 13.
- 83-948. Transferred to section 83-4,126.
- 83-948.01. Transferred to section 83-4,127.

Section

- 83-948.02. Transferred to section 83-4,128.
- 83-948.03. Transferred to section 83-4,129.
- 83-948.04. Transferred to section 83-4,130.
- 83-949. Repealed. Laws 1978, LB 212, § 13.
- 83-950. Transferred to section 83-4,131.
- 83-951. Transferred to section 83-4,132.
- 83-952. Transferred to section 83-4,133.
- 83-953. Transferred to section 83-4,134.
- 83-954. Repealed. Laws 2015, LB 2, § 1.
- 83-955. Repealed. Laws 1982, LB 592, § 2.

(g) TRANSFER OF FOREIGN OFFENDERS

- 83-956. Treaty; transfer of convicted offenders to foreign countries; Director of Correctional Services; duties.

(h) CENTRAL WAREHOUSE SYSTEM

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- 83-958. Department of Correctional Services Warehouse Revolving Fund; created; use; investment.
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(i) CORRECTIONAL SYSTEM OVERCROWDING EMERGENCY ACT

- 83-960. Act, how cited.
- 83-961. Terms, defined.
- 83-962. Correctional system overcrowding emergency; director; Board of Parole; duties.
- 83-963. Department; annual report; contents.

(j) LETHAL INJECTION

- 83-964. Sentence of death; how enforced.
- 83-965. Director of Correctional Services; written execution protocol; contents.
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- 83-967. Director of Correctional Services; administration of substances; execution team; confidentiality.
- 83-968. Method of execution declared unconstitutional; effect on sentence.
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- 83-970. Execution; persons permitted.
- 83-971. Director of Correctional Services; military force necessary to carry out punishment; inform Governor.
- 83-972. Director of Correctional Services; inflict punishment; return of proceedings; clerk of court; duty.

(k) PRISON OVERCROWDING

- 83-973. Prison Overcrowding Contingency Fund; created; use; investment; study of inmate classification.

(l) NATIONAL CAREER READINESS CERTIFICATE

- 83-974. National Career Readiness Certificate Pilot Program.

(a) GENERAL PROVISIONS

83-901 Sections; purpose.

The purpose of sections 49-617, 68-621, 72-249, 72-1302 to 72-1304, 81-101, 81-102, 81-1021, 83-101.08, 83-107.01, 83-108, 83-112, 83-135, 83-139, 83-140, 83-144, 83-145, 83-147 to 83-150, 83-153 to 83-156, 83-170 to 83-173, 83-186, 83-188, 83-443, and 83-901 to 83-916 is to establish an agency of state government for the custody, study, care, discipline, training, and treatment of persons in the correctional and detention institutions and for the study, training, and treatment of persons under the supervision of other correctional

services of the state so that they may be prepared for lawful community living. Correctional services shall be so diversified in program and personnel as to facilitate individualization of treatment.

Source: Laws 1973, LB 563, § 53; Laws 1996, LB 1044, § 958; Laws 1997, LB 307, § 228; Laws 1998, LB 1073, § 168; Laws 2007, LB256, § 14; Laws 2020, LB1148, § 15; Laws 2024, LB631, § 46.

Effective date July 19, 2024.

Cross References

Department of Correctional Services, created, see sections 81-101 and 83-171.

Director of Correctional Services, appointment, salary, qualifications, see sections 81-102 and 83-172.

83-902 Department of Correctional Services; seal; certification of documents.

The Department of Correctional Services shall adopt a seal. Copies of all records or other instruments in the department, when certified by the department as true copies and bearing the seal thereof, shall be received in any court as prima facie evidence of the original records or instruments.

Source: Laws 1973, LB 563, § 54.

83-903 Reentry program; development; reentry program administrator; purpose of program; parolees; reentry plans; department; duties.

(1) The Department of Correctional Services, in consultation with the Board of Parole, shall develop a reentry program for individuals incarcerated in a department correctional facility, individuals who have been discharged from a department correctional facility within the prior eighteen months, and parolees. The department shall hire a reentry program administrator to develop and oversee the reentry program and additional staff as needed to implement the reentry program.

(2) The purpose of the reentry program is to facilitate a standard systemwide program of reentry for individuals leaving correctional facilities or transitioning off community supervision. The primary objectives of the reentry program are to reduce recidivism, to identify, assess, and provide treatment options for individuals with mental illness, to increase public safety, and to improve the overall transition of the individual from the criminal justice system into the community.

(3) The department shall develop and implement individual, comprehensive reentry plans for parolees. Such plans shall address housing, employment, health care, substance abuse treatment, mental health services, and other essential needs to support successful community reintegration. The department shall provide necessary resources and support to parolees to facilitate their adherence to their reentry plans.

Source: Laws 2014, LB907, § 13; Laws 2018, LB258, § 1; Laws 2024, LB631, § 48.

Effective date July 19, 2024.

83-903.01 State identification card; motor vehicle operator's license; department; duties.

(1) Prior to the discharge of an individual from a facility of the Department of Correctional Services, the department shall provide such individual with an

opportunity to obtain a state identification card or renew a motor vehicle operator's license.

(2) The Office of Probation Administration may assist any such individual in obtaining a state identification card or renewing a motor vehicle operator's license. The department shall cooperate with and facilitate the office's involvement in such matter.

Source: Laws 2024, LB631, § 47.
Effective date July 19, 2024.

83-904 Vocational and Life Skills Program; created; Vocational and Life Skills Programming Fund; created; use; investment; reports.

(1) The Vocational and Life Skills Program is created within the Department of Correctional Services, in consultation with the Board of Parole. The program shall provide funding to aid in the establishment and provision of community-based vocational training and life skills training for adults who are incarcerated, formerly incarcerated, or serving a period of supervision on either probation or parole.

(2)(a) The Vocational and Life Skills Programming Fund is created. The fund shall consist of transfers authorized by the Legislature, funds donated by nonprofit entities, funds from the federal government, and funds from other sources. The fund shall be used to provide grants to community-based organizations, community colleges, federally recognized or state-recognized Indian tribes, or nonprofit organizations that provide vocational and life skills programming and services to adults and juveniles who are incarcerated, who have been incarcerated within the prior eighteen months, or who are serving a period of supervision on either probation or parole.

(b) The department, in awarding grants, shall give priority to programs, services, or training that results in meaningful employment or that provides reentry or transitional housing, wrap-around services, family support, or restorative justice programming.

(c) Any funds not distributed to community-based organizations, community colleges, federally recognized or state-recognized Indian tribes, or nonprofit organizations shall be retained by the department to be distributed on a competitive basis under the Vocational and Life Skills Program. Such funds shall not be expended by the department for any other purpose.

(d) No money in the fund shall be used for capital construction.

(e) 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.

(f) Beginning July 1, 2022, and each July 1 thereafter until July 1, 2024, the State Treasurer shall transfer five million dollars annually from the Prison Overcrowding Contingency Fund to the Vocational and Life Skills Programming Fund, on such dates as directed by the budget administrator of the budget division of the Department of Administrative Services.

(3) The department, in consultation with the Board of Parole, shall adopt and promulgate rules and regulations to carry out the Vocational and Life Skills Program. The rules and regulations shall include, but not be limited to, a plan

for evaluating the effectiveness of programs, services, and training that receive funding and a reporting process for aid recipients.

(4) The reentry program administrator shall report quarterly to the Governor and the Clerk of the Legislature beginning October 1, 2014, on the distribution and use of the aid distributed under the Vocational and Life Skills Program, including how many individuals received programming, the types of programming, the cost per individual for each program, service, or training provided, how many individuals successfully completed their programming, and information on any funds that have not been used. The report to the Clerk of the Legislature shall be submitted electronically.

Source: Laws 2014, LB907, § 14; Laws 2015, LB598, § 35; Laws 2022, LB1012, § 28; Laws 2024, LB631, § 49.
Effective date July 19, 2024.

Note: The provisions of section 83-904 as amended by Laws 2022, LB1012, section 28, that were line-item vetoed by the Governor and overridden by the Legislature became effective on April 8, 2022, and all other provisions of such section became effective on April 5, 2022.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

83-905 Department; control of adult corrections and secure youth facility.

The Department of Correctional Services shall have oversight and general control of all state adult correctional institutions and the secure youth facility. The Secure Youth Confinement Facility is a physically secure, coeducational facility designed to provide secure confinement, education, and treatment only for serious and chronic juvenile offenders who have been committed to the Department of Correctional Services for secure care.

Source: Laws 1973, LB 563, § 57; Laws 1974, LB 994, § 1; Laws 1980, LB 794, § 4; Laws 1993, LB 31, § 65; Laws 1994, LB 988, § 40; Laws 1997, LB 882, § 9.

83-905.01 Repealed. Laws 2002, Second Spec. Sess., LB 1, § 15.

83-906 Staffing analysis; report.

The Department of Correctional Services shall conduct a department-wide staffing analysis of all positions, including a specific analysis regarding behavioral health staffing, in an effort to make a comprehensive determination of staffing needs. Concurrently, the department shall make short-term recommendations for needed staffing, including, but not limited to, facility administrative and support positions, in order to improve the effectiveness of staffing.

The staffing analysis shall be completed and a report of its findings and subsequent staffing recommendations submitted electronically to the Legislature no later than September 15, 2020. Subsequent updates of the staffing analysis shall be completed and shall be submitted electronically to the Legislature on or before September 15, 2026, and at least every six years thereafter or more frequently at the discretion of the department.

Source: Laws 2018, LB841, § 55.

83-907 Correctional system overcrowding emergency; Department of Correctional Services and Board of Parole; plan; contents; report.

To ensure public safety in the event a correctional system overcrowding emergency is ever declared or determined to exist, the Department of Correctional Services and the Board of Parole shall submit to the Legislature a proposed plan which describes the process of implementing the accelerated parole review process required by section 83-962. The plan shall include, but not be limited to:

- (1) The process by which the Director of Correctional Services shall certify that an overcrowding emergency exists;
- (2) The process by which the department shall prepare and submit to the board a listing of parole-eligible committed offenders to be considered or reconsidered accelerated for parole;
- (3) Any statutory changes required or funding necessary to accommodate such process;
- (4) The process by which the board shall examine committed offenders during the accelerated parole review;
- (5) A review of the analysis for granting parole pursuant to section 83-1,114 and whether this process and the factors set out in such section are sufficient or adequate for the accelerated parole review process required by section 83-962;
- (6) A review of the process of supervising parolees released pursuant to the accelerated review process and the necessary means to ensure public safety; and
- (7) Any statutory changes required or resources necessary to accommodate the existence of an overcrowding emergency status and to facilitate the potential requisite gubernatorial declaration of such emergency.

The plan shall be submitted electronically in a report to the Legislature on or before December 1, 2018.

Source: Laws 2018, LB841, § 56.

83-908 Department of Correctional Services; estimate of appropriations; prepare.

The Department of Correctional Services shall prepare an estimate of the appropriations necessary for the support and needed improvements of the institutions under its charge, and a report of their operation during the preceding year, for the use of the Legislature. The estimate shall be printed, and may include a report of the results of investigation of methods of institution management and of treatment of patients and inmates, with suggestions for the betterment of any or all conditions.

Source: Laws 1973, LB 563, § 60.

83-909 Department; gather information; encourage scientific investigation.

The Department of Correctional Services shall gather demographic information for statistical reporting purposes, shall encourage scientific investigation of the treatment of delinquency and crime, shall provide forms for statistical returns to be made by the institutions in their annual reports, and shall supervise the methods of care, treatment, education, and improvement of the inmates of the institutions under its control.

Source: Laws 1973, LB 563, § 61; Laws 1979, LB 322, § 70; Laws 1981, LB 545, § 46; Laws 1993, LB 31, § 66.

83-909.01 Repealed. Laws 1993, LB 31, § 83.**83-910 Director; employees; inquiries to determine fitness for duties; investigation and report to Governor.**

The Director of Correctional Services may examine any employee of the Department of Correctional Services and make such inquiries as will determine the employee's fitness for his or her respective duties, and the director shall investigate and report to the Governor any abuses or wrongs alleged to exist in the department.

Source: Laws 1973, LB 563, § 62; Laws 1993, LB 31, § 67.

83-911 Director; information for Legislature.

The Director of Correctional Services shall be prepared to give any information desired by the Legislature concerning the institutions under his control, and his administration shall be subject to examination under oath by a legislative committee touching any matter in regard to which the Legislature may desire information concerning the condition of the institutions, their inmates, and the performance of their duties by the director or his employees. The committee may call and examine under oath any other persons as witnesses in such investigation. Such examinations shall be conducted in the manner and subject to the provisions of section 83-114.

Source: Laws 1973, LB 563, § 63.

83-911.01 Transferred to section 83-925.11.**83-912 Director, employee; no gift or gratuity; violation; removal from office.**

Neither the Director of Correctional Services nor any employee of the Department of Correctional Services shall receive from any person, firm, or corporation having dealings with the department, or from any employee or representative of such person, firm, or corporation, any gift or gratuity, either directly or indirectly, for himself or for any other person. The director or any employee who receives such a gift or gratuity shall be deemed guilty of bribery under section 28-917 and shall be removed from office.

Source: Laws 1973, LB 563, § 64; Laws 1978, LB 748, § 48.

83-913 Cash received; remit to State Treasurer; report to department.

All money derived from any source in any institution controlled by the Department of Correctional Services shall be remitted to the State Treasurer by the proper executive officer on the first day of each month. Detailed reports showing the source of all money received shall be made to the department every thirty days.

Source: Laws 1973, LB 563, § 65.

83-913.01 Department of Correctional Services Facility Cash Fund; created; how funded; investment; disbursements; how made.

(1) There is hereby created the Department of Correctional Services Facility Cash Fund.

Except as otherwise provided, all money derived from any source in any facility under the supervision of the Department of Correctional Services shall

be remitted to the State Treasurer in accordance with the policies and procedures established by the Director of Correctional Services for credit to the fund. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Department of Correctional Services Facility Cash Fund available for investment may be invested pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) All disbursements from the fund shall be made by the Director of Administrative Services by warrants drawn on the fund only upon certification of expenses by the chief executive officer of the appropriate facility within the Department of Correctional Services and upon presentation of proper vouchers for such expenses by the Director of Correctional Services or his or her authorized agent.

Source: Laws 1976, LB 869, § 1; Laws 1993, LB 31, § 68; Laws 1994, LB 1066, § 130; Laws 2009, First Spec. Sess., LB3, § 89.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

83-914 Emergency Revolving Fund; funding; accounting.

An Emergency Revolving Fund, not to exceed six thousand dollars for any one institution or the central office of the Department of Correctional Services, upon order of the Director of Correctional Services, shall be drawn from the State Treasurer, to be used by the chief executive officer of each institution or the central office as an emergency cash fund. The fund shall be drawn from the general maintenance appropriation for the director. An accounting of such fund shall be made by each executive officer once each month to the director.

Source: Laws 1973, LB 563, § 66; Laws 1976, LB 581, § 2.

83-915 Trust funds; investment; income; use.

The Department of Correctional Services shall invest any surplus trust funds belonging to inmates in its custody with the state investment officer. The interest accruing from any investments shall be credited to the Inmate Welfare and Club Accounts Fund created under section 83-915.01. The department shall also provide inmates with the option of having an interest-earning savings account and shall notify the inmates of such option and the terms of such account.

Source: Laws 1973, LB 563, § 67; Laws 1980, LB 698, § 1; Laws 2002, LB 604, § 1.

83-915.01 Inmate Welfare and Club Accounts Fund; created; use; investment.

The Inmate Welfare and Club Accounts Fund is created. The fund shall consist of revenue from soft drinks sold to inmates in the custody of the Department of Correctional Services, including proceeds from recycling cans or other containers containing such soft drinks, profit from departmental canteens, interest earned by the fund, interest on inmate trust funds pursuant to section 83-915, or other revenue at the department's discretion. The fund shall be used to provide recreational activities and equipment for inmates at all of the department's correctional facilities. The fund shall be administered by the

Director of Correctional Services or his or her designee. 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 2002, LB 604, § 2; Laws 2015, LB605, § 107.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

83-916 Buildings; erection; repair and improvement; contracts; bidding; procedure; exceptions; bond.

(1) The Department of Correctional Services shall have general charge of the erection of new buildings, the repair and improvement of buildings, including fire escapes, and the improvement of grounds.

(2) Buildings and other improvements costing more than fifty thousand dollars, exclusive of equipment not germane to construction and building material made in the institution, shall be (a) constructed under the general charge of the department as provided in subsection (1) of this section and (b) let by contract to the lowest responsible bidder after proper advertisement as set forth in subsection (5) of this section, except that buildings costing more than fifty thousand dollars, such as shops, warehouses, or a cannery, when declared necessary by the department and to be constructed on the grounds of any Department of Correctional Services adult correctional facility, may be constructed by the use of inmate labor. Any construction by inmate labor shall have the approval of the department, the warden, and the chief engineer of the department.

(3) Inmate labor or the labor of state charges shall be employed, whenever the department deems it practicable, in all construction, repairs, and improvements at state institutions.

(4) The successful bidder at the letting referred to in subsection (2) of this section shall enter into a formal contract with the department, prepared as provided for by subsection (5) of this section, and shall furnish a bond for the faithful performance of his or her contract, except that a performance bond shall not be required for any project which has a total cost of one hundred thousand dollars or less unless the department includes a bond requirement in the specifications for the project.

(5) When contracts are to be let by the department as provided for by subsection (2) of this section, advertisements shall be published in accordance with rules and regulations adopted and promulgated by the state building division of the Department of Administrative Services stating that sealed proposals will be received by the Department of Correctional Services at its office on the date therein stated for the furnishing of materials, the construction of buildings, or the making of repairs or improvements and that plans and specifications can be seen at the office of the department. All bids or proposals shall be accompanied by a certified check or bid bond in a sum fixed by the department and payable thereto. All such contracts shall be awarded to the lowest responsible bidder, but the right shall be reserved to reject any and all

bids. Whenever any material described in any contract can be obtained from any state institution, the department shall exclude it from such a contract.

Source: Laws 1973, LB 563, § 68; Laws 1990, LB 257, § 6; Laws 1993, LB 31, § 69; Laws 1995, LB 530, § 18; Laws 2007, LB256, § 15.

83-917 Reentry Cash Fund; created; use; investment.

The Reentry Cash Fund is created. The fund shall be administered by the Department of Correctional Services. The State Treasurer shall credit funds remitted pursuant to sections 33-157 and 83-184 and donations or contributions from public or private sources to the Reentry Cash Fund. The fund shall be used by the department for tuition, fees, and other costs associated with reentry and reintegration programs offered to offenders that are placed in the incarceration work camp. 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, LB510, § 6.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

83-918 Strategic plan; contents; report; appear at hearing.

(1) For each biennium, the Department of Correctional Services shall, as part of the appropriations request process pursuant to subsection (1) of section 81-132, include a strategic plan that identifies the main purpose or purposes of each program, verifiable and auditable key goals that the department believes are fair measures of its progress in meeting each program's main purpose or purposes, and benchmarks for improving performance on the key goals. The department shall also report whether the benchmarks are being met and, if not, the expected timeframes for meeting them.

(2) On or before September 15 of each year, the Department of Correctional Services shall report electronically to the Judiciary Committee of the Legislature and the Appropriations Committee of the Legislature on the progress towards the key goals identified pursuant to this section that occurred in the previous twelve months. Upon request, the department shall appear at a joint hearing of the Judiciary Committee and Appropriations Committee and present the report.

Source: Laws 2015, LB33, § 3; Laws 2016, LB1092, § 11; Laws 2023, LB157, § 17.

83-919 Correctional officer; protective vest; required.

The Department of Correctional Services shall provide each correctional officer, as part of the standard uniform, with a protective vest designed to protect against edged weapons and stabbings. Each such vest shall be fitted to the officer.

Source: Laws 2023, LB50, § 58.

83-920 Reentry service center pilot programs; report.

(1) Beginning October 1, 2024, the Department of Correctional Services shall electronically submit a quarterly report to the Judiciary Committee of the

Legislature and the Appropriations Committee of the Legislature regarding any reentry service center pilot programs being conducted by the department. The report shall include:

(a) Information regarding residential substance abuse pilot programs, including rates of successful and unsuccessful completion by participants and information on the long-term outcomes of program participants;

(b) Information regarding parolees receiving financial assistance for transitional housing, including how long parolees are receiving such assistance or using such housing, success rates of parolees while in transitional housing, and long-term outcomes for such parolees; and

(c) Information on the number of parolees who submit more than one reentry transition living plan to the board.

(2) The report shall redact all personal identifying information of parolees.

Source: Laws 2024, LB631, § 20.
Effective date July 19, 2024.

83-921 Repealed. Laws 1987, LB 11, § 1.

83-922 Department of Correctional Services; duties; divisions enumerated.

The Department of Correctional Services shall fulfill those functions of state government relating to the custody, study, care, discipline, training, and treatment of persons in correctional and detention institutions. There shall be separate divisions within the department to assist in fulfilling these functions. The divisions shall be the Division of Community-Centered Services, the Division of Administrative Services, and the Division of Adult Services. The Director of Correctional Services shall appoint an assistant director as head of each division and may remove or change the powers and responsibilities of the assistant director of any of the divisions at his or her discretion.

Source: Laws 1975, LB 417, § 1; Laws 1993, LB 31, § 70; Laws 1994, LB 988, § 42; Laws 1996, LB 1044, § 959.

83-923 Repealed. Laws 1993, LB 31, § 83.

83-924 Assistant director; duties, powers, and responsibilities.

Subject to the supervision and approval of the Director of Correctional Services, each assistant director shall have the following duties, powers, and responsibilities:

(1) To coordinate and direct all programs and facilities under his or her jurisdiction;

(2) To select and manage such staff and supervise the operation of such equipment as he or she may require;

(3) To make such revisions to internal systems in each division as may be necessary to promote economy and facilitate maximum utilization of existing correctional services and facilities;

(4) To cause any existing program and facilities to be utilized by or merged with those of any other division in order to provide for greater efficiency or achieve any economic advantage;

(5) To provide the Legislature and the Governor technical assistance, advice, and information concerning administrative operations within his or her division; and

(6) To exercise all powers and perform all duties necessary and proper in carrying out his or her responsibilities.

Source: Laws 1975, LB 417, § 3; Laws 1993, LB 31, § 71; Laws 2012, LB782, § 218; Laws 2013, LB222, § 41.

83-924.01 Repealed. Laws 1987, LB 12, § 1.

(b) OFFICE OF JUVENILE SERVICES

83-925 Repealed. Laws 1994, LB 988, § 47.

83-925.01 Transferred to section 43-402.

83-925.02 Transferred to section 43-404.

83-925.03 Repealed. Laws 1998, LB 1073, § 179.

83-925.04 Repealed. Laws 1998, LB 1073, § 179.

83-925.05 Repealed. Laws 1998, LB 1073, § 179.

83-925.06 Transferred to section 43-407.

83-925.07 Transferred to section 43-406.

83-925.08 Repealed. Laws 1998, LB 1073, § 179.

83-925.09 Repealed. Laws 1998, LB 1073, § 179.

83-925.10 Repealed. Laws 1998, LB 1073, § 179.

83-925.11 Repealed. Laws 1998, LB 1073, § 179.

83-925.12 Transferred to section 43-408.

83-925.13 Transferred to section 43-411.

83-926 Repealed. Laws 1994, LB 988, § 47.

83-927 Repealed. Laws 1994, LB 988, § 47.

83-928 Repealed. Laws 1994, LB 988, § 47.

83-929 Repealed. Laws 1994, LB 988, § 47.

83-930 Repealed. Laws 1994, LB 988, § 47.

(c) DIVISION OF COMMUNITY-CENTERED SERVICES

83-931 Assistant director of the Division of Community-Centered Services; qualifications.

The Director of Correctional Services shall appoint as assistant director of the Division of Community-Centered Services any person who has an appropriate academic background and adequate training and experience.

Source: Laws 1975, LB 417, § 9; Laws 1993, LB 31, § 77; Laws 2015, LB598, § 36.

83-932 Division of Community-Centered Services; duties.

The Division of Community-Centered Services shall:

- (1) Coordinate all adult parole programs and services in the state and supervise the administration of such programs and services;
- (2) Cooperate with the Division of Adult Services in the coordination of volunteer programs in the adult correctional facilities;
- (3) Coordinate and supervise community educational programs to increase community awareness and understanding of the community rehabilitative programs of the division; and
- (4) Perform all duties necessary to carry out the provisions of this section.

Source: Laws 1975, LB 417, § 10; Laws 1993, LB 31, § 78.

83-933 Repealed. Laws 2024, LB631, § 52.**83-934 Repealed. Laws 1993, LB 31, § 83.**

(d) DIVISION OF ADULT SERVICES

83-935 Repealed. Laws 1993, LB 31, § 83.**83-936 Adult Diagnostic and Evaluation Services Program; duties.**

There is hereby established the Adult Diagnostic and Evaluation Services Program within the Division of Adult Services. Subject to the supervision of the assistant director of the division, the program shall:

- (1) Establish programs for the observation, testing, and examination, both mental and physical, of adult individuals within the jurisdiction of the Department of Correctional Services;
- (2) Recommend treatment for and disposition of adult individuals within the jurisdiction of the department; and
- (3) Cooperate with the division to establish and maintain rehabilitation programs for individuals committed or referred to any institution within the division.

Source: Laws 1975, LB 417, § 14; Laws 1993, LB 31, § 80.

83-937 Repealed. Laws 1993, LB 31, § 83.**83-938 Division of Adult Services; assistant director; qualifications.**

The Director of Correctional Services shall appoint as assistant director of the Division of Adult Services any person who shall have an appropriate background in adult institutional correctional programs and adequate training and experience in correctional administrative work.

Source: Laws 1975, LB 417, § 15.

83-939 Division of Adult Services; duties.

The Division of Adult Services shall:

- (1) Establish, administer, and supervise all correctional facilities designed to house adult offenders;

(2) Establish and maintain the Adult Diagnostic and Evaluation Services Program;

(3) Develop and coordinate with the assistance of the Division of Community-Centered Services, volunteer programs within adult correctional facilities; and

(4) Perform any other duties assigned by the Director of Correctional Services.

Source: Laws 1975, LB 417, § 16; Laws 1986, LB 481, § 2; Laws 1993, LB 31, § 81.

83-940 Repealed. Laws 1993, LB 31, § 83.

83-941 Repealed. Laws 1993, LB 31, § 83.

(e) DIVISION OF ADMINISTRATIVE SERVICES

83-942 Division of Administrative Services; assistant director; qualifications.

The Director of Correctional Services shall appoint as assistant director of the Division of Administrative Services any person who shall have a thorough academic background and practical experience in correctional administrative work.

Source: Laws 1975, LB 417, § 20.

83-943 Division of Administrative Services; duties.

The Division of Administrative Services shall coordinate and supervise services available to all divisions of the Department of Correctional Services from a centralized location within the department. Such services shall include:

(1) Providing technical assistance on budget preparation, accounting procedures, federal funding administration, procurement, and inventory;

(2) Providing assistance in the total concept of human resource management involving staffing, recruitment, and evaluation and establishing and maintaining inservice training programs for existing programs as well as future programs;

(3) Providing technical assistance in the planning and development of new capital construction projects and supervising maintenance functions for all facilities within the department;

(4) Providing data collection and analysis from Nebraska and other states to assist the director in the formulation of current and future corrections policy and to justify budgetary needs to implement policy decisions, and developing standards for evaluation of corrections programs to better evaluate social worth and budgetary performance;

(5) Design and implementation of a comprehensive data record system for the disposition of the criminal records of adult inmates in the state; and

(6) Performance of other duties assigned by the Director of Correctional Services.

Source: Laws 1975, LB 417, § 21; Laws 1993, LB 31, § 82.

83-944 Repealed. Laws 1992, LB 1184, § 25.

(f) CRIMINAL DETENTION FACILITIES

- 83-945** Transferred to section 83-4,124.
- 83-946** Transferred to section 83-4,125.
- 83-947** Repealed. Laws 1978, LB 212, § 13.
- 83-948** Transferred to section 83-4,126.
- 83-948.01** Transferred to section 83-4,127.
- 83-948.02** Transferred to section 83-4,128.
- 83-948.03** Transferred to section 83-4,129.
- 83-948.04** Transferred to section 83-4,130.
- 83-949** Repealed. Laws 1978, LB 212, § 13.
- 83-950** Transferred to section 83-4,131.
- 83-951** Transferred to section 83-4,132.
- 83-952** Transferred to section 83-4,133.
- 83-953** Transferred to section 83-4,134.
- 83-954** Repealed. Laws 2015, LB 2, § 1.
- 83-955** Repealed. Laws 1982, LB 592, § 2.

(g) TRANSFER OF FOREIGN OFFENDERS

83-956 Treaty; transfer of convicted offenders to foreign countries; Director of Correctional Services; duties.

If a treaty in effect between the United States and a foreign country provides for the transfer or exchange of convicted offenders to the country of which they are citizens or nationals, the Governor may, on behalf of the state and subject to the terms of the treaty, authorize the Director of Correctional Services to consent to the transfer or exchange of offenders and take any other action necessary to initiate the participation of this state in the treaty.

Source: Laws 1980, LB 808, § 1.

(h) CENTRAL WAREHOUSE SYSTEM

83-957 Central warehouse system; authorized.

The Department of Correctional Services is authorized to develop a central warehouse system for the ordering, purchasing, delivering, and billing for facilities and programs within the Department of Correctional Services of items stocked in the central warehouse system. The central warehouse system shall operate separately and distinctly from other department revolving-funded operations.

Source: Laws 1999, LB 873, § 8.

83-958 Department of Correctional Services Warehouse Revolving Fund; created; use; investment.

There is hereby created the Department of Correctional Services Warehouse Revolving Fund. This fund shall only be used for the purchase of items to be resold at cost to facilities and programs within the Department of Correctional Services. Facilities and programs within the department receiving items from the central warehouse system shall be billed for such goods at the time of delivery. All receipts from the items sold through the central warehouse system shall be deposited in the fund. The fund shall be administered by the Director of Correctional Services. 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 1999, LB 873, § 9.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

83-959 Separate budget programs required.

The budget division of the Department of Administrative Services shall administratively create a separate budget program classification within the Department of Correctional Services to properly account for revenue and disbursements of items stocked and sold by the central warehouse system. The Department of Correctional Services shall track the operating expenses of the central warehouse system within a separate budget subprogram within the central office budget.

Source: Laws 1999, LB 873, § 10.

(i) CORRECTIONAL SYSTEM OVERCROWDING EMERGENCY ACT

83-960 Act, how cited.

Sections 83-960 to 83-963 shall be known and may be cited as the Correctional System Overcrowding Emergency Act.

Source: Laws 2003, LB 46, § 46.

83-961 Terms, defined.

For purposes of the Correctional System Overcrowding Emergency Act:

- (1) Board means the Board of Parole;
- (2) Committed offender has the definition found in section 83-170;
- (3) Department means the Department of Correctional Services;
- (4) Design capacity means the total designed bed space in facilities operated by the department, as certified by the director;
- (5) Director means the Director of Correctional Services;
- (6) Operational capacity means one hundred twenty-five percent of design capacity;
- (7) Population means the actual number of inmates assigned to facilities operated by the department and does not include inmates assigned to county-operated correctional institutions; and
- (8) Violent offense means any one or more of the following crimes: Murder in the first degree, murder in the second degree, manslaughter, assault in the first degree, kidnapping, sexual assault in the first degree, or robbery.

Source: Laws 2003, LB 46, § 47.

83-962 Correctional system overcrowding emergency; director; Board of Parole; duties.

(1) A correctional system overcrowding emergency shall exist whenever the director certifies that the department's inmate population is over one hundred forty percent of design capacity. The director shall so certify within thirty days after the date on which the population first exceeds one hundred forty percent of design capacity.

(2) During a correctional system overcrowding emergency, the board shall immediately consider or reconsider committed offenders eligible for parole who have not been released on parole.

(3) Upon such consideration or reconsideration, and for all other consideration of committed offenders eligible for parole while the correctional system overcrowding emergency is in effect, the board shall order the release of each committed offender unless it is of the opinion that such release should be deferred because:

(a) The board has determined that it is more likely than not that the committed offender will not conform to the conditions of parole;

(b) The board has determined that release of the committed offender would have a very significant and quantifiable effect on institutional discipline; or

(c) The board has determined that there is a very substantial risk that the committed offender will commit a violent act against a person.

(4) In making the determination regarding the risk that a committed offender will not conform to the conditions of parole, the board shall take into account the factors set forth in subsection (2) of section 83-1,114 and shall comply with the requirements of subsection (3) of section 83-1,114 and section 83-196.01.

(5) The board shall continue granting parole to offenders under this section until the director certifies that the population is at operational capacity. The director shall so certify within thirty days after the date on which the population first reaches operational capacity.

Source: Laws 2003, LB 46, § 48; Laws 2015, LB598, § 38; Laws 2024, LB631, § 50.
Effective date July 19, 2024.

83-963 Department; annual report; contents.

The department shall prepare an annual report on committed offenders who are paroled or granted controlled release pursuant to the Correctional System Overcrowding Emergency Act. The report shall summarize each such former committed offender's behavior since parole and generally evaluate his or her success or lack of success in becoming a law-abiding member of society. The annual report shall be filed electronically with the Executive Board of the Legislative Council on or before December 31, with the first such report submitted by December 31 of the first year that committed offenders are paroled pursuant to the act. A notice of the filing of the report shall be submitted electronically to each member of the Legislature when the annual report is filed with the Executive Board.

Source: Laws 2003, LB 46, § 49; Laws 2012, LB782, § 219.

(j) LETHAL INJECTION

83-964 Sentence of death; how enforced.

A sentence of death shall be enforced by the intravenous injection of a substance or substances in a quantity sufficient to cause death. The lethal substance or substances shall be administered in compliance with an execution protocol created and maintained by the Department of Correctional Services.

Source: Laws 1973, LB 268, § 17; R.S.1943, (2008), § 29-2532; Laws 2009, LB36, § 9; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 83-964 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

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

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

83-965 Director of Correctional Services; written execution protocol; contents.

(1) A sentence of death shall be enforced by the Director of Correctional Services. Upon receipt of an execution warrant, the director shall proceed at the time named in the warrant to enforce the sentence, unless the director is informed that enforcement of the sentence has been stayed by competent judicial authority, the sentence has been commuted, or the conviction has been pardoned.

(2) The director shall create, modify, and maintain a written execution protocol describing the process and procedures by which an execution will be carried out consistent with this section. The director shall (a) select the substance or substances to be employed in an execution by lethal injection, (b) create a documented process for obtaining the necessary substances, (c) designate an execution team composed of one or more executioners and any other personnel deemed necessary to effectively and securely conduct an execution, (d) describe the respective responsibilities of each member of the execution team, (e) describe the training required of each member of the execution team, and (f) perform or authorize any other details deemed necessary and appropriate by the director.

(3) The execution protocol shall require that the first or only substance injected be capable of rendering the convicted person unconscious and that a determination sufficient to reasonably verify that the convicted person is unconscious be made before the administration of any additional substances, if any.

Source: Laws 2009, LB36, § 10; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 83-965 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

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

83-966 Lethal injection; participation of professional; how treated under other law.

Notwithstanding any other provision of law:

(1) Any prescription, preparation, compounding, dispensing, obtaining, or administration of the substances deemed necessary to perform a lethal injection shall not constitute the practice of medicine or any other profession relating to health care which is subject by law to regulation, licensure, or certification;

(2) A pharmacist or pharmaceutical supplier may dispense the designated substances, without a prescription, to the Director of Correctional Services or the director's designee upon production of a written request from the director for the designated substances necessary to conduct an execution;

(3) Obtaining, preparing, compounding, dispensing, and administering the substance or substances designated by the execution protocol does not violate the Uniform Controlled Substances Act or sections 71-2501 to 71-2512; and

(4) If a person who is a member of the execution team is licensed by a board or department, the licensing board or department shall not censure, reprimand, suspend, revoke, or take any other disciplinary action against that person's license as a result of that person's participation in a court-ordered execution.

Source: Laws 2009, LB36, § 11; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 83-966 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

Cross References

Uniform Controlled Substances Act, see section 28-401.01.

83-967 Director of Correctional Services; administration of substances; execution team; confidentiality.

(1) The Director of Correctional Services may designate any person qualified under the terms of the execution protocol to administer to the convicted person the substances necessary to comply with the execution protocol.

(2) The identity of all members of the execution team, and any information reasonably calculated to lead to the identity of such members, shall be confidential and exempt from disclosure pursuant to sections 84-712 to 84-712.09 and shall not be subject to discovery or introduction as evidence in any civil proceeding unless extraordinary good cause is shown and a protective order is issued by a district court limiting dissemination of such information.

Source: Laws 2009, LB36, § 12; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 83-967 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

Subsection (2) of this section does not provide a complete exception to the public records statutes and is reasonably and ordinarily understood as an exemption like those under section 84-712.05. *State ex rel. BH Media Group v. Frakes*, 305 Neb. 780, 943 N.W.2d 231 (2020).

Under the plain and unambiguous language of subsection (2) of this section, the Legislature intended to prevent the disclosure of the identities of execution team members. *State ex rel. BH Media Group v. Frakes*, 305 Neb. 780, 943 N.W.2d 231 (2020).

83-968 Method of execution declared unconstitutional; effect on sentence.

No death sentence shall be voided or reduced as a result of a determination that a method of execution was declared unconstitutional under the Constitution of Nebraska or the Constitution of the United States. In any case in which an execution method is declared unconstitutional, the death sentence shall remain in force until the sentence can be lawfully executed by any valid method of execution.

Source: Laws 2009, LB36, § 13; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 83-968 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

83-969 Punishment inflicted; exclude view of persons; exception.

When any convicted person is sentenced to death, such punishment shall be inflicted at a Department of Correctional Services facility under the supervision of the Director of Correctional Services and in such a manner as to exclude the view of all persons except those permitted to be present as provided in sections 83-970 and 83-971.

Source: Laws 1973, LB 268, § 18; R.S.1943, (2008), § 29-2533; Laws 2009, LB36, § 14; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 83-969 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

83-970 Execution; persons permitted.

Besides the Director of Correctional Services and those persons required to be present under the execution protocol, the following persons, and no others, except as provided in section 83-971, may be present at the execution: (1) The member of the clergy in attendance upon the convicted person; (2) no more than three persons selected by the convicted person; (3) no more than three persons representing the victim or victims of the crime; and (4) such other persons, not exceeding six in number, as the director may designate. At least two persons designated by the director shall be professional members of the Nebraska news media.

Source: Laws 1973, LB 268, § 19; R.S.1943, (2008), § 29-2534; Laws 2009, LB36, § 15; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 83-970 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

83-971 Director of Correctional Services; military force necessary to carry out punishment; inform Governor.

Whenever the Director of Correctional Services shall deem the presence of a military force necessary to carry into effect the provisions of sections 83-964 and 83-969, he or she shall make the fact known to the Governor of the state, who is hereby authorized to call out so much of the military force of the state as in his or her judgment may be necessary for the purpose.

Source: Laws 1973, LB 268, § 20; R.S.1943, (2008), § 29-2535; Laws 2009, LB36, § 16; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 83-971 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

83-972 Director of Correctional Services; inflict punishment; return of proceedings; clerk of court; duty.

Whenever the Director of Correctional Services shall inflict the punishment of death upon a convicted person, in obedience to the command of the court, he or she shall make return of his or her proceedings as soon as may be to the

clerk of the court where the conviction was had, and the clerk shall subjoin the return to the record of conviction and sentence.

Source: Laws 1973, LB 268, § 21; R.S.1943, (2008), § 29-2536; Laws 2009, LB36, § 17; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 83-972 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

(k) PRISON OVERCROWDING

83-973 Prison Overcrowding Contingency Fund; created; use; investment; study of inmate classification.

The Prison Overcrowding Contingency Fund is created. The State Treasurer shall transfer fifteen million dollars from the General Fund to the Prison Overcrowding Contingency Fund on or before July 15, 2021, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services. It is the intent of the Legislature that these funds remain in the Prison Overcrowding Contingency Fund until sufficient details are provided to the Legislature regarding plans to reduce prison overcrowding, except that (1) the fund may be used for purposes of a study of inmate classification within the Department of Correctional Services and (2) transfers may be made to the Vocational and Life Skills Programming Fund at the direction of the Legislature. Any money in the Prison Overcrowding Contingency 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 2021, LB384, § 28; Laws 2022, LB1012, § 29.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

(l) NATIONAL CAREER READINESS CERTIFICATE

83-974 National Career Readiness Certificate Pilot Program.

(1) The National Career Readiness Certificate Pilot Program is created. The program shall be administered by the Department of Correctional Services. The department shall collaborate with enterprises offering justice-involved individuals the chance to acquire the National Career Readiness Certificate, a broadly recognized credential substantiating key skills across various industries and roles.

(2) The department shall evaluate the success of the program for each fiscal year and electronically submit a report of such evaluation to the Clerk of the Legislature on or before June 30, 2025, and on or before June 30, 2026.

(3) It is the intent of the Legislature to appropriate five hundred thousand dollars from the General Fund for each of fiscal years 2024-25 and 2025-26 to the department for expenditure and distribution to aid in carrying out the pilot program.

Source: Laws 2024, LB631, § 45.
Effective date July 19, 2024.

MENTAL HEALTH COMMITMENT AND RELEASE

ARTICLE 10

MENTAL HEALTH COMMITMENT AND RELEASE

Section	
83-1001.	Transferred to section 71-902.
83-1002.	Transferred to section 71-903.
83-1003.	Repealed. Laws 2004, LB 1083, § 149.
83-1004.	Transferred to section 71-905.
83-1005.	Transferred to section 71-904.
83-1006.	Transferred to section 71-914.
83-1007.	Transferred to section 71-911.
83-1007.01.	Transferred to section 71-909.
83-1008.	Repealed. Laws 2004, LB 1083, § 149.
83-1009.	Transferred to section 71-908.
83-1009.01.	Transferred to section 71-907.
83-1009.02.	Transferred to section 71-913.
83-1010.	Transferred to section 71-906.
83-1011.	Transferred to section 71-910.
83-1012.	Repealed. Laws 2004, LB 1083, § 149.
83-1013.	Repealed. Laws 2004, LB 1083, § 149.
83-1014.	Transferred to section 71-912.
83-1015.	Repealed. Laws 2004, LB 1083, § 149.
83-1016.	Transferred to section 71-917.
83-1017.	Transferred to section 71-915.
83-1018.	Repealed. Laws 2004, LB 1083, § 149.
83-1019.	Transferred to section 71-918.
83-1020.	Transferred to section 71-919.
83-1021.	Repealed. Laws 2004, LB 1083, § 149.
83-1022.	Repealed. Laws 2004, LB 1083, § 149.
83-1023.	Repealed. Laws 2004, LB 1083, § 149.
83-1024.	Transferred to section 71-921.
83-1025.	Repealed. Laws 2004, LB 1083, § 149.
83-1026.	Transferred to section 71-922.
83-1027.	Transferred to section 71-923.
83-1028.	Repealed. Laws 2004, LB 1083, § 149.
83-1029.	Repealed. Laws 2004, LB 1083, § 149.
83-1030.	Repealed. Laws 1981, LB 95, § 30.
83-1031.	Repealed. Laws 1981, LB 95, § 30.
83-1032.	Repealed. Laws 1981, LB 95, § 30.
83-1033.	Repealed. Laws 1981, LB 95, § 30.
83-1034.	Repealed. Laws 1981, LB 95, § 30.
83-1035.	Transferred to section 71-924.
83-1036.	Repealed. Laws 2004, LB 1083, § 149.
83-1037.	Transferred to section 71-925.
83-1038.	Repealed. Laws 2004, LB 1083, § 149.
83-1039.	Transferred to section 71-926.
83-1040.	Repealed. Laws 2004, LB 1083, § 149.
83-1041.	Transferred to section 71-927.
83-1042.	Transferred to section 71-928.
83-1043.	Transferred to section 71-930.
83-1044.	Transferred to section 71-931.
83-1044.01.	Repealed. Laws 2004, LB 1083, § 149.
83-1045.	Transferred to section 71-932.
83-1045.01.	Transferred to section 71-933.
83-1045.02.	Transferred to section 71-934.
83-1046.	Transferred to section 71-935.
83-1047.	Transferred to section 71-943.
83-1048.	Transferred to section 71-944.
83-1049.	Transferred to section 71-945.
83-1050.	Transferred to section 71-946.
83-1051.	Transferred to section 71-947.

Section	
83-1052.	Transferred to section 71-948.
83-1053.	Transferred to section 71-949.
83-1054.	Transferred to section 71-950.
83-1055.	Transferred to section 71-951.
83-1056.	Transferred to section 71-952.
83-1057.	Transferred to section 71-953.
83-1058.	Transferred to section 71-954.
83-1059.	Transferred to section 71-955.
83-1060.	Transferred to section 71-956.
83-1061.	Transferred to section 71-957.
83-1062.	Transferred to section 71-958.
83-1063.	Repealed. Laws 1981, LB 95, § 30.
83-1064.	Transferred to section 71-960.
83-1065.	Repealed. Laws 2004, LB 1083, § 149.
83-1066.	Transferred to section 71-959.
83-1067.	Repealed. Laws 2004, LB 1083, § 149.
83-1068.	Transferred to section 71-961.
83-1069.	Transferred to section 71-962.
83-1070.	Repealed. Laws 2004, LB 1083, § 149.
83-1071.	Transferred to section 71-939.
83-1072.	Transferred to section 71-940.
83-1073.	Transferred to section 71-941.
83-1074.	Transferred to section 71-942.
83-1075.	Repealed. Laws 1982, LB 592, § 2.
83-1076.	Repealed. Laws 1982, LB 592, § 2.
83-1077.	Repealed. Laws 1982, LB 592, § 2.
83-1077.01.	Repealed. Laws 2004, LB 1083, § 149.
83-1078.	Transferred to section 71-901.
83-1079.	Transferred to section 71-937.
83-1080.	Transferred to section 71-938.
83-1081.	Repealed. Laws 1992, LB 523, § 18.

83-1001 Transferred to section 71-902.

83-1002 Transferred to section 71-903.

83-1003 Repealed. Laws 2004, LB 1083, § 149.

83-1004 Transferred to section 71-905.

83-1005 Transferred to section 71-904.

83-1006 Transferred to section 71-914.

83-1007 Transferred to section 71-911.

83-1007.01 Transferred to section 71-909.

83-1008 Repealed. Laws 2004, LB 1083, § 149.

83-1009 Transferred to section 71-908.

83-1009.01 Transferred to section 71-907.

83-1009.02 Transferred to section 71-913.

83-1010 Transferred to section 71-906.

83-1011 Transferred to section 71-910.

83-1012 Repealed. Laws 2004, LB 1083, § 149.

- 83-1013 Repealed. Laws 2004, LB 1083, § 149.
- 83-1014 Transferred to section 71-912.
- 83-1015 Repealed. Laws 2004, LB 1083, § 149.
- 83-1016 Transferred to section 71-917.
- 83-1017 Transferred to section 71-915.
- 83-1018 Repealed. Laws 2004, LB 1083, § 149.
- 83-1019 Transferred to section 71-918.
- 83-1020 Transferred to section 71-919.
- 83-1021 Repealed. Laws 2004, LB 1083, § 149.
- 83-1022 Repealed. Laws 2004, LB 1083, § 149.
- 83-1023 Repealed. Laws 2004, LB 1083, § 149.
- 83-1024 Transferred to section 71-921.
- 83-1025 Repealed. Laws 2004, LB 1083, § 149.
- 83-1026 Transferred to section 71-922.
- 83-1027 Transferred to section 71-923.
- 83-1028 Repealed. Laws 2004, LB 1083, § 149.
- 83-1029 Repealed. Laws 2004, LB 1083, § 149.
- 83-1030 Repealed. Laws 1981, LB 95, § 30.
- 83-1031 Repealed. Laws 1981, LB 95, § 30.
- 83-1032 Repealed. Laws 1981, LB 95, § 30.
- 83-1033 Repealed. Laws 1981, LB 95, § 30.
- 83-1034 Repealed. Laws 1981, LB 95, § 30.
- 83-1035 Transferred to section 71-924.
- 83-1036 Repealed. Laws 2004, LB 1083, § 149.
- 83-1037 Transferred to section 71-925.
- 83-1038 Repealed. Laws 2004, LB 1083, § 149.
- 83-1039 Transferred to section 71-926.
- 83-1040 Repealed. Laws 2004, LB 1083, § 149.
- 83-1041 Transferred to section 71-927.
- 83-1042 Transferred to section 71-928.
- 83-1043 Transferred to section 71-930.

83-1044 Transferred to section 71-931.

83-1044.01 Repealed. Laws 2004, LB 1083, § 149.

83-1045 Transferred to section 71-932.

83-1045.01 Transferred to section 71-933.

83-1045.02 Transferred to section 71-934.

83-1046 Transferred to section 71-935.

83-1047 Transferred to section 71-943.

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83-1061 Transferred to section 71-957.

83-1062 Transferred to section 71-958.

83-1063 Repealed. Laws 1981, LB 95, § 30.

83-1064 Transferred to section 71-960.

83-1065 Repealed. Laws 2004, LB 1083, § 149.

83-1066 Transferred to section 71-959.

83-1067 Repealed. Laws 2004, LB 1083, § 149.

83-1068 Transferred to section 71-961.

83-1069 Transferred to section 71-962.

83-1070 Repealed. Laws 2004, LB 1083, § 149.

83-1071 Transferred to section 71-939.

- 83-1072 Transferred to section 71-940.**
- 83-1073 Transferred to section 71-941.**
- 83-1074 Transferred to section 71-942.**
- 83-1075 Repealed. Laws 1982, LB 592, § 2.**
- 83-1076 Repealed. Laws 1982, LB 592, § 2.**
- 83-1077 Repealed. Laws 1982, LB 592, § 2.**
- 83-1077.01 Repealed. Laws 2004, LB 1083, § 149.**
- 83-1078 Transferred to section 71-901.**
- 83-1079 Transferred to section 71-937.**
- 83-1080 Transferred to section 71-938.**
- 83-1081 Repealed. Laws 1992, LB 523, § 18.**

ARTICLE 11

PERSONS WITH MENTAL RETARDATION

- Section
- 83-1101. Repealed. Laws 1991, LB 830, § 36.
 - 83-1102. Repealed. Laws 1991, LB 830, § 36.
 - 83-1103. Repealed. Laws 1991, LB 830, § 36.
 - 83-1104. Repealed. Laws 1991, LB 830, § 36.
 - 83-1105. Repealed. Laws 1991, LB 830, § 36.
 - 83-1106. Repealed. Laws 1991, LB 830, § 36.
 - 83-1107. Repealed. Laws 1991, LB 830, § 36.
 - 83-1108. Repealed. Laws 1991, LB 830, § 36.
 - 83-1109. Repealed. Laws 1991, LB 830, § 36.
 - 83-1110. Repealed. Laws 1991, LB 830, § 36.
 - 83-1111. Repealed. Laws 1991, LB 830, § 36.
 - 83-1112. Repealed. Laws 1991, LB 830, § 36.
 - 83-1113. Repealed. Laws 1991, LB 830, § 36.
 - 83-1114. Repealed. Laws 1991, LB 830, § 36.
 - 83-1115. Repealed. Laws 1991, LB 830, § 36.
 - 83-1116. Repealed. Laws 1991, LB 830, § 36.
 - 83-1117. Repealed. Laws 1991, LB 830, § 36.
 - 83-1118. Repealed. Laws 1991, LB 830, § 36.
 - 83-1119. Repealed. Laws 1991, LB 830, § 36.
 - 83-1120. Repealed. Laws 1991, LB 830, § 36.
 - 83-1121. Repealed. Laws 1991, LB 830, § 36.
 - 83-1122. Repealed. Laws 1991, LB 830, § 36.
 - 83-1123. Repealed. Laws 1991, LB 830, § 36.
 - 83-1124. Repealed. Laws 1991, LB 830, § 36.
 - 83-1125. Repealed. Laws 1991, LB 830, § 36.
 - 83-1126. Repealed. Laws 1991, LB 830, § 36.
 - 83-1127. Repealed. Laws 1991, LB 830, § 36.
 - 83-1128. Repealed. Laws 1991, LB 830, § 36.
 - 83-1129. Repealed. Laws 1991, LB 830, § 36.
 - 83-1130. Repealed. Laws 1991, LB 830, § 36.
 - 83-1131. Repealed. Laws 1991, LB 830, § 36.
 - 83-1132. Repealed. Laws 1991, LB 830, § 36.
 - 83-1133. Repealed. Laws 1991, LB 830, § 36.
 - 83-1134. Repealed. Laws 1991, LB 830, § 36.
 - 83-1135. Repealed. Laws 1991, LB 830, § 36.

Section

- 83-1136. Repealed. Laws 1991, LB 830, § 36.
- 83-1137. Repealed. Laws 1991, LB 830, § 36.
- 83-1138. Repealed. Laws 1991, LB 830, § 36.
- 83-1139. Repealed. Laws 1991, LB 830, § 36.

83-1101 Repealed. Laws 1991, LB 830, § 36.

83-1102 Repealed. Laws 1991, LB 830, § 36.

83-1103 Repealed. Laws 1991, LB 830, § 36.

83-1104 Repealed. Laws 1991, LB 830, § 36.

83-1105 Repealed. Laws 1991, LB 830, § 36.

83-1106 Repealed. Laws 1991, LB 830, § 36.

83-1107 Repealed. Laws 1991, LB 830, § 36.

83-1108 Repealed. Laws 1991, LB 830, § 36.

83-1109 Repealed. Laws 1991, LB 830, § 36.

83-1110 Repealed. Laws 1991, LB 830, § 36.

83-1111 Repealed. Laws 1991, LB 830, § 36.

83-1112 Repealed. Laws 1991, LB 830, § 36.

83-1113 Repealed. Laws 1991, LB 830, § 36.

83-1114 Repealed. Laws 1991, LB 830, § 36.

83-1115 Repealed. Laws 1991, LB 830, § 36.

83-1116 Repealed. Laws 1991, LB 830, § 36.

83-1117 Repealed. Laws 1991, LB 830, § 36.

83-1118 Repealed. Laws 1991, LB 830, § 36.

83-1119 Repealed. Laws 1991, LB 830, § 36.

83-1120 Repealed. Laws 1991, LB 830, § 36.

83-1121 Repealed. Laws 1991, LB 830, § 36.

83-1122 Repealed. Laws 1991, LB 830, § 36.

83-1123 Repealed. Laws 1991, LB 830, § 36.

83-1124 Repealed. Laws 1991, LB 830, § 36.

83-1125 Repealed. Laws 1991, LB 830, § 36.

83-1126 Repealed. Laws 1991, LB 830, § 36.

83-1127 Repealed. Laws 1991, LB 830, § 36.

83-1128 Repealed. Laws 1991, LB 830, § 36.

- 83-1129 Repealed. Laws 1991, LB 830, § 36.
- 83-1130 Repealed. Laws 1991, LB 830, § 36.
- 83-1131 Repealed. Laws 1991, LB 830, § 36.
- 83-1132 Repealed. Laws 1991, LB 830, § 36.
- 83-1133 Repealed. Laws 1991, LB 830, § 36.
- 83-1134 Repealed. Laws 1991, LB 830, § 36.
- 83-1135 Repealed. Laws 1991, LB 830, § 36.
- 83-1136 Repealed. Laws 1991, LB 830, § 36.
- 83-1137 Repealed. Laws 1991, LB 830, § 36.
- 83-1138 Repealed. Laws 1991, LB 830, § 36.
- 83-1139 Repealed. Laws 1991, LB 830, § 36.

ARTICLE 12

DEVELOPMENTAL DISABILITIES SERVICES

- Section
- 83-1201. Act, how cited.
 - 83-1202. Legislative intent.
 - 83-1202.01. Appropriations; legislative findings.
 - 83-1202.02. Repealed. Laws 1996, LB 1044, § 985.
 - 83-1203. Definitions, where found.
 - 83-1204. Department, defined.
 - 83-1205. Developmental disability, defined.
 - 83-1206. Director, defined.
 - 83-1206.01. Intellectual disability, defined.
 - 83-1207. Specialized program, defined.
 - 83-1208. Specialized service, defined.
 - 83-1209. Director; duties.
 - 83-1210. Local field offices.
 - 83-1211. Responsibility for cost of services.
 - 83-1212. Repealed. Laws 2005, LB 205, § 1.
 - 83-1212.01. Advisory Committee on Developmental Disabilities; created; members; expenses; duties.
 - 83-1213. Repealed. Laws 2017, LB333, § 13.
 - 83-1214. Repealed. Laws 2006, LB 1248, § 92.
 - 83-1215. Department; authority granted for specialized services; social services; duties.
 - 83-1216. Department; duties; services; legislative intent; priorities.
 - 83-1216.01. Quality management and improvement plan; purpose; contents; implementation report.
 - 83-1216.02. Insufficient funds to provide services; department; duties; termination.
 - 83-1217. Department; contract for specialized services; certification and accreditation requirements; assisted services; method of reimbursement.
 - 83-1217.01. Employees; criminal history record information check; fingerprints; Nebraska State Patrol; duties.
 - 83-1217.02. Repealed. Laws 2014, LB 728, § 3.
 - 83-1218. Specialized program; local governing board; duties.
 - 83-1219. Complaints and hearings; procedures.
 - 83-1220. Hearing officers; qualifications.
 - 83-1221. Hearing officer; powers and duties.
 - 83-1222. Hearing; rights of parties; hearing officer; production of evidence.

§ 83-1201

STATE INSTITUTIONS

Section	
83-1223.	Hearing officer; subpoena power; enforcement.
83-1224.	Judicial review; enforcement of final decision and order; procedures; appeal to Court of Appeals.
83-1225.	School district; provide transition services; enumerated.
83-1226.	Rules and regulations.
83-1227.	Department; prepare comprehensive plan for Beatrice State Developmental Center and Bridges program; contents; assessment of facilities; public hearing; report.
83-1228.	Developmental disabilities system; evaluation; consultant; qualifications; report.

83-1201 Act, how cited.

Sections 83-1201 to 83-1228 shall be known and may be cited as the Developmental Disabilities Services Act.

Source: Laws 1991, LB 830, § 1; Laws 1994, LB 1136, § 1; Laws 1997, LB 852, § 1; Laws 2016, LB895, § 1; Laws 2016, LB1039, § 3; Laws 2017, LB333, § 3; Laws 2018, LB793, § 11; Laws 2022, LB376, § 7.

83-1202 Legislative intent.

It is the intent of the Legislature that:

- (1) All persons with developmental disabilities shall receive services and assistance which present opportunities to increase their independence, productivity, and integration into the community;
- (2) All persons with developmental disabilities shall have access to a full array of services appropriate for them as individuals;
- (3) All persons with developmental disabilities shall have a right to live, work, and recreate with people who are not disabled;
- (4) All persons with developmental disabilities shall be served in their communities and should only be served by specialized programs when their needs cannot be met through general services available to all persons, including those without disabilities;
- (5) All persons with developmental disabilities shall have the right to receive age-appropriate services consistent with their individual needs, potentials, and abilities;
- (6) All persons with developmental disabilities shall be afforded the same rights, dignity, and respect as members of society who are not disabled; and
- (7) Persons who deliver services to persons with developmental disabilities shall be assured a uniform system of compensation and training and a full range of work-site enhancements which attract and retain qualified employees.

Source: Laws 1991, LB 830, § 2; Laws 2017, LB333, § 4.

83-1202.01 Appropriations; legislative findings.

The Legislature finds that present state appropriations on behalf of community-based services to persons with developmental disabilities are inadequate to pay the reasonable costs of providing such services to all Nebraskans who are eligible to receive them.

It is the intent of the Legislature that the state pursue full funding of community-based developmental disability programs in a reasonable timeframe

and that the Legislature commit itself and the state to attaining the goal of providing services to all eligible persons by July 1, 2010.

Source: Laws 1994, LB 1136, § 2; Laws 2004, LB 297, § 1.

83-1202.02 Repealed. Laws 1996, LB 1044, § 985.

83-1203 Definitions, where found.

For purposes of the Developmental Disabilities Services Act, the definitions found in sections 83-1204 to 83-1208 shall be used.

Source: Laws 1991, LB 830, § 3.

83-1204 Department, defined.

Department shall mean the Division of Developmental Disabilities of the Department of Health and Human Services.

Source: Laws 1991, LB 830, § 4; Laws 1996, LB 1044, § 971; Laws 2007, LB296, § 807.

83-1205 Developmental disability, defined.

Developmental disability shall mean a severe, chronic disability, including an intellectual disability, other than mental illness, which:

(1) Is attributable to a mental or physical impairment unless the impairment is solely attributable to a severe emotional disturbance or persistent mental illness;

(2) Is manifested before the age of twenty-two years;

(3) Is likely to continue indefinitely;

(4) Results in substantial functional limitations in one of each of the following areas of adaptive functioning:

(a) Conceptual skills, including language, literacy, money, time, number concepts, and self-direction;

(b) Social skills, including interpersonal skills, social responsibility, self-esteem, gullibility, wariness, social problem solving, and the ability to follow laws and rules and to avoid being victimized; and

(c) Practical skills, including activities of daily living, personal care, occupational skills, health care, mobility, and the capacity for independent living; and

(5) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

An individual from birth through the age of nine years inclusive who has a substantial developmental delay or specific congenital or acquired condition may be considered to have a developmental disability without meeting three or more of the major life activities described in subdivision (4) of this section if the individual, without services and support, has a high probability of meeting those criteria later in life.

Source: Laws 1991, LB 830, § 5; Laws 2013, LB23, § 59; Laws 2016, LB1039, § 4.

83-1206 Director, defined.

Director shall mean the Director of Developmental Disabilities of the Division of Developmental Disabilities.

Source: Laws 1991, LB 830, § 6; Laws 1996, LB 1044, § 972; Laws 2007, LB296, § 808.

83-1206.01 Intellectual disability, defined.

Intellectual disability means significant subaverage general intellectual functioning which is associated with significant impairments in adaptive functioning manifested before the age of twenty-two years. Significant subaverage general intellectual functioning shall refer to a score of seventy or below on a properly administered and valid intelligence quotient test.

Source: Laws 2016, LB1039, § 5.

83-1207 Specialized program, defined.

Specialized program shall mean an agency, organization, association, or other entity which provides specialized services.

Source: Laws 1991, LB 830, § 7.

83-1208 Specialized service, defined.

Specialized service shall mean a service provided specifically for persons with developmental disabilities.

Source: Laws 1991, LB 830, § 8.

83-1209 Director; duties.

To carry out the policies and purposes of the Developmental Disabilities Services Act, the director shall:

(1) Ensure effective management by (a) determining whether applicants are eligible for specialized services, (b) authorizing service delivery for eligible persons, (c) ensuring that services are available, accessible, and coordinated, (d) ensuring that eligible persons have their needs assessed by a team process, have individual program plans developed by a team process to address assessed needs, which plans incorporate the input of the individual and the family, and have services delivered in accordance with the program plan, (e) having the amount of funding for specialized services determined by an objective assessment process, (f) providing information and referral services to persons with developmental disabilities and their families, (g) promoting the development of pilot projects of high quality, cost-efficient services provided by specialized programs, and (h) administering the Beatrice State Developmental Center;

(2) Ensure a coordinated statewide response by (a) developing a comprehensive and integrated statewide plan for specialized services to persons with developmental disabilities in conjunction with state and local officials, designated advocates for such persons, service providers, and the general public, (b) reporting biennially to the Legislature, the Governor, service providers, and the public on persons served and progress made toward meeting requirements of the plan, and (c) creating a statewide registry of persons eligible for specialized services. The report submitted to the Legislature shall be submitted electronically;

(3) Ensure specialized services which are efficient and individualized by (a) developing a written policy which ensures the adequate and equitable distribution of fiscal resources based upon a consistent rationale for reimbursement that allows funding to follow service recipients as their service needs change and which also includes a plan for funding shortfalls and (b) administering all state and federal funds as may be allowed by law;

(4) Ensure maximum quality of services by (a) developing a due process mechanism for resolution of disputes, (b) coordinating the development and implementation of a quality management and improvement plan as described in section 83-1216.01, (c) developing certification and accreditation requirements for service providers, (d) providing technical assistance to local service providers, and (e) providing eligible persons, their families, and the designated protection and advocacy system authorized pursuant to the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. 15001 et seq., with copies of all reports resulting from surveys of providers of specialized services conducted as part of the certification and accreditation process; and

(5) Establish and staff a developmental disabilities division which shall assist in carrying out the policies and purposes of the Developmental Disabilities Services Act.

Source: Laws 1991, LB 830, § 9; Laws 2004, LB 297, § 2; Laws 2009, LB288, § 40; Laws 2012, LB782, § 220; Laws 2017, LB333, § 5.

83-1210 Local field offices.

The department may establish local field offices to assist in discharging departmental responsibilities and to ensure accessibility of departmental services for persons with developmental disabilities and their families throughout the state.

Source: Laws 1991, LB 830, § 10.

83-1211 Responsibility for cost of services.

A person receiving specialized services from a local specialized program which receives financial assistance through the department shall be responsible for the cost of such services in the same manner as are persons receiving services at the Beatrice State Developmental Center. Provisions of law in effect on September 6, 1991, or enacted after such date relating to the responsibility of such persons and their relatives for the cost of and determination of ability to pay for services at the center shall also apply to persons receiving services from specialized programs.

Source: Laws 1991, LB 830, § 11; Laws 2009, LB288, § 41.

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

83-1212 Repealed. Laws 2005, LB 205, § 1.

83-1212.01 Advisory Committee on Developmental Disabilities; created; members; expenses; duties.

(1) There is hereby created the Advisory Committee on Developmental Disabilities. The advisory committee shall consist of a representative of a statewide advocacy organization for persons with developmental disabilities

and their families, a representative of Nebraska's designated protection and advocacy organization, a representative of the Nebraska Planning Council on Developmental Disabilities, a representative of the University Center for Excellence in Developmental Disability Education, Research and Service as defined in section 68-1114, and not more than fifteen additional members. At least fifty-one percent of the members shall be persons with developmental disabilities and family members of persons with developmental disabilities.

(2) The members shall be appointed by the Governor for staggered terms of three years. Any vacancy shall be filled by the Governor for the remainder of the term. One of the members shall be designated as chairperson by the Governor. Members shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

(3) The advisory committee shall advise the department regarding all aspects of the funding and delivery of services to persons with developmental disabilities.

(4) The advisory committee shall (a) provide sufficient oversight to ensure that persons placed in the custody of the department under the Developmental Disabilities Court-Ordered Custody Act are receiving the least restrictive treatment and services necessary, (b) oversee the design and implementation of the quality management and improvement plan described in section 83-1216.01, and (c) assist, provide feedback, and guide the implementation of the family support program under section 68-1530.

(5) The department shall inform the advisory committee of proposed systemic changes to services for persons with developmental disabilities at least thirty days prior to implementation of the changes so that the advisory committee may provide for a response to the proposed changes. If the director determines that circumstances require implementation of the changes prior to such notice, the department shall inform the advisory committee as soon as possible. The advisory committee, in partnership with the director, shall establish criteria for the process of providing the information and receiving the response.

Source: Laws 1994, LB 1136, § 4; Laws 2005, LB 206, § 35; Laws 2017, LB333, § 6; Laws 2020, LB381, § 132; Laws 2022, LB376, § 9.

Cross References

Developmental Disabilities Court-Ordered Custody Act, see section 71-1101.

83-1213 Repealed. Laws 2017, LB333, § 13.

83-1214 Repealed. Laws 2006, LB 1248, § 92.

83-1215 Department; authority granted for specialized services; social services; duties.

The department shall carry out the authority granted to it pursuant to section 68-1204 and shall comply with all applicable provisions of the federal act identified in such section and of sections 68-1202 to 68-1210.

Source: Laws 1991, LB 830, § 15; Laws 1996, LB 1044, § 974.

83-1216 Department; duties; services; legislative intent; priorities.

(1) The department shall administer the medicaid home and community-based services waivers upon application approval by the federal Centers for Medicare and Medicaid Services. The amount of funding for any person

receiving services shall be determined using an objective assessment process developed by the department and approved by the federal Centers for Medicare and Medicaid Services.

(2) The department shall provide directly or by contract service coordination to Nebraska residents found to be eligible for specialized services.

(3) It is the intent of the Legislature that the department take all possible steps to maximize federal funding. All Nebraska residents eligible for funding for specialized services through the department shall apply for and accept any federal medicaid benefits for which they may be eligible and benefits from other funding sources within the department, the State Department of Education, specifically including the Division of Rehabilitation Services, and other agencies to the maximum extent possible.

(4) The priorities for funding the medicaid home and community-based services waivers under this section are as follows:

(a) The first funding priority of the state shall be responding to the needs of persons with developmental disabilities in immediate crisis due to caregiver death, homelessness, or a threat to the life and safety of the person;

(b) The second funding priority of the state in responding to the needs of persons with developmental disabilities shall be for persons that have resided in an institutional setting for a period of at least twelve consecutive months and who are requesting community-based services;

(c) The third funding priority of the state in responding to the needs of persons with developmental disabilities shall be for serving wards of the department or persons placed under the supervision of the Office of Probation Administration by the Nebraska court system who are transitioning upon age nineteen with no other alternatives as determined by the department to support residential services necessary to pursue economic self-sufficiency;

(d) The fourth funding priority of the state in responding to the needs of persons with developmental disabilities shall be for serving persons transitioning from the education system upon attaining twenty-one years of age to maintain skills and receive the day services necessary to pursue economic self-sufficiency;

(e) The fifth funding priority of the state in responding to the needs of persons with developmental disabilities shall be, upon approval by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services, for serving a dependent of a member of the armed forces of the United States who is a legal resident of this state due to the service member's military assignment in Nebraska; and

(f) The sixth funding priority of the state in responding to the needs of persons with developmental disabilities shall be for serving all other persons by date of application.

Source: Laws 1991, LB 830, § 16; Laws 1992, Third Spec. Sess., LB 4, § 1; Laws 1994, LB 1136, § 5; Laws 1996, LB 1044, § 975; Laws 2004, LB 297, § 3; Laws 2007, LB296, § 809; Laws 2017, LB333, § 7; Laws 2018, LB685, § 1; Laws 2018, LB793, § 12.

83-1216.01 Quality management and improvement plan; purpose; contents; implementation report.

(1)(a) The department shall, with the assistance and support of the Advisory Committee on Developmental Disabilities, develop and implement a quality management and improvement plan to promote and monitor quality relating to services and quality of life for persons with developmental disabilities.

(b) The purpose of the quality management and improvement plan is to provide information necessary for an accurate assessment of the quality and effectiveness of services for persons with developmental disabilities and their families and the delivery of such services, with special attention to the impact that the services have on the quality of life of recipients and their families.

(c) The quality management and improvement plan shall reflect national best practice for services for persons with developmental disabilities and their families as determined by the department with the assistance of the advisory committee.

(d) The quality management and improvement plan shall assess, through both quantitative and qualitative means, (i) the quality of services provided to persons with developmental disabilities and their families, (ii) the ability of the services provided to meet the needs of the recipients of the services, (iii) the effect of the services to support or improve the quality of life of the recipients of the services, and (iv) the satisfaction of the recipients with the process of determination of eligibility and the process of delivery of the services. In order to develop the quality management and improvement plan, the department shall use procedures to collect data from recipients of services for persons with disabilities and their families by relying on external, independent evaluators who are not employed by the department. The quality management and improvement plan shall give significance to input gathered from recipients of services for persons with developmental disabilities and families of such recipients and include information gathered from the department.

(e) The quality management and improvement plan shall include recommendations for improvements to the types of services and the delivery of services for persons with developmental disabilities and their families.

(2) The department shall provide a quality management plan electronically to the Legislature no later than September 30, 2017. In the plan the department shall detail its approach to ensuring a sustainable, continuous, quality improvement management system for the delivery of services for persons with developmental disabilities and their families that incorporates responsibilities of the department and recipients.

(3) The department shall issue an implementation report regarding the quality management and improvement plan and publish it on the website of the department and provide it electronically to the Legislature on or before December 30, 2017, and March 30, 2018. Beginning in 2018, the department shall annually provide a report regarding outcomes, improvement priorities, and activities of the department during the previous fiscal year. The report shall be published on the website of the department and shall be provided electronically to the Legislature on or before September 30.

Source: Laws 2017, LB333, § 8.

83-1216.02 Insufficient funds to provide services; department; duties; termination.

(1) If the department determines that there are not enough funds available to provide services to all eligible individuals under subdivision (4)(d) of section 83-1216, the department shall provide day services to individuals who:

(a) Are transitioning from the education system upon attaining twenty-one years of age on or after July 1, 2019; and

(b) Are determined by the department to be otherwise eligible for the day services in accordance with the Developmental Disabilities Services Act.

(2) The department shall provide services comparable to the day services the individual would have received pursuant to subdivision (4)(d) of section 83-1216 if funds were available.

(3) No later than September 15 of each year, the director shall provide electronic notification to the Health and Human Services Committee of the Legislature and the Appropriations Committee of the Legislature of the estimated number of individuals needing services under subsection (4) of section 83-1216 and the net additional resources necessary to provide services to all eligible individuals under subsection (4) of section 83-1216 other than subdivision (f) of such subsection.

(4) This section terminates June 30, 2025.

Source: Laws 2018, LB793, § 13; Laws 2020, LB540, § 1.

83-1217 Department; contract for specialized services; certification and accreditation requirements; assisted services; method of reimbursement.

The department shall contract for specialized services and shall only contract with specialized programs which meet certification and accreditation requirements. Assisted services provided under this section through community-based developmental disability programs shall be reimbursed on a daily rate basis, including such services provided to eligible recipients under the medical assistance program established in section 68-903 upon approval for such reimbursement from the federal Centers for Medicare and Medicaid Services. The department shall apply to the federal Centers for Medicare and Medicaid Services for approval of any necessary waiver amendments to permit such reimbursement and shall begin reimbursing such services on a daily rate basis no later than March 1, 2011. In order to be certified, each specialized program shall:

(1) Have an internal quality assurance process;

(2) Have a program evaluation component;

(3) Have a complaint mechanism for persons with developmental disabilities and their families;

(4) Have a process to ensure direct and open communication with the department;

(5) Develop, implement, and regularly evaluate a plan to ensure retention of quality employees and prevent staff turnover;

(6) Have measures to enhance staff training and development;

(7) Be governed by a local governing board or have an advisory committee, the membership of which consists of (a) persons with developmental disabilities, (b) family members or legal guardians of persons with developmental disabilities, and (c) persons who are interested community members;

(8) Meet accreditation standards developed by the department;

(9) Require a criminal history record information check of all employees hired on or after September 13, 1997, who work directly with clients receiving services and who are not licensed or certified as members of their profession; and

(10) Meet any other certification requirements developed by the department to further the purposes of the Developmental Disabilities Services Act.

Source: Laws 1991, LB 830, § 17; Laws 1997, LB 852, § 2; Laws 2004, LB 297, § 4; Laws 2009, LB288, § 43; Laws 2010, LB849, § 30.

83-1217.01 Employees; criminal history record information check; fingerprints; Nebraska State Patrol; duties.

(1) Each employee of state-operated services and facilities providing developmental disabilities services shall be subject to the criminal history record information check requirements of subdivision (9) of section 83-1217 and shall file a complete set of his or her legible fingerprints with the department. The department shall transmit such fingerprints to the Nebraska State Patrol which shall transmit a copy of the applicant's fingerprints to the Identification Division of the Federal Bureau of Investigation for a national criminal history record information check.

(2) The national criminal history record information check shall include information concerning the employee from federal repositories of such information and repositories of such information in other states if authorized by federal law for use by the department.

(3) The Nebraska State Patrol shall undertake a search for Nebraska criminal history record information concerning the employee. The Nebraska State Patrol shall issue a report to the department which contains the results of the criminal history record information check conducted by the Nebraska State Patrol.

(4) Criminal history record information subject to federal confidentiality requirements shall remain confidential and may be released only upon the written authorization of the employee.

(5) The department, in cooperation with the Nebraska State Patrol, shall adopt and promulgate rules and regulations to carry out this section.

Source: Laws 1997, LB 852, § 3; Laws 2014, LB728, § 1.

83-1217.02 Repealed. Laws 2014, LB 728, § 3.

83-1218 Specialized program; local governing board; duties.

The local governing board for a specialized program shall:

(1) Organize and supervise the delivery of specialized services within its governance;

(2) Cause such services to be provided;

(3) Report annually to the director regarding the expenditure of funds and the evaluation of specialized services rendered during the preceding year; and

(4) Ensure compliance with the certification and accreditation requirements of section 83-1217 and all applicable rules and regulations of the department.

Source: Laws 1991, LB 830, § 18.

83-1219 Complaints and hearings; procedures.

A person with developmental disabilities or his or her parent or guardian may initiate a hearing on matters related to the initiation, change, or termination of or the refusal to initiate, change, or terminate the determination of eligibility for specialized services or the evaluation or placement of the person or the provision of specialized services or records relating thereto. A copy of the procedures specified in rules and regulations of the department for complaints and hearings under this section shall be provided to such persons who are receiving specialized services or their parents or guardians. The hearing shall be initiated by filing a petition with the department.

Source: Laws 1991, LB 830, § 19; Laws 2004, LB 297, § 5.

83-1220 Hearing officers; qualifications.

The department shall conduct hearings initiated under section 83-1219 using hearing officers. The department may employ, retain, or approve such qualified hearing officers as are necessary to conduct the hearings. The hearing officers shall not be persons who are employees or officers of a local agency which is involved in providing services to the person with developmental disabilities. A person who otherwise qualifies to conduct a hearing shall not be considered an employee of the agency solely because the person is paid by the agency to serve as a hearing officer. No hearing officer shall participate in any way in any hearing or matter in which the hearing officer may have a conflict of interest. The department shall have exclusive original jurisdiction over cases arising under sections 83-1219 to 83-1224, and in no event shall juvenile courts have jurisdiction over such matters.

Source: Laws 1991, LB 830, § 20; Laws 2010, LB849, § 31.

83-1221 Hearing officer; powers and duties.

Upon the receipt of a petition pursuant to section 83-1219, the department shall assign it to a hearing officer. The hearing officer shall receive all subsequent pleadings and shall conduct the hearing. At the hearing the parties shall present evidence on the issues raised in the pleadings. At the completion of the proceedings, the hearing officer shall prepare a report based on the evidence presented containing recommendations for the director to make findings of fact and conclusions of law. Within forty-five days after the receipt of a request for a hearing, the director shall prepare a final decision and order directing such action as may be necessary. At the request of either party for good cause shown, the hearing officer may grant specific extensions of time beyond this period. The report and the final decision and order shall be delivered to each party or attorney of record by certified mail.

Source: Laws 1991, LB 830, § 21; Laws 2010, LB849, § 32.

83-1222 Hearing; rights of parties; hearing officer; production of evidence.

Any party at a hearing conducted pursuant to section 83-1219 shall have the right to:

- (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the needs of persons with developmental disabilities;
- (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing;

(4) Obtain a written or electronic verbatim record of the hearing; and

(5) Obtain written findings of fact and decisions from the director.

The hearing officer may also produce evidence on his or her own motion.

Source: Laws 1991, LB 830, § 22; Laws 2010, LB849, § 33.

83-1223 Hearing officer; subpoena power; enforcement.

The hearing officer shall have the power by subpoena to compel the appearance of witnesses and the production of any relevant evidence. Any witness compelled to attend or produce evidence shall be entitled to the fees and expenses allowed in district court. Any failure to respond to such subpoena shall be certified by the director to the district court of Lancaster County for enforcement or for punishment for contempt of the district court.

Source: Laws 1991, LB 830, § 23; Laws 2010, LB849, § 34.

83-1224 Judicial review; enforcement of final decision and order; procedures; appeal to Court of Appeals.

(1) Any party aggrieved by the findings, conclusions, or final decision and order of the director shall be entitled to judicial review under this section. Any party of record also may seek enforcement of the final decision and order of the director pursuant to this section.

(2) Proceedings for judicial review shall be instituted by filing a petition in the district court of Lancaster County within thirty days after service of the final decision and order on the party seeking such review. All parties of record shall be made parties to the proceedings. The court, in its discretion, may permit other interested parties to intervene.

(3) The filing of a petition for judicial review to such district court shall operate to stay the enforcement of the final decision and order of the director. While judicial proceedings are pending in district court and unless the parties otherwise agree, the person with developmental disabilities shall remain in his or her current placement. If the health or safety of the person with developmental disabilities or of other persons would be endangered by delaying a change in placement, the service provider may make such change without prejudice to the rights of any party.

(4) Within thirty days after receiving notification that a petition for judicial review has been filed or, if good cause is shown, within such further time as the court may allow, the department shall prepare and transmit to the court a certified transcript of the proceedings before the hearing officer.

(5) Judicial review shall be heard de novo on the record. The court shall receive the records of the administrative proceedings, base its decision on the preponderance of the evidence, and grant such relief as the court determines is appropriate. The district court may affirm, reverse, or modify the decision of the director, or remand the case to the director for further proceedings, including the receipt of additional evidence, for good cause shown.

(6) An aggrieved party may secure a review of any final judgment of the district court under this section by appeal to the Court of Appeals. Such appeal

shall be taken in the manner provided by law for appeals in civil cases and shall be heard de novo on the record.

(7) When no petition for judicial review or other civil action is filed within thirty days after service of the final decision and order on all of the parties, the director's final decision and order shall become effective. Proceedings for enforcement of the director's final decision and order shall be instituted by filing a petition for appropriate relief in the district court of Lancaster County within one year after the date of the director's final decision and order.

Source: Laws 1991, LB 830, § 24; Laws 1992, LB 360, § 39; Laws 2004, LB 297, § 6; Laws 2010, LB849, § 35.

83-1225 School district; provide transition services; enumerated.

Each school district shall provide transition services for each student with a developmental disability no later than when the student reaches fourteen years of age and until the student graduates from a special education program or no longer meets the definition of a child with a disability pursuant to section 79-1117. Transition services shall consist of a coordinated set of activities for a student, designed within an outcome-oriented process, which promotes movement from school to postschool activities, including postsecondary education, vocational training, integrated employment, continuing and adult education, adult services, independent living, and community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation. The transition team shall designate one or more specialized service providers to develop a plan for the student's transition to adult specialized services.

Source: Laws 1991, LB 830, § 25; Laws 1996, LB 900, § 1068; Laws 2019, LB675, § 55; Laws 2021, LB527, § 1.

83-1226 Rules and regulations.

The department shall adopt and promulgate rules and regulations to carry out the Developmental Disabilities Services Act.

Source: Laws 1991, LB 830, § 26.

83-1227 Department; prepare comprehensive plan for Beatrice State Developmental Center and Bridges program; contents; assessment of facilities; public hearing; report.

(1) Within the framework of the best interests of persons with developmental disabilities, the department shall prepare a comprehensive plan for the Beatrice State Developmental Center and the Bridges program in Hastings, Nebraska. The plan shall include, but not be limited to:

(a) An analysis of residents of the Beatrice State Developmental Center and the Bridges program in Hastings, Nebraska, on April 8, 2016, and their needs and the ability to serve them in the community;

(b) The role of the Beatrice State Developmental Center and the Bridges program in the continuum of services offered to persons with developmental disabilities in Nebraska;

(c) The preferences of residents of the Beatrice State Developmental Center and the Bridges program and their families;

(d) Nationwide trends in facilities like the Beatrice State Developmental Center and the Bridges program;

(e) The cost efficiency of services provided at the Beatrice State Developmental Center and the Bridges program;

(f) An analysis of the facilities at the Beatrice State Developmental Center and the Bridges program on April 8, 2016, and the long-term structural needs of the facilities;

(g) Census trends and future needs for services at the Beatrice State Developmental Center and the Bridges program; and

(h) The level of community integration for residents of the Beatrice State Developmental Center and the Bridges program.

(2) The department shall prepare an assessment of the long-term viability of the facilities used to provide services at the Beatrice State Developmental Center and the facilities used to provide services through the Bridges program in Hastings, Nebraska.

(3) The department shall analyze the United States Supreme Court's decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999), and provide an analysis of Nebraska's compliance with the decision.

(4) The department shall hold a public hearing to receive input from the public on the Beatrice State Developmental Center and the Bridges program.

(5) The department shall prepare a report including the plan, assessment, analysis, and results of the hearing required by subsections (1) through (4) of this section. The department shall submit the report electronically to the Legislature on or before June 1, 2017.

Source: Laws 2016, LB895, § 2.

83-1228 Developmental disabilities system; evaluation; consultant; qualifications; report.

(1) The Department of Health and Human Services shall engage a nationally recognized consultant to provide an evaluation of the state's developmental disabilities system in order to examine how the State of Nebraska can better serve all Nebraskans with a variety of developmental disabilities.

(2) The consultant shall be independent of the Department of Health and Human Services and be a national entity that can demonstrate:

(a) Direct involvement with public and tribal developmental disabilities agencies;

(b) Partnerships with national advocacy organizations, think tanks, or technical assistance providers for persons with developmental disabilities;

(c) Collaboration with community agencies for persons with developmental disabilities; and

(d) Independent research regarding developmental disabilities.

(3) The evaluation shall analyze the array of services and programs existing in Nebraska for persons with developmental disabilities and address potential areas for improvement with an emphasis on maximizing impact, effectiveness, and cost-efficiencies. The evaluation shall consider: (a) Services offered and

provided by the state through the medicaid state plan or by current medicaid waivers; (b) services offered by other states through medicaid state plans, medicaid waivers, or other mechanisms; and (c) any other areas which may be beneficial to the state in the assessment of its developmental disabilities services.

(4) The consultant shall electronically deliver a report detailing the findings and recommendations of the consultant to the Governor, the Department of Health and Human Services, the chairperson of the Health and Human Services Committee of the Legislature, and the Clerk of the Legislature on or before December 31, 2023.

Source: Laws 2022, LB376, § 8.

CHAPTER 84

STATE OFFICERS

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The Governor is constituted the legal custodian of all the property of the state not specially entrusted to other officers by law; and he is authorized and empowered to take summary possession of such property of the state, without any process of law, and to adopt such measures as he may deem proper to preserve it from injury or deterioration.

Source: Laws 1867, § 1, p. 100; R.S.1913, § 5531; C.S.1922, § 4827; C.S.1929, § 84-101; R.S.1943, § 84-101.

84-101.01 Governor; salary.

Until January 4, 2007, the annual salary of the Governor shall be eighty-five thousand dollars. Commencing January 4, 2007, the annual salary of the Governor shall be one hundred five thousand dollars. Such salary shall be payable in equal monthly installments.

Source: Laws 1986, LB 43, § 2; Laws 1990, LB 503, § 2; Laws 2000, LB 956, § 2; Laws 2006, LB 817, § 2.

84-102 Executive officers; duty to report to Governor.

It shall be the duty of the several officers of the executive department to make a written report to the Governor of the public business entrusted to their charge, whenever required by him so to do.

Source: Laws 1867, § 2, p. 101; R.S.1913, § 5532; C.S.1922, § 4828; C.S.1929, § 84-103; R.S.1943, § 84-102.

84-103 Civil officers; commissions; issuance by Governor.

All commissions to civil officers in this state shall be issued and signed by the Governor, and countersigned by the Secretary of State, and a record thereof kept in the office of the Secretary of State.

Source: Laws 1867, § 3, p. 101; R.S.1913, § 5533; C.S.1922, § 4829; C.S.1929, § 84-104; R.S.1943, § 84-103.

84-104 Thanksgiving Day; proclamation by Governor.

The Governor shall by proclamation set apart the fourth Thursday in each November as a day of solemn and public thanksgiving to Almighty God for His blessings to us as a state and nation, and no business shall be transacted on that day at any department of state.

Source: Laws 1867, § 6, p. 101; R.S.1913, § 5534; C.S.1922, § 4830; C.S.1929, § 84-105; Laws 1941, c. 187, § 2, p. 756; C.S.Supp.,1941, § 84-105; R.S.1943, § 84-104; Laws 1945, c. 252, § 2, p. 789.

Cross References

Other sections bearing on holidays, see sections 25-2221, 62-301, 81-113, and 84-1001.

84-104.01 Veterans Day; proclamation by Governor; prohibition of transaction of business by state departments; manner of observance.

The Governor shall issue his proclamation each year designating Veterans Day and calling upon the public schools and citizens of Nebraska to observe such day as a patriotic day. Veterans Day shall be November 11, annually, unless such date falls on Saturday or Sunday, in which event the Governor may declare the preceding Friday or the following Monday as Veterans Day. No business shall be transacted on that day at any department of the State of Nebraska, except for necessary maintenance, highway construction inspection or in case of emergency. In pursuance to such proclamation, suitable exercises having reference to the wars and military campaigns of the United States, of Nebraska's role therein, and honoring the veterans of such wars and campaigns may be held in all schools of the state, both public and private.

Source: Laws 1957, c. 392, § 1, p. 1056; Laws 1961, c. 448, § 1, p. 1373; Laws 1969, c. 844, § 3, p. 3181; Laws 1973, LB 34, § 3.

84-104.02 Martin Luther King, Jr. Day; manner of observance.

January 15 of each year shall be Martin Luther King, Jr. Day, and shall be set apart for holding suitable exercises in the schools of the state in recognition of the sacrifices of the late Martin Luther King, Jr., and his contributions to the betterment of society.

Source: Laws 1978, LB 329, § 1.

Cross References

Legal holiday declared for birthday of Martin Luther King, Jr., see sections 25-2221, 62-301, 81-113, and 84-1001.

84-104.03 Martin Luther King, Jr. Day; proclamation by Governor; commemoration.

(1) The Governor shall, prior to January 15 of each year, issue a proclamation inviting and urging the people of the State of Nebraska to observe Martin Luther King, Jr. Day in schools and other suitable places with appropriate ceremony and fellowship.

(2) The State Department of Education is directed to make, within the limits of funds available for such purpose, information available to the schools and all people of this state regarding Martin Luther King, Jr. Day and the observance thereof.

Source: Laws 1978, LB 329, § 2.

84-104.04 George W. Norris Day; manner of observance.

January 5 of each year shall be designated as George W. Norris Day, and shall be set apart for holding suitable exercises in the schools of the state in recognition of the many great benefits bestowed upon the people of the State of Nebraska and the United States as a whole, due in large part to the influence of George W. Norris. Such benefits include: (1) Establishment of a nonpartisan unicameral legislative body for the State of Nebraska; (2) establishment of the Tennessee Valley Authority; (3) the development of electricity in the rural areas of the nation; (4) passage of the twentieth amendment to the United States Constitution, commonly known as the lame duck amendment; and (5) the Norris-La Guardia Act which outlawed yellow-dog contracts and was a great boon to working men and women across the nation.

Source: Laws 1981, LB 18, § 1.

84-104.05 George W. Norris Day; proclamation by Governor; commemoration.

The Governor of the State of Nebraska shall issue a proclamation calling upon the officials of state government and subdivisions thereof to display the flags of the United States and Nebraska on all public buildings on January 5 of each year and inviting the people of the State of Nebraska to observe the day in schools and other suitable places with appropriate ceremonies in commemoration of the life's work and contributions of George W. Norris.

Source: Laws 1981, LB 18, § 2.

84-104.06 American Indian Day; legislative findings.

The Legislature finds that American Indians were the first residents of the State of Nebraska. The Legislature further finds that these residents have made advances to the growth and development of the United States, the State of Nebraska, and their local communities, first through history and now through human and natural resources. The Legislature also finds that American Indians have made significant contributions and will continue to make contributions to the development of business, industry, education, the arts, and other areas which have made this country and this state a good place in which to live. The Legislature also finds that many of these contributions are unknown and unrecognized by many Nebraska citizens.

Source: Laws 1983, LB 90, § 1.

84-104.07 American Indian Day; manner of observance.

It is hereby declared that the fourth Monday in September of each year shall be known in Nebraska as American Indian Day and that on this day schools, clubs, and civic and religious organizations shall be encouraged to recognize the contributions of American Indians with suitable ceremony and fellowship designed to promote greater understanding and brotherhood between American Indians and the non-Indian people of the State of Nebraska.

Source: Laws 1983, LB 90, § 2.

84-104.08 American Indian Day; proclamation by Governor; commemoration.

(1) The Governor shall, prior to the fourth Monday in September of each year, issue a proclamation inviting and urging the people of the State of Nebraska to observe American Indian Day with suitable ceremony and fellowship.

(2) The State Department of Education and the Commission on Indian Affairs shall make, within the limits of funds available for such purpose, information available to all people of this state regarding American Indian Day and the observance thereof.

Source: Laws 1983, LB 90, § 3.

84-104.09 Workers Memorial Day; proclamation by Governor; commemoration.

The Governor shall annually proclaim April 28 as Workers Memorial Day in remembrance of the courage and integrity of American workers. The Governor shall recommend that Workers Memorial Day be observed in an appropriate manner.

Source: Laws 1991, LB 199, § 1.

84-105 Repealed. Laws 1953, c. 353, § 1.

84-106 Superintendent of Law Enforcement and Public Safety; deputies; appointment by Governor; bond or insurance; powers; actions against, where brought.

The Governor is authorized to call to his or her assistance and to appoint persons necessary to assist the Superintendent of Law Enforcement and Public Safety to enforce the criminal laws. The superintendent and his or her assistants, who shall be designated deputy state sheriffs, shall qualify by taking and filing an oath in writing. Such persons shall be bonded or insured as required by section 11-201. The premiums may be paid for out of appropriations made to the state offices, departments, commissions, or other agencies to which such deputy state sheriffs are assigned. No deputy state sheriffs shall be assigned to the Department of Correctional Services. The superintendent and his or her assistants shall have the same powers in each of the counties of the state as the sheriffs have in their respective counties, insofar as the enforcement of the criminal laws is concerned. An action against the superintendent or any of his or her assistants for an act done by them or either of them by virtue of or under color of their offices respectively, or for any neglect of their official duties, shall be brought in Lancaster County, Nebraska, or in the county where the cause of action or some part thereof arose.

Source: Laws 1919, c. 173, § 1, p. 384; C.S.1922, § 4832; Laws 1927, c. 157, § 1, p. 419; C.S.1929, § 84-107; Laws 1941, c. 176, § 14, p. 694; C.S.Supp.,1941, § 84-107; R.S.1943, § 84-106; Laws 1961, c. 449, § 1, p. 1374; Laws 1978, LB 653, § 37; Laws 2004, LB 884, § 47; Laws 2006, LB 757, § 1.

Cross References

Superintendent designated as chief officer of the Nebraska State Patrol, see section 81-2001.

A deputized railroad security officer is constrained by the Fourth Amendment like any sheriff or police officer. *State v. Claus*, 8 Neb. App. 430, 594 N.W.2d 685 (1999).

84-107 State Day; observance; commemoration; proclamation.

The Governor shall annually issue his proclamation designating State Day and calling upon the public schools and citizens of Nebraska to observe said day as a patriotic day. State Day shall be on March 1, annually, unless such day falls on Saturday or Sunday, in which event the Governor may declare the preceding Friday or the following Monday as State Day. In pursuance to said proclamation of the Governor, suitable exercises, having reference to Nebraska pioneers, Nebraska's natural resources, its history, and the event of the admission of Nebraska as a state to the Union, may be held in all schools of the state, both public and private.

Source: Laws 1931, c. 154, § 1, p. 413; C.S.Supp.,1941, § 84-109; R.S. 1943, § 84-107.

84-108 Pulaski's Memorial Day; proclamation; observance.

The Governor of the State of Nebraska is authorized and directed to issue a proclamation calling upon the officials of the state government and subdivisions thereof in local communities to display the flag of the United States on all public buildings on October 11 of each year and inviting the people of the State of Nebraska to observe the day in schools and other suitable places, with appropriate ceremonies, in commemoration of the death of Brigadier General Casimir Pulaski.

Source: Laws 1931, c. 94, § 1, p. 263; C.S.Supp.,1941, § 84-110; R.S. 1943, § 84-108.

84-108.01 Observances; not paid holidays.

The observances provided for in sections 84-104.05, 84-104.08, 84-104.09, 84-107, and 84-108 shall not include provisions for such days to be declared paid holidays pursuant to subsection (3) of section 84-1001.

Source: Laws 1991, LB 199, § 2.

84-109 State projects; control and supervision by Governor; when authorized; delegation of powers.

Wherever statewide projects contributed to by any federal agency are initiated within the state, and there is no state agency which is authorized by law to sponsor the same, the same may be sponsored by the Governor under his general power to take care that the affairs of the state be efficiently and economically administered. This power granted to the Governor shall include the power to cooperate with, or to supervise or to act in an advisory capacity as to any and all projects contributed to by any federal agency, as to which statewide supervision, direction, or advisory control may be deemed expedient; *Provided*, that for the purpose of efficient execution of the powers hereby bestowed, the Governor may delegate actual performance of such duties as may be necessary to any department or agency of the state to which it may seem proper and expedient to him to make such delegation.

Source: Laws 1941, c. 175, § 1, p. 685; C.S.Supp.,1941, § 81-126; R.S. 1943, § 84-109; Laws 1961, c. 450, § 1, p. 1375.

84-110 Repealed. Laws 1973, LB 494, § 34.

84-111 Repealed. Laws 1973, LB 494, § 34.

84-111.01 Repealed. Laws 1973, LB 494, § 34.

84-112 Repealed. Laws 1973, LB 494, § 34.

84-113 Repealed. Laws 1973, LB 494, § 34.

84-114 Repealed. Laws 1973, LB 494, § 34.

84-115 Repealed. Laws 1973, LB 494, § 34.

84-116 Repealed. Laws 1973, LB 494, § 34.

84-117 Repealed. Laws 1973, LB 494, § 34.

84-118 Repealed. Laws 1973, LB 494, § 34.

84-119 Repealed. Laws 1973, LB 494, § 34.

84-119.01 Repealed. Laws 1971, LB 226, § 5.

84-119.02 Repealed. Laws 1971, LB 226, § 5.

84-119.03 Repealed. Laws 1971, LB 226, § 5.

84-119.04 Repealed. Laws 1971, LB 226, § 5.

84-119.05 Repealed. Laws 1971, LB 226, § 5.

84-120 Governor; succession to office.

If the Lieutenant Governor or Speaker of the Legislature becomes incapable of performing the duties of Governor as provided by Article IV, section 16, of the Constitution of Nebraska, the duties of Governor shall be performed in the following order: Chairperson of the Executive Board of the Legislative Council, Chairperson of Committee on Committees, Chairperson of Committee on Judiciary, Chairperson of Committee on Government, Military and Veterans Affairs, Chairperson of Committee on Appropriations, Chairperson of Committee on Revenue, Chairperson of Committee on Education, Chairperson of Committee on Banking, Commerce and Insurance, Chairperson of Committee on Natural Resources, Chairperson of Committee on Agriculture, Chairperson of Committee on Health and Human Services, Chairperson of Committee on General Affairs, Chairperson of Committee on Urban Affairs, Chairperson of Committee on Business and Labor, and Chairperson of Committee on Transportation, until the vacancy is filled.

Source: Laws 1959, c. 499, § 1, p. 1499; Laws 1961, c. 451, § 2, p. 1378; Laws 1969, c. 831, § 1, p. 3153; Laws 1974, LB 596, § 1; Laws 1992, LB 965, § 5.

84-121 Governor; succession to office; resignation required.

If, for any of the reasons mentioned in Article IV, section 16, of the Constitution of Nebraska, the Lieutenant Governor is unable to perform the duties that devolve on him or her as Governor, then the Speaker of the Legislature shall, upon his or her resignation as speaker and as a member of the Legislature, become Governor.

If for any of the reasons mentioned in Article IV, section 16, of the Constitution of Nebraska, there is a vacancy in the office of Governor after the succession of the speaker to such office, then the chairperson of the several committees in the order listed in section 84-120 shall, after resignation as such chairperson and member of the Legislature, become Governor.

Source: Laws 1959, c. 449, § 2, p. 1500; Laws 1992, LB 965, § 6.

84-122 Governor; succession to office; oath of office; effect.

The taking of the oath of office by an individual specified in section 84-120, except the Lieutenant Governor, shall be held to constitute his resignation from the office by virtue of the holding of which he qualifies to act as Governor.

Source: Laws 1959, c. 449, § 3, p. 1500.

84-123 Repealed. Laws 1963, c. 406, § 21.

84-124 Repealed. Laws 1963, c. 406, § 21.

84-125 Repealed. Laws 1963, c. 406, § 21.

84-126 Repealed. Laws 1963, c. 406, § 21.

84-127 Governor; disability; examination; conference; members; findings; effect.

(1) Whenever it appears that the Governor is unable to discharge the duties of the office, the person next in line of succession to the office of Governor or the person who is dean of the College of Medicine of the University of Nebraska may call a conference consisting of the person who is dean of the College of Medicine of the University of Nebraska, the person who is chairperson of the Department of Psychiatry at the University of Nebraska Medical Center, and the dean of an accredited college of medicine located in the State of Nebraska to be selected by the other two members of the conference. The three members of the conference shall examine the Governor. After the examination, or if upon attempting to examine the Governor the members of the conference are unable to examine him or her because of circumstances beyond their control, they shall conduct a secret ballot and, by unanimous vote, may find that the Governor is temporarily unable to discharge the duties of the office.

(2) The finding of or failure to find a disability shall be made public, and in case the Governor is found to be unable to discharge the duties of the office, the person next in line of succession to the office of Governor shall be notified. After receiving the notification, the powers, duties, and emoluments of the office of Governor shall, under Article IV, section 16, of the Constitution of Nebraska, devolve upon the person next in line of succession to the office of Governor.

Source: Laws 1961, c. 452, § 1, p. 1379; Laws 1969, c. 832, § 1, p. 3155; Laws 1987, LB 112, § 7.

84-128 Governor; disability; removal; examination; conference; members; findings; effect.

Whenever a Governor who has been unable to discharge the duties of the office believes his disability to be removed, he may call a conference consisting of the three persons referred to as members of such a conference in subsection

(1) of section 84-127. The three members of the conference shall examine the disabled Governor. After the examination they shall conduct a secret ballot and, by unanimous vote may find the disability removed, and their findings shall immediately be made public.

Source: Laws 1961, c. 452, § 2, p. 1380.

84-129 Governor; disability; conference; member; unable to perform duty; successor.

Should any of the officials named as members of the conference provided for in sections 84-127 and 84-128 be, for any reason, unable to perform the duties of his office, his place in such conference shall be taken by the person actually performing the duties of his office.

Source: Laws 1961, c. 452, § 3, p. 1380.

84-130 Governor; disability; findings; appeal; procedure; validity of acts of successor to office of Governor.

The Governor or any elector of the State of Nebraska may appeal to the Supreme Court from the decision of the members of the conference as provided in sections 84-127 and 84-128. Such appeal shall be perfected within one month from the rendition of the decision of the conference by filing an appeal bond with the court and a copy of the decision of the conference. The cause shall be tried de novo, and shall be advanced for argument before the Supreme Court, and the Supreme Court shall render its judgment and write an opinion in such cases as speedily as possible. The decision of the conference may be modified, affirmed, or set aside. The decision of the conference shall remain in full force and effect unless and until such decision is modified or set aside by the Supreme Court. Any official acts of the person who succeeded to the office of Governor while any such appeal is pending shall be deemed to be fully valid for all purposes even though such conference decision be subsequently modified or set aside on appeal.

Source: Laws 1961, c. 452, § 4, p. 1380.

84-131 Comprehensive state and regional planning; declaration of purpose.

The Legislature hereby finds and declares that:

(1) The people of the State of Nebraska have a fundamental interest in the orderly development of the state and its regions;

(2) The state has a positive interest in the establishment of a comprehensive state and regional planning process and in the preparation and maintenance of long-range, comprehensive plans and programs for the physical, social, and economic development of the whole state and of each of its regions, which plans and programs can serve as a guide for local governmental units and state departments, agencies, and institutions;

(3) The continued growth of the state, particularly in urban areas, and the general readjustment of people and the economy in many of the state's rural regions present problems which cannot be met by individual counties or cities;

(4) Planning by local governmental units can be strengthened when conducted in relation to statewide and regional studies and planning; and

(5) Direct leadership by the Governor is required to assure the coordination of state and local plans and programs with the planning and programming activities of federal, state, and regional bodies.

Source: Laws 1969, c. 775, § 1, p. 2937.

84-132 Sections; purpose.

It is the purpose of sections 84-131 to 84-141 to promote the development of the state's human, economic, and physical resources; to promote the health, safety, and general welfare of its citizens; and to secure the economical and efficient expenditure of the state's revenue by creating, within the executive branch, an office for development and review of policy alternatives. The office shall act as a directing, advisory, consulting, and coordinating agency to harmonize planning and policy development activities at all levels of government within Nebraska, and to stimulate public interest and participation in the social, economic, and physical development of the state.

Source: Laws 1969, c. 775, § 2, p. 2937; Laws 1979, LB 412, § 12.

84-133 Governor's Policy Research Office; created; members; Director of Policy Research; appointment; duties; Governor's Policy Research Office Revolving Fund; created; use; investment.

(1) There is created a Governor's Policy Research Office in the executive branch of state government. The Governor's Policy Research Office shall consist of the Governor, a Director of Policy Research who shall be appointed by the Governor and serve at his or her pleasure, and such other employees as are appointed by the Director of Policy Research to achieve the purposes of sections 84-131 to 84-141 and for which adequate funding is available.

(2) The Governor, through the Governor's Policy Research Office, shall encourage coordination of policy development in state government, inquire into the methods of policy and program development in state government, and provide adequate systems of records for policy development purposes and may prescribe the institution and uses of standards for effective state agency policy development.

(3) The Governor may direct any state department, agency, or institution of state government to furnish the Governor's Policy Research Office with such information, personnel, equipment, and services as are necessary to enable it to carry out its responsibilities and duties and to prescribe the terms thereof, including reimbursement of costs thereof, if any.

(4) The Governor shall be permitted to appoint the Director of Policy Research to serve as an ex officio, nonvoting member of any committee, commission, council, or other similar organization of a state agency, department, institution, or group of such bodies that is concerned with planning, research, or policy development. Opportunities for such representation on any public, nonfederal, regional bodies concerned with planning or research and operating wholly or partially within Nebraska shall also be provided when requested by the Governor. The Director of Policy Research may in turn delegate such membership to his or her staff or to an appropriate official of another state agency. The state, interstate, and regional organizations mentioned in this subsection shall make any necessary organizational adjustments to receive the ex officio member if requested to do so by the Governor.

(5) The Governor may delegate any of his or her powers, duties, and responsibilities as conferred by sections 84-131 to 84-141 to the Director of Policy Research.

(6) There is hereby created a fund to be known as the Governor's Policy Research Office Revolving Fund. All money credited to the fund shall be used by the Governor's Policy Research Office to enable it to carry out its statutory responsibilities and duties in research and policy development. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1969, c. 775, § 3, p. 2938; Laws 1979, LB 412, § 13; Laws 1985, LB 421, § 1; Laws 1988, LB 1106, § 2; Laws 1995, LB 7, § 143.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

84-134 Advisory committees or councils; members; appointment; no compensation; expenses; meetings.

The Governor may establish special or general advisory committees or councils to the Governor's Policy Research Office and appoint the members thereof, who shall serve for stated times or at his or her pleasure. Members shall serve without compensation, but may be reimbursed for the necessary expenses incurred in the performance of their duties as provided in sections 81-1174 to 81-1177 for state employees. The Governor may designate the chairperson and such other officers as he or she may deem necessary for each advisory committee or council. Advisory committees or councils established pursuant to the provisions of this section shall meet at the call of their chairperson or of the Director of Policy Research.

Source: Laws 1969, c. 775, § 4, p. 2939; Laws 1979, LB 412, § 14; Laws 1981, LB 204, § 210.

84-135 Governor's Policy Research Office; principal state office to coordinate policy development; duties; Governor's Policy Research Cash Fund; created; use; investment.

The Governor's Policy Research Office shall be the principal state agency to coordinate policy development relating to the state's social, economic, and physical resources and to coordinate programs administered by the state and its political subdivisions. It shall provide available information, assistance, and staff support to the executive and legislative branches by all appropriate means. Furthermore, the office may, except as otherwise specified by the Governor:

(1) Identify long-range state problems and development opportunities and propose alternative policy options which may be submitted by the Governor to the Legislature for its consideration;

(2) Formulate for the Governor or the Legislature policy options for the orderly and coordinated growth of the state, except that functional plans shall only be formulated by the Governor's Policy Research Office when no department, agency, or institution has been given the responsibility for such planning or when such a body is not fulfilling its assigned planning responsibilities;

(3) Prepare special reports and furnish the results of the office's research and other activities through publications, memoranda, briefings, and expert testimony;

(4) Establish and require the use of standard basic population and economic data for all state departments, agencies, and institutions;

(5) Analyze and project the quality and quantity of services which may be necessary for the continued and orderly growth of the state, taking into consideration the relationship of activities, capabilities, and future plans of local units of government, area planning commissions, transportation authorities, development districts, regional councils, private enterprise, state government, the federal government, and other public and private bodies;

(6) Encourage the coordination of the planning activities of all state departments, agencies, and institutions and political subdivisions of the state;

(7) Advise, if requested, and consult with regional, joint, and local planning agencies;

(8) Monitor and participate in interstate policy development, planning, and other activities related thereto;

(9) Survey, review, and appraise the accomplishments of state government in achieving the goals and objectives set forth in legislation or reflected in directives from the Governor or state agencies;

(10) Assist the Department of Administrative Services with the capital improvement programming process;

(11) Apply for and accept advances, loans, grants, contributions, and any other form of assistance from the federal government, the state, or any public or private sources for the purposes of sections 84-131 to 84-141 under such conditions as may be required and execute contracts or agreements in connection therewith. The office may include in any contract for financial assistance with the federal government such conditions imposed pursuant to federal laws as it may deem reasonable and appropriate and which are not inconsistent with the purposes of sections 84-131 to 84-141. There is hereby created a fund to be known as the Governor's Policy Research Cash Fund. All money credited to the fund shall be used by the Governor's Policy Research Office to carry out the responsibilities and duties of 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;

(12) Serve as state government's applicant agency, or coapplicant when existing or future federal legislation specifically requires another applicant, but not necessarily administering agency, for all planning, programming, or research grants to transportation authorities and to state departments, agencies, or institutions. The Governor's Policy Research Office may delegate its applicant or coapplicant role upon such terms and for such periods of time as it shall deem appropriate;

(13) Enter into agreements with state departments and other agencies of state government and Nebraska state institutions of higher education for the temporary use of personnel in pursuit of the purposes of sections 84-131 to 84-141;

(14) Contract for professional or consultant services with state departments and agencies, Nebraska institutions of higher education, other public bodies, and private sources in pursuit of the purposes of sections 84-131 to 84-141;

(15) Review and comment on all local and regional applications for federal planning assistance. This authority may be delegated to regional planning commissions, development districts, regional councils, or such other state agency upon such terms as it deems appropriate; and

(16) Exercise all other powers necessary and proper for the discharge of its duties, including the promulgation of reasonable rules and regulations.

The Governor's Policy Research Office shall periodically review the organization and programs of state government and make recommendations to the Governor on ways to more effectively organize state government, eliminate duplication of units of government and of programs, and encourage efficiency and economy.

Source: Laws 1969, c. 775, § 5, p. 2939; Laws 1979, LB 412, § 15; Laws 1985, LB 421, § 2; Laws 1992, LB 573, § 13; Laws 1994, LB 1066, § 131.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

84-135.01 Repealed. Laws 1979, LB 412, § 32.

84-136 Governor's Policy Research Office; state development policy alternatives; powers.

(1) At the direction of the Governor, the Governor's Policy Research Office may prepare and issue long-range state development policy alternatives based on studies, plans, requirements, and operations of departments, agencies, and institutions of state, local, and regional units of government and the federal government. Such policies shall be based upon the existing and prospective resources and needs of the people of Nebraska and shall identify and stress alternative statewide goals, objectives, and opportunities.

(2) State development policy alternatives shall take into consideration the physical, economic, and social development of the state and may include, but not be limited to, the following:

(a) Population and economic analysis with projections for each region and subregion of the state;

(b) General land-use policy alternatives for urban development, agriculture, mineral extraction, forests, open space, and other purposes;

(c) Policy alternatives for housing and the development and redevelopment of urban areas and other places of settlement;

(d) Policy alternatives for the balanced development of airport, highway, and other transportation facilities, including rail, ship, and pipelines;

(e) Policy alternatives for health services and facilities, manpower development, employment opportunity, education, elimination of poverty, law enforcement, and other programs;

(f) Projection of needs for public facilities, including but not limited to headquarters and district state office buildings, state colleges and universities, and state health, welfare, and correctional institutions;

(g) Policy alternatives for the prudent exploitation, conservation, and replenishment of the state's natural resources; and

(h) Policy alternatives for intergovernmental relations and governmental structure.

Source: Laws 1969, c. 775, § 6, p. 2942; Laws 1979, LB 412, § 16.

84-137 Governor's Policy Research Office; functional plans; Governor; powers.

(1) In consultation with appropriate state and local governmental agencies, the Governor's Policy Research Office may prepare, or cause to be prepared, and issue on behalf of the Governor, a series of medium-range or long-range development plans on a specific subject or service area of government. Such plans, called functional plans, may include one of the following subject areas: Outdoor recreation, water resources, transportation, law enforcement and the administration of criminal justice, housing, education, social and economic development, physical and mental health services and facilities, employment, poverty, manpower development, and other broad areas of state responsibility.

(2) The Governor, through the Governor's Policy Research Office, may direct each department, agency, and institution of the state to designate from among its employees and officers a planning officer who shall be directly responsible to the chief executive officer of the department, agency, or institution for internal and interagency planning and programming activities and who shall maintain continuing liaison with personnel of the Governor's Policy Research Office.

(3) Functional plans, whether specifically required as a condition to federal loans or grants or not, prepared by transportation authorities, natural resources districts, state departments, agencies, or institutions, shall be issued only after review and approval by the Governor's Policy Research Office.

(4) Functional plans and revisions thereof may be transmitted to the Legislature by the Governor for its consideration and action.

Source: Laws 1969, c. 775, § 7, p. 2943; Laws 1979, LB 412, § 17.

84-138 Repealed. Laws 1979, LB 412, § 32.

84-139 Plans of state agencies; approval by Governor's Policy Research Office.

No state agency functional plan of the type referred to in section 84-137 may be promulgated, nor may any planning program of a state agency, department, or institution be undertaken, unless the Governor's Policy Research Office finds that such plans or planning programs are not in conflict with the laws of the State of Nebraska and executive orders of the Governor.

Source: Laws 1969, c. 775, § 9, p. 2944; Laws 1979, LB 412, § 18.

84-140 Repealed. Laws 1988, LB 811, § 1.

84-140.01 Repealed. Laws 1995, LB 14, § 1.

84-141 Nebraska Commission on Law Enforcement and Criminal Justice; planning programs; consistent with planning policies of Governor's Policy Research Office.

The planning programs of the Nebraska Commission on Law Enforcement and Criminal Justice shall be consistent with the planning policies of the Governor's Policy Research Office.

Source: Laws 1969, c. 775, § 14, p. 2947; Laws 1979, LB 412, § 20.

Cross References

Nebraska Commission on Law Enforcement and Criminal Justice, powers and duties, see section 81-1423.

84-142 Repealed. Laws 1992, LB 573, § 16.

84-143 Repealed. Laws 1992, LB 573, § 16.

84-144 Repealed. Laws 1992, LB 573, § 16.

84-145 Repealed. Laws 1992, LB 573, § 16.

84-146 Repealed. Laws 1992, LB 573, § 16.

84-147 Repealed. Laws 1992, LB 573, § 16.

84-148 Repealed. Laws 1992, LB 573, § 16.

84-149 Repealed. Laws 1992, LB 573, § 16.

84-150 Repealed. Laws 1992, LB 573, § 16.

84-151 Repealed. Laws 1985, LB 421, § 6.

84-152 Transferred to section 13-301.

84-153 Transferred to section 13-302.

84-154 Repealed. Laws 1985, LB 421, § 6.

84-155 Transferred to section 19-912.01.

84-156 Repealed. Laws 1985, LB 421, § 6.

84-157 Repealed. Laws 1985, LB 421, § 6.

84-158 Repealed. Laws 1985, LB 421, § 6.

84-159 Repealed. Laws 1985, LB 421, § 6.

84-160 Repealed. Laws 1985, LB 421, § 6.

84-161 Comprehensive development plans; Governor's Policy Research Office; assist in preparation; when.

The Governor's Policy Research Office shall not contract with or provide assistance to any municipality or county to prepare comprehensive development plans or land-use regulatory proposals, unless such assistance shall first be requested in writing by the municipality or county.

Source: Laws 1978, LB 186, § 14; Laws 1979, LB 412, § 30.

84-162 Vital resource emergencies; legislative findings.

The Legislature finds, for purposes of sections 84-162 to 84-167, that:

(1) Water for domestic, agricultural, and industrial use, food for domestic use, and adequate energy supplies are vital resources needed to sustain life;

(2) The interruption of supplies of these resources or the threat of such interruption may cause severe hardship or threaten the health and lives of the citizens of the state;

(3) The Governor, as chief executive, should have adequate means at his or her disposal to insure the health and welfare of the citizens of the state; and

(4) Sections 84-162 to 84-167 provide the additional emergency powers necessary for the Governor to act in specified vital resource emergencies.

Source: Laws 1980, LB 954, § 51.

84-163 Terms, defined.

As used in sections 84-162 to 84-167, unless the context otherwise requires:

(1) Vital resource crisis shall mean the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from the shortage of any vital resource as the result of interruption or shortage of electricity, petroleum-based fuels, uranium, coal, or any other form of energy; and

(2) Vital resource shall include food for domestic use, water for domestic, agricultural, or industrial use, and electricity, petroleum-based fuels, uranium, coal, or any other form of energy.

Source: Laws 1980, LB 954, § 52.

84-164 Vital resource emergency; Governor declare; when; termination.

A vital resource emergency shall be declared by the Governor if he or she finds that a vital resource crisis is imminent or has occurred. Such declaration shall be promptly filed with the Secretary of State. The state of emergency shall continue until the Governor finds that the threat or danger has passed or that the vital resource emergency has been dealt with to the extent that emergency conditions no longer exist and therefor terminates the state of emergency by proclamation. No state of emergency shall continue for longer than fifteen days unless renewed by proclamation of the Governor. The Legislature may terminate a state of emergency at any time, upon passage of a resolution.

Source: Laws 1980, LB 954, § 53.

84-165 Vital resource emergency; legislative determination; response of Governor.

If the Legislature determines by resolution that a vital resource emergency exists it shall transmit such resolution to the Governor. The Governor shall respond in writing to such legislative resolution within ten days, stating his or her plan, if an emergency proclamation is to be issued pursuant to the resolution, and stating the reason or reasons for not issuing such proclamation if action is not going to be taken.

Source: Laws 1980, LB 954, § 54.

84-166 Vital resource emergency; Governor; powers.

Pursuant to the proclamation of a vital resource emergency issued as provided in section 84-164, the Governor by executive order may:

(1) Regulate the operating hours of vital resource consuming instrumentalities including state government, political subdivisions, private institutions, and

business facilities to the extent that the regulation is not hazardous or detrimental to the health, safety, or welfare of the people of this state;

(2) Establish a system for the distribution of the supply of energy or vital resource;

(3) Curtail, regulate, or direct the public and private transportation and use of the vital resource which is in short supply, to the extent necessary, so long as such regulation is not hazardous or detrimental to the health, safety, or welfare of the people of this state;

(4) Delegate any administrative authority vested in him or her to the Department of Environment and Energy or any other state agency or its respective director; and

(5) Provide for the temporary transfer of directors, personnel, or functions of state departments and agencies for the purpose of carrying out any emergency measures taken pursuant to sections 84-162 to 84-167.

Source: Laws 1980, LB 954, § 55; Laws 2019, LB302, § 175.

84-167 Emergency measures; exemption; issued by Governor.

Any person, association, partnership, limited liability company, or corporation may appeal to the Governor requesting a partial or complete exemption from the emergency measures ordered pursuant to sections 84-162 to 84-167. Any such exemption issued by the Governor shall be in writing and shall clearly identify those persons exempted, the scope of such exemption, and the reasons for granting such exemptions.

Source: Laws 1980, LB 954, § 56; Laws 1993, LB 121, § 548.

84-168 Acceptance of cession or retrocession of federal jurisdiction; conditions; filing; memorandum of understanding.

(1) By appropriate executive order, the Governor may accept on behalf of the state full or partial cession or retrocession of federal jurisdiction, including criminal, civil, or juvenile, over any lands, except Indian lands, in federal enclaves within the state where such cession or retrocession has been offered by appropriate federal authority.

(2) To be accepted by the Governor, such offer must:

(a) Clearly state the subject matter of the offer, including specifically identifying whether it includes matters of criminal, civil, or juvenile jurisdiction and the scope of any concurrent jurisdiction;

(b) Provide a metes and bounds description of the boundaries; and

(c) Indicate whether the offer includes future contiguous expansions of land acquired for military purposes.

(3) An executive order accepting a cession or retrocession of jurisdiction shall be filed in the office of the Secretary of State and in the office of the register of deeds of the county in which the affected real estate is located. Upon filing, the Governor shall cause a certified copy of the executive order and any documents filed under this subsection to be sent to the appropriate federal authority.

(4) If an area of concurrent jurisdiction between the state and the federal government is established pursuant to this section, any state agency or political subdivision may enter into a memorandum of understanding with any federal

agency for coordination and designation of responsibilities relating to such concurrent jurisdiction.

Source: Laws 1993, LB 545, § 1; Laws 2024, LB1195, § 14.
Effective date July 19, 2024.

ARTICLE 2 ATTORNEY GENERAL

Cross References

Constitutional provisions:

Election, term, eligibility, see Article IV, section 1, Constitution of Nebraska.

Parole and pardons, see Article IV, section 13, Constitution of Nebraska.

Salary, see Article IV, section 25, Constitution of Nebraska.

Term of office, begins when, see Article XVII, section 5, Constitution of Nebraska.

Election, see section 32-507.

Expenses, see sections 81-1174 to 81-1177.

Impeachment, see section 24-101.

Quo warranto, see sections 25-21,121 to 25-21,148.

Section

- 84-201. Department of Justice; Attorney General; head.
- 84-201.01. Attorney General; salary.
- 84-201.02. Restriction on private practice of law.
- 84-202. Department of Justice; powers and duties.
- 84-203. Attorney General; actions by or against the state; duties.
- 84-204. Attorney General; power in counties concurrent with county attorney.
- 84-205. Attorney General; powers and duties; Child Protection Division.
- 84-206. Deputy attorney general; bond or insurance; powers and duties; compensation.
- 84-206.01. Attorney General; actions relating to boundary lines; duty.
- 84-206.02. Repealed. Laws 1957, c. 220, § 4.
- 84-206.03. Repealed. Laws 1959, c. 266, § 1.
- 84-206.04. Repealed. Laws 1967, c. 402, § 1.
- 84-207. Attorney General; actions involving use of waters of interstate streams; duty.
- 84-208. Attorney General; actions involving use of waters in interstate streams; special counsel; expense.
- 84-209. Attorney General; actions against members of Legislature; defense; when authorized.
- 84-210. Attorney General; actions against members of Legislature; defense when Attorney General disqualified.
- 84-211. Attorney General; antitrust division; violations of federal antitrust laws; duties.
- 84-212. Attorney General; antitrust matters; powers; duties; damages; proof; distribution.
- 84-213. Attorney General; antitrust matters; investigation; powers; duties; subpoena.
- 84-214. Antitrust matters; labor of human beings; exempt.
- 84-215. Repealed. Laws 2024, LB287, § 77.
- 84-216. State agency; failure or refusal to implement statute; action by Attorney General; when; costs.
- 84-217. Section; cumulative to existing remedies.
- 84-218. Statewide model anonymous reporting protocol for health care providers.
- 84-219. Department of Justice Revolving Fund; created; use; investment.
- 84-220. Repealed. Laws 2006, LB 1061, § 28.
- 84-221. Repealed. Laws 2007, LB 322, § 43.

84-201 Department of Justice; Attorney General; head.

There is hereby constituted an executive department to be known as the Department of Justice, and the Attorney General shall be the head of this department.

Source: Laws 1919, c. 205, § 1, p. 904; C.S.1922, § 4834; C.S.1929, § 84-201; R.S.1943, § 84-201.

Attorney General has right to appeal from order of State Board of Equalization and Assessment. *State ex rel. Sorensen v. State Board of Equalization and Assessment*, 123 Neb. 259, 242 N.W. 609 (1932), 243 N.W. 264 (1932).

Attorney General on own initiative had authority to maintain suit to enjoin repeated violations of anti-gambling statutes in

form of pari-mutuel betting on horse races. *State ex rel. Sorensen v. Ak-Sar-Ben Exposition Co.*, 121 Neb. 248, 236 N.W. 736 (1931).

Attorney General is clothed with power to prosecute criminal actions in any county in the state. *Lower v. State*, 106 Neb. 666, 184 N.W. 174 (1921).

84-201.01 Attorney General; salary.

Until January 4, 2007, the annual salary of the Attorney General shall be seventy-five thousand dollars. Commencing January 4, 2007, the annual salary of the Attorney General shall be ninety-five thousand dollars. The salary of the Attorney General shall be payable in equal monthly installments.

Source: Laws 1963, c. 538, § 1, p. 1684; Laws 1965, c. 567, § 1, p. 1853; Laws 1969, c. 833, § 1, p. 3156; Laws 1973, LB 246, § 1; Laws 1978, LB 541, § 1; Laws 1986, LB 43, § 4; Laws 1990, LB 503, § 3; Laws 2000, LB 956, § 3; Laws 2006, LB 817, § 3.

84-201.02 Restriction on private practice of law.

The Attorney General and all permanent deputy and assistant attorneys general shall not engage in the private practice of law for compensation or lobbying for compensation.

Source: Laws 1984, LB 826, § 1.

84-202 Department of Justice; powers and duties.

The Department of Justice shall have the general control and supervision of all actions and legal proceedings in which the State of Nebraska may be a party or may be interested, and shall have charge and control of all the legal business of all departments and bureaus of the state, or of any office thereof, which requires the services of attorney or counsel in order to protect the interests of the state.

Source: Laws 1919, c. 205, § 2, p. 904; C.S.1922, § 4835; C.S.1929, § 84-202; R.S.1943, § 84-202; Laws 1953, c. 354, § 1, p. 1131.

Constitutionality of act creating Department of Justice was raised but not decided. *Smith v. State*, 109 Neb. 579, 191 N.W. 687 (1922).

Attorney General is authorized to institute suits on official bond of state officer, and admissions in pleadings verified by

him bind state. *Paxton v. State*, 59 Neb. 460, 81 N.W. 383 (1899).

84-203 Attorney General; actions by or against the state; duties.

The Attorney General is authorized to appear for the state and prosecute and defend, in any court or before any officer, board or tribunal, any cause or matter, civil or criminal, in which the state may be a party or interested. If the Director-State Engineer shall have drawn any plans or specifications for the construction of bridges or other public structures for any county in this state, and such plans shall have been adopted by any such county and bids let thereon, and the same constructed by any person, corporation or association, and suit is brought against such county, person, corporation or association for damages on account of the infringement of any alleged United States patent, in any court, state or federal, it shall be the duty of the Attorney General to intervene in said suit in behalf of the state and defend it, or, if intervention cannot be had, then the Attorney General shall take charge of the suit for such county, person, corporation or association, and defend it, or he may employ

counsel to do so, and the fee of such counsel and other expenses shall be paid from appropriations made to the office of the Attorney General.

Source: Laws 1919, c. 205, § 3, p. 904; C.S.1922, § 4836; C.S.1929, § 84-203; R.S.1943, § 84-203.

Attorney General is not authorized to enter voluntary appearance of state in workmen's compensation case. *Anstine v. State*, 137 Neb. 148, 288 N.W. 525 (1939).

Assistant attorney general does not have authority to sign informations. *Lower v. State*, 106 Neb. 666, 184 N.W. 174 (1921).

Voluntary appearance by the Attorney General on behalf of the state and his failure to object to the jurisdiction of the court

could not bind state. *McShane v. Murray*, 106 Neb. 512, 184 N.W. 147 (1921).

Attorney General has no general authority to appear in suits against state in federal court and consent to waiver of state's immunity from suit. *O'Connor v. Slaker*, 22 F.2d 147 (8th Cir. 1927).

84-204 Attorney General; power in counties concurrent with county attorney.

The Attorney General and the Department of Justice shall have the same powers and prerogatives in each of the several counties of the state as the county attorneys have in their respective counties.

Source: Laws 1919, c. 205, § 4, p. 905; C.S.1922, § 4837; C.S.1929, § 84-204; R.S.1943, § 84-204.

Attorney General has same authority to prosecute exceptions in the Supreme Court as the county attorney. *State v. Hutter*, 145 Neb. 798, 18 N.W.2d 203 (1945).

Attorney General has right to invoke judgment of appellate court by writ of error to State Board of Equalization upon order

reducing assessments entered by board. *State ex rel. Sorensen v. State Board of Equalization and Assessment*, 123 Neb. 259, 242 N.W. 609 (1932), 243 N.W. 264 (1932).

Assistant attorney general has no authority to make and sign information in his own name, and information so signed is nullity. *Lower v. State*, 106 Neb. 666, 184 N.W. 174 (1921).

84-205 Attorney General; powers and duties; Child Protection Division.

The duties of the Attorney General shall be:

- (1) To appear and defend actions and claims against the state;
- (2) To investigate, commence, and prosecute any and all actions resulting from violations of sections 32-1401 to 32-1417;
- (3) To consult with and advise the county attorneys, when requested by them, in all criminal matters and in matters relating to the public revenue. He or she shall have authority to require aid and assistance of the county attorney in all matters pertaining to the duties of the Attorney General in the county of such county attorney and may, in any case brought to the Court of Appeals or Supreme Court from any county, demand and receive the assistance of the county attorney from whose county such case is brought;
- (4) To give, when required, without fee, his or her opinion in writing upon all questions of law submitted to him or her by the Governor, head of any executive department, Secretary of State, State Treasurer, Auditor of Public Accounts, Board of Educational Lands and Funds, State Department of Education, Public Service Commission, or Legislature;
- (5) At the request of the Governor, head of any executive department, Secretary of State, State Treasurer, Auditor of Public Accounts, Board of Educational Lands and Funds, State Department of Education, or Public Service Commission, to prosecute any official bond or any contract in which the state is interested which is deposited with any of them and to prosecute or defend for the state all civil or criminal actions and proceedings relating to any matter connected with any of such officers' departments if, after investigation, he or she is convinced there is sufficient legal merit to justify the proceeding. Such officers shall not pay or contract to pay from the funds of the state any

money for special attorneys or counselors-at-law unless the employment of such special counsel is made upon the written authorization of the Governor or the Attorney General;

(6) To enforce the proper application of money appropriated by the Legislature to the various funds of the state and prosecute breaches of trust in the administration of such funds;

(7) To prepare, when requested by the Governor, Secretary of State, State Treasurer, or Auditor of Public Accounts or any other executive department, proper drafts for contracts, forms, or other writings which may be wanted for the use of the state and report to the Legislature, whenever requested, upon any business pertaining to the duties of his or her office. The report submitted to the Legislature shall be submitted electronically;

(8) To pay all money received, belonging to the people of the state, immediately upon receipt thereof, into the state treasury;

(9) To keep a record in proper books provided for that purpose at the expense of the state, a register of all actions and demands prosecuted or defended by him or her in behalf of the state and all proceedings had in relation thereto, and deliver the same to his or her successor in office;

(10) To appear for the state and prosecute and defend all civil or criminal actions and proceedings in the Court of Appeals or Supreme Court in which the state is interested or a party. When requested by the Governor or the Legislature, the Attorney General shall appear for the state and prosecute or defend any action or conduct any investigation in which the state is interested or a party before any court, officer, board, tribunal, or commission;

(11) To prepare and promulgate model rules of procedure appropriate for use by as many agencies as possible. The Attorney General shall add to, amend, or revise the model rules as necessary for the proper guidance of agencies;

(12) To include within the budget of the office sufficient funding to assure oversight and representation of the State of Nebraska for district court appeals of administrative license revocation proceedings under section 60-498.04;

(13)(a) To create a Child Protection Division to be staffed by at least three assistant attorneys general who each have five or more years of experience in the prosecution or defense of felonies or misdemeanors, including two years in the prosecution or defense of crimes against children. Upon the written request of a county attorney, the division shall provide consultation and advise and assist in the preparation of the trial of any case involving a crime against a child, including, but not limited to, the following offenses:

- (i) Murder as defined in sections 28-303 and 28-304;
- (ii) Manslaughter as defined in section 28-305;
- (iii) Kidnapping as defined in section 28-313;
- (iv) False imprisonment as defined in sections 28-314 and 28-315;
- (v) Child abuse as defined in section 28-707;
- (vi) Pandering as defined in section 28-802;
- (vii) Debauching a minor as defined in section 28-805; and
- (viii) Offenses listed in sections 28-813, 28-813.01, and 28-1463.03.

(b) Any offense listed in subdivisions (13)(a)(i) through (viii) of this section shall include all inchoate offenses pursuant to the Nebraska Criminal Code and

compounding a felony pursuant to section 28-301. Such crimes shall not include matters involving dependent and neglected children, infraction violations, custody, parenting time, visitation, or other access matters, or child support. If the county attorney declines in writing to prosecute a case involving a crime against a child because of an ethical consideration, including the presence or appearance of a conflict of interest, or for any other reason, the division shall, upon the receipt of a written request of the county attorney, the Department of Health and Human Services, the minor child, the parents of the minor child, or any other interested party, investigate the matter and either decline to prosecute the matter or initiate the appropriate criminal proceedings in a court of proper jurisdiction.

(c) For purposes of this subdivision (13), child or children shall mean an individual or individuals sixteen years of age or younger; and

(14) To enforce the Foreign-owned Real Estate National Security Act.

Source: Laws 1919, c. 205, § 5, p. 905; C.S.1922, § 4838; C.S.1929, § 84-205; R.S.1943, § 84-205; Laws 1972, LB 1456, § 4; Laws 1973, LB 14, § 2; Laws 1990, LB 1246, § 17; Laws 1991, LB 732, § 157; Laws 1994, LB 446, § 13; Laws 1996, LB 1044, § 977; Laws 1997, LB 758, § 6; Laws 2003, LB 209, § 18; Laws 2007, LB554, § 45; Laws 2012, LB782, § 221; Laws 2024, LB1301, § 22.

Operative date January 1, 2025.

Cross References

Foreign-owned Real Estate National Security Act, see section 76-3701.
Nebraska Criminal Code, see section 28-101.

The Attorney General acted in this case pursuant to a request of the Governor as provided in this section. State ex rel. Douglas v. Gradwohl, 194 Neb. 745, 235 N.W.2d 854 (1975).

Attorney General was required upon request of Governor to bring declaratory judgment proceeding to determine constitutionality of statute. State ex rel. Meyer v. County of Lancaster, 173 Neb. 195, 113 N.W.2d 63 (1962).

Action to test constitutionality of statute was properly brought by Attorney General at direction of the Governor. State ex rel. Beck v. City of York, 164 Neb. 223, 82 N.W.2d 269 (1957).

Attorney General, at request of Department of Roads and Irrigation, is authorized to bring injunction suit to enforce compliance with irrigation laws. State ex rel. Sorensen v. Mitchell Irrigation District, 129 Neb. 586, 262 N.W. 543 (1935).

Officers of departments and state institutions are entitled to opinion and advice of Attorney General upon questions of law. Follmer v. State, 94 Neb. 217, 142 N.W. 908 (1913).

Attorney General may authorize other attorneys to appear for him and assert right on behalf of state to public charity. In re Creighton's Estate, 91 Neb. 654, 136 N.W. 1001 (1912).

Attorney General may, on behalf of state, sue in equity to enjoin common carriers whose rates are fixed by law from exacting excessive rates. State v. Pacific Express Co., 80 Neb. 823, 115 N.W. 619 (1908).

Where Attorney General refuses to file brief on ground that evidence is insufficient, conviction will ordinarily be reversed. Lorenz v. State, 53 Neb. 463, 73 N.W. 935 (1898); George v. State, 44 Neb. 757, 62 N.W. 1094 (1895).

Attorney General is required to prosecute or defend any case in Supreme Court in which state is party or interested. State ex rel. Board of Transportation v. Fremont, E. & M. V. R.R. Co., 22 Neb. 313, 35 N.W. 118 (1887).

Attorney General cannot appear in federal court and consent to waiver of state's immunity from suit. O'Connor v. Slaker, 22 F.2d 147 (8th Cir. 1927).

84-206 Deputy attorney general; bond or insurance; powers and duties; compensation.

The Attorney General shall appoint a deputy attorney general, who shall be bonded or insured as required by section 11-201. A copy of the appointment shall be deposited in the office of the Secretary of State. The deputy may do and perform, in the absence of the Attorney General, all the acts and duties that may be authorized and required to be performed by the Attorney General. The Attorney General shall be responsible for all acts of such deputy. The deputy shall receive a salary of such amount as shall be fixed by the Attorney General, to be paid on a monthly basis by warrant of the Director of Administrative Services on the State Treasurer. The salary of the deputy attorney general and

each full-time assistant attorney general shall be not less than twenty thousand dollars.

Source: Laws 1887, c. 84, § 1, p. 629; R.S.1913, § 5542; Laws 1919, c. 205, § 6, p. 907; Laws 1921, c. 107, § 2, p. 379; C.S.1922, § 4839; C.S.1929, § 84-206; Laws 1943, c. 228, § 1, p. 775; R.S.1943, § 84-206; Laws 1947, c. 346, § 4, p. 1092; Laws 1951, c. 338, § 8, p. 1119; Laws 1953, c. 355, § 1, p. 1132; Laws 1955, c. 347, § 1, p. 1066; Laws 1957, c. 220, § 1, p. 759; Laws 1959, c. 451, § 1, p. 1503; Laws 1963, c. 535, § 1, p. 1680; Laws 1973, LB 246, § 2; Laws 1978, LB 653, § 38; Laws 2004, LB 884, § 48.

Cross References

For bonding provisions, see Chapter 11.

For other provisions as to deputy state officers, see Chapter 84, article 8.

Attorney General has power to designate an assistant attorney general to appear in his stead in trial of a criminal cause, and it is not necessary that the assistant be a bonded deputy under above section. *Carlsen v. State*, 127 Neb. 11, 254 N.W. 744 (1934).

Assistant attorney general has no power to make and sign information in his own name, and information so signed is a nullity. *Lower v. State*, 106 Neb. 666, 184 N.W. 174 (1921).

Prohibition against creation of new executive department does not prevent the appointment of deputy. In re Appropriations for Deputies, Etc., 25 Neb. 662, 41 N.W. 643 (1889).

84-206.01 Attorney General; actions relating to boundary lines; duty.

The Attorney General shall commence, prosecute, or defend all actions relating to Nebraska's boundary line which affect the rights and interests of Nebraska landowners whose land is being taxed by Nebraska political subdivisions on or after September 13, 1997. The Attorney General shall also take any other action that is required in his or her judgment to protect all rights and interests of such landowners.

Source: Laws 1997, LB 588, § 1.

84-206.02 Repealed. Laws 1957, c. 220, § 4.

84-206.03 Repealed. Laws 1959, c. 266, § 1.

84-206.04 Repealed. Laws 1967, c. 402, § 1.

84-207 Attorney General; actions involving use of waters of interstate streams; duty.

It shall be the duty of the Attorney General of the state to commence, prosecute and defend any and all actions affecting the rights of Nebraska water users in interstate streams as against appropriators in any other state, and to take such steps as in his judgment are required to protect any and all interests of appropriators of water within this state in such cases.

Source: Laws 1915, c. 223, § 1, p. 492; C.S.1922, § 4841; C.S.1929, § 84-208; R.S.1943, § 84-207.

Attorney General was authorized to maintain action to compel irrigation district to refrain from using water for irrigation purposes without complying with statute regulating same. State

ex rel. *Sorensen v. Mitchell Irrigation District*, 129 Neb. 586, 262 N.W. 543 (1935).

84-208 Attorney General; actions involving use of waters in interstate streams; special counsel; expense.

The Attorney General is authorized to employ such assistance and incur such expenses as shall be necessary in any such actions.

Source: Laws 1915, c. 223, § 2, p. 492; C.S.1922, §§ 4842, 4843; C.S. 1929, § 84-209; R.S.1943, § 84-208.

84-209 Attorney General; actions against members of Legislature; defense; when authorized.

It shall be the duty of the Attorney General, when requested by resolution of the Legislature, to appear for, and prosecute or defend any action instituted or now pending in any of the courts of this state against any member of the Legislature for, or on account of, any words spoken, or any act or thing done, in the course of legislative procedure, or with relation to any act, measure, resolution, report, speech or debate, or other matter had or transacted by the Legislature, or in connection therewith.

Source: Laws 1935, Spec. Sess., c. 9, § 1, p. 67; C.S.Supp.,1941, § 84-211; R.S.1943, § 84-209.

84-210 Attorney General; actions against members of Legislature; defense when Attorney General disqualified.

When the nature of the action referred to in section 84-209 is such that the Attorney General is disqualified by law from appearing therein and defending the same, then, in that event, it shall be the duty of the Governor of the state to appoint special counsel to appear and defend such action in like manner as the Attorney General might do, if qualified.

Source: Laws 1935, Spec. Sess., c. 9, § 2, p. 68; C.S.Supp.,1941, § 84-212; R.S.1943, § 84-210.

84-211 Attorney General; antitrust division; violations of federal antitrust laws; duties.

It shall be the duty of the Attorney General to institute and prosecute such proceedings as may be necessary for the State of Nebraska and its political subdivisions when there are violations of state and federal antitrust laws. Such proceedings shall be for the state and its political subdivisions as their interest may appear, and may be prosecuted in the name of the State of Nebraska. No later than June 30, 1974, the Attorney General shall establish within the Department of Justice an antitrust division to which he shall assign one or more assistants, as the work may require. It shall be the primary duty of such division to enforce the laws against monopolies, illegal trusts and other unlawful combinations in restraint of trade, and it shall investigate complaints of violations of such laws, subject to the availability of appropriations for that purpose. To assist the division, the Attorney General shall have authority to call on all agencies of this state, and the political subdivisions thereof, for such assistance as they may be in a position to provide, including but not limited to the furnishing of records and information relating to transactions entered into by them which the Attorney General believes pertain to his antitrust investigations.

Source: Laws 1969, c. 826, § 1, p. 3133; Laws 1974, LB 1028, § 4.

Cross References

Antitrust actions, see section 59-829.

84-212 Attorney General; antitrust matters; powers; duties; damages; proof; distribution.

The Attorney General shall have and retain all his common-law powers with respect to dealing with antitrust matters, and all related statutes of this state shall be deemed to be supplementary to such powers. He shall have authority to bring civil actions in the name of the state against anyone found violating either state or federal antitrust laws, and may recover treble damages in such actions. Such actions may also be brought as *parens patriae* of the citizens of this state with respect to damages personally sustained by such citizens, and he may recover the aggregate damages sustained by the citizens of this state, without separately proving the individual claims of each such citizen. Proof of such damages may be based on statistical sampling methods, the pro rata allocation of excess profits to sales occurring within this state, or such other reasonable system of estimating aggregate damages as the court in its discretion may permit. He shall distribute, allocate, or otherwise pay out of the funds so recovered to each citizen of the state a pro rata portion of the fund attributable to his respective claim for damages, less litigation and administrative costs, and any balance remaining after the payment of such individual claims and the costs of litigation and other administrative costs shall be placed in a fund to be distributed to the common schools of this state.

Source: Laws 1974, LB 1028, § 5.

84-213 Attorney General; antitrust matters; investigation; powers; duties; subpoena.

Whenever the Attorney General undertakes any investigation contemplated by section 59-828, 84-211, or 84-212, he or she shall have the authority, prior to commencement of any action, to subpoena witnesses, compel their attendance, examine them under oath, or require the production of any books, documents, records, writings, or tangible things referred to in this section as documentary material, which he or she deems relevant or material to the investigation, for inspection, reproducing, or copying under such terms and conditions as are set forth in this section. Any subpoena issued by the Attorney General shall contain the following information: (1) The section of the statutes the alleged violation of which is under investigation and the general subject matter of the investigation; (2) the date and place at which time the person is required to appear or produce documentary material in his or her possession, custody, or control, which date shall not be less than ten days from the date of service of the subpoena; and (3) a description of any documentary material required by class so as to clearly indicate the material demanded. He or she may require the production of documentary material prior to the taking of any testimony of the person subpoenaed, in which event the documentary material shall be made available for inspection and copying during normal business hours at the principal place of business of the person served or at such other time and place as may be agreed upon by the person served and the Attorney General. When documentary material is demanded by subpoena, the subpoena shall not contain any requirement which would be unreasonable or improper if contained in a subpoena *duces tecum* issued by a court of this state or require the disclosure of any documentary material which would be privileged or which for any other reason would not be required by a subpoena *duces tecum* issued by a court of this state. Service of such subpoena shall be in the same manner as subpoenas issued by a court in this state, and service on a corporation may be

made on its resident agent. The examination of all witnesses under this section shall be conducted by the Attorney General or by an assistant or special assistant attorney general designated by him or her in writing, and the testimony shall be taken stenographically or by a sound-recording device and shall be transcribed. All persons served with a subpoena by the Attorney General under sections 59-828 and 84-211 to 84-214 shall be paid the same fees as paid witnesses in the courts of this state and mileage as provided in section 81-1176 for state employees, which shall be paid the same as other requests for payment or reimbursement from the state at the time such person appears in response to the subpoena. If a witness served with a subpoena under such sections fails or refuses to obey the same or produce documentary material as required or to give testimony relevant or material to the investigation being conducted, the Attorney General may petition the district court of Lancaster County or the county in which the witness resides for an order requiring the witness to attend and testify or produce the documentary material demanded. Any failure or refusal on the part of the witness to obey such an order of court may be punishable by the court as a contempt thereof. In any investigation brought by the Attorney General pursuant to section 59-828, 84-211, or 84-212, no individual shall be excused from attending, testifying, or producing documentary material, objects, or tangible things in obedience to a subpoena or under order of the court on the ground that the testimony or evidence required of him or her may tend to incriminate him or her or subject him or her to any criminal penalty for or on account of any testimony given by him or her in any investigation brought by the Attorney General pursuant to such sections. No person shall be prosecuted or be subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she may testify or produce evidence, documentary or otherwise, in any proceeding, suit, or prosecution under such sections, and no individual so testifying shall be exempt from prosecution or punishment for perjury committed in so testifying.

Source: Laws 1974, LB 1028, § 6; Laws 1981, LB 204, § 211; Laws 1988, LB 864, § 66.

84-214 Antitrust matters; labor of human beings; exempt.

Anything in sections 59-821, 59-828, 59-829, and 84-211 to 84-214 to the contrary notwithstanding the labor of human beings shall not be construed to be an article of commerce or commodity of business and shall be exempt from the provisions of sections 59-821, 59-828, 59-829, and 84-211 to 84-214.

Source: Laws 1974, LB 1028, § 7.

84-215 Repealed. Laws 2024, LB287, § 81.

Operative date July 19, 2024.

84-216 State agency; failure or refusal to implement statute; action by Attorney General; when; costs.

When the Attorney General determines, after such investigation as shall be necessary, that any agency of state government charged with the implementation of any act of the Legislature is failing or refusing to implement such act, he shall notify the agency head by letter of such determination. If, within ten working days of the receipt of such letter, it is not established to his satisfaction that steps to implement the act are being expeditiously taken, and there is no valid reason for failing to do so, such as a failure of an appropriation, the

Attorney General shall file an action in the appropriate court to compel implementation. In any such action the department head or the agency head shall defend the action. The costs and a reasonable attorney's fee as fixed by the court shall be paid out of the appropriation to the department.

Source: Laws 1977, LB 46, § 2.

84-217 Section; cumulative to existing remedies.

Section 84-216 is cumulative to any existing remedies which may exist.

Source: Laws 1977, LB 46, § 3; Laws 2024, LB287, § 73.
Operative date July 19, 2024.

84-218 Statewide model anonymous reporting protocol for health care providers.

On or before July 1, 2019, the Attorney General shall develop and distribute a statewide model anonymous reporting protocol for use by health care providers as provided in section 28-902. Once developed, the statewide model anonymous reporting protocol shall be maintained by the Nebraska Commission on Law Enforcement and Criminal Justice.

Source: Laws 2018, LB1132, § 4.

84-219 Department of Justice Revolving Fund; created; use; investment.

There is hereby created the Department of Justice Revolving Fund. The fund shall be administered by the Attorney General and shall consist of funds received from other governmental agencies for the provision of legal services pursuant to agreements with the Department of Justice. Money in the fund shall be used to pay the salaries and related expenses of department staff pursuant to the terms of such agreements.

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

Source: Laws 1994, LB 1194, § 12; Laws 1995, LB 7, § 144.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

84-220 Repealed. Laws 2006, LB 1061, § 28.

84-221 Repealed. Laws 2007, LB 322, § 43.

ARTICLE 3

AUDITOR OF PUBLIC ACCOUNTS

Cross References

Constitutional provisions:

Election, term, eligibility, see Article IV, section 1, Constitution of Nebraska.

Salary, see Article IV, section 25, Constitution of Nebraska.

Term of office, begins when, see Article XVII, section 5, Constitution of Nebraska.

Bond, official, see section 11-119.

Budget Act, Nebraska, see section 13-501.

Canvassers, board of state, member, see section 32-1037.

Charitable homes, records, inspection, see section 21-614.

County budget, advisory functions, see section 23-905.

County inventory statements, see section 23-346.

Deputy, see sections 84-801 and 84-803.

§ 84-301**STATE OFFICERS**

Election, see section 32-507.
Expenses, see sections 81-1174 to 81-1177.
Funds, establishment of petty cash, see section 81-104.01.
Impeachment, see section 24-101.
Investigation Petty Cash Fund, see section 81-2004.03.
New township or municipal names, duties, see section 23-281.
Records, delivery to successor, see section 84-604.
Salary, see sections 84-721 and 84-723.
State Funds Investment Act, Nebraska, postaudits, see section 72-1255.
State Records Board, see section 84-1204.
State Treasurer, examination of records of, see section 84-605.
Suggestion Award Board, member, see section 81-1348.
Vacancy, possession and control of office, see section 32-563.

Section

- 84-301. Repealed. Laws 2000, LB 692, § 13.
84-302. Transferred to section 81-1107.01.
84-303. Transferred to section 81-1125.01.
84-304. Auditor; powers and duties; assistant deputies; qualifications; powers and duties.
84-304.01. Auditor; audit, financial, or accounting reports; minimum standards; establish; political subdivisions; failure to file report; late fee; performance audits.
84-304.02. Auditor; audit, financial, accounting, or retirement system plan reports; written review; copies; disposition.
84-304.03. Auditor; establish minimum standards.
84-305. Public entity; access to records; procedure; Auditor of Public Accounts; powers; nonpublic information shall not be made public.
84-305.01. Audit report; working papers and audit files; access; request; failure to comply; late fee; refuse report; deficiency; powers and duties.
84-305.02. Prohibited acts; penalty.
84-306. Transferred to section 81-1170.
84-306.01. Transferred to section 81-1174.
84-306.02. Transferred to section 81-1175.
84-306.03. Transferred to section 81-1176.
84-306.04. Transferred to section 81-1171.
84-306.05. Transferred to section 81-1177.
84-306.06. Transferred to section 81-1178.
84-306.07. Transferred to section 81-1179.
84-306.08. Transferred to section 81-1180.
84-306.09. Transferred to section 81-1181.
84-307. Transferred to section 81-1107.02.
84-308. Transferred to section 81-1107.03.
84-309. Transferred to section 81-1172.
84-310. Transferred to section 81-1173.
84-311. Reports and working papers; disclosure status; penalty.
84-312. Auditor; oath; power to administer.
84-313. Transferred to section 81-1107.04.
84-314. Auditor; deputy; bond or insurance; compensation; duties; qualifications.
84-314.01. Repealed. Laws 1959, c. 266, § 1.
84-314.02. Repealed. Laws 1959, c. 266, § 1.
84-315. Auditor; seal; evidentiary effect.
84-316. Auditor of Public Accounts; powers; employees; prohibited acts; violation; penalty.
84-317. Repealed. Laws 1986, LB 748, § 1.
84-318. Repealed. Laws 1986, LB 748, § 1.
84-319. Repealed. Laws 1986, LB 748, § 1.
84-320. Repealed. Laws 1986, LB 748, § 1.
84-321. Auditor of Public Accounts Cash Fund; created; use.
84-322. Performance audits; authorized; report.
84-323. Auditor of Public Accounts; federal funds; Statewide Single Audit; exclusive authority to perform.

84-301 Repealed. Laws 2000, LB 692, § 13.

84-302 Transferred to section 81-1107.01.

84-303 Transferred to section 81-1125.01.

84-304 Auditor; powers and duties; assistant deputies; qualifications; powers and duties.

It shall be the duty of the Auditor of Public Accounts:

(1) To give information electronically to the Legislature, whenever required, upon any subject relating to the fiscal affairs of the state or with regard to any duty of his or her office;

(2) To furnish offices for himself or herself and all fuel, lights, books, blanks, forms, paper, and stationery required for the proper discharge of the duties of his or her office;

(3)(a) To examine or cause to be examined, at such time as he or she shall determine, books, accounts, vouchers, records, and expenditures of all state officers, state bureaus, state boards, state commissioners, the state library, societies and associations supported by the state, state institutions, state colleges, and the University of Nebraska, except when required to be performed by other officers or persons. Such examinations shall be done in accordance with generally accepted government auditing standards for financial audits and attestation engagements set forth in Government Auditing Standards (2011 Revision for audit periods ending before June 30, 2020, or 2018 Revision for audit periods ending on or after June 30, 2020), published by the Comptroller General of the United States, Government Accountability Office, and except as provided in subdivision (11) of this section, subdivision (16) of section 50-1205, and section 84-322, shall not include performance audits, whether conducted pursuant to attestation engagements or performance audit standards as set forth in Government Auditing Standards (2018 Revision), published by the Comptroller General of the United States, Government Accountability Office.

(b) Any entity, excluding the state colleges and the University of Nebraska, that is audited or examined pursuant to subdivision (3)(a) of this section and that is the subject of a comment and recommendation in a management letter or report issued by the Auditor of Public Accounts shall, on or before six months after the issuance of such letter or report, provide to the Auditor of Public Accounts a detailed written description of any corrective action taken or to be taken in response to the comment and recommendation. The Auditor of Public Accounts may investigate and evaluate the corrective action. The Auditor of Public Accounts shall then electronically submit a report of any findings of such investigation and evaluation to the Governor, the appropriate standing committee of the Legislature, and the Appropriations Committee of the Legislature. The Auditor of Public Accounts shall also ensure that the report is delivered to the Appropriations Committee for entry into the record during the committee's budget hearing process;

(4)(a) To examine or cause to be examined, at the expense of the political subdivision, when the Auditor of Public Accounts determines such examination necessary or when requested by the political subdivision, the books, accounts, vouchers, records, and expenditures of any agricultural association formed under Chapter 2, article 20, any county agricultural society, any joint airport authority formed under the Joint Airport Authorities Act, any city or county airport authority, any bridge commission created pursuant to section 39-868, any cemetery district, any community redevelopment authority or limited

community redevelopment authority established under the Community Development Law, any development district, any drainage district, any local public health department as defined in section 71-1626, any historical society, any hospital authority or district, any county hospital, any housing agency as defined in section 71-1575, any irrigation district, any county or municipal library, any community mental health center, any railroad transportation safety district, any rural water district, any township, Wyuka Cemetery, the Educational Service Unit Coordinating Council, any entity created pursuant to the Interlocal Cooperation Act, any educational service unit, any village, any service contractor or subrecipient of state or federal funds, any political subdivision with the authority to levy a property tax or a toll, or any entity created pursuant to the Joint Public Agency Act.

For purposes of this subdivision, service contractor or subrecipient means any nonprofit entity that expends state or federal funds to carry out a state or federal program or function, but it does not include an individual who is a direct beneficiary of such a program or function or a licensed health care provider or facility receiving direct payment for medical services provided for a specific individual.

(b) The Auditor of Public Accounts may waive the audit requirement of subdivision (4)(a) of this section upon the submission by the political subdivision of a written request in a form prescribed by the auditor. The auditor shall notify the political subdivision in writing of the approval or denial of the request for a waiver.

(c) Through December 31, 2017, the Auditor of Public Accounts may conduct audits under this subdivision for purposes of sections 2-3228, 12-101, 13-2402, 14-567, 14-1805.01, 14-2111, 16-1017, 16-1037, 19-3501, 23-1118, 23-3526, 71-1631.02, and 79-987.

(d) Beginning on May 24, 2017, the Auditor of Public Accounts may conduct audits under this subdivision for purposes of sections 13-2402, 14-567, 14-1805.01, 14-2111, 15-1017, 16-1017, 16-1037, 18-814, 71-1631.02, and 79-987 and shall prescribe the form for the annual reports required in each of such sections. Such annual reports shall be published annually on the website of the Auditor of Public Accounts;

(5) To report promptly to the Governor and the appropriate standing committee of the Legislature the fiscal condition shown by such examinations conducted by the auditor, including any irregularities or misconduct of officers or employees, any misappropriation or misuse of public funds or property, and any improper system or method of bookkeeping or condition of accounts. The report submitted to the committee shall be submitted electronically. In addition, if, in the normal course of conducting an audit in accordance with subdivision (3) of this section, the auditor discovers any potential problems related to the effectiveness, efficiency, or performance of state programs, he or she shall immediately report them electronically to the Legislative Performance Audit Committee which may investigate the issue further, report it electronically to the appropriate standing committee of the Legislature, or both;

(6)(a) To examine or cause to be examined the books, accounts, vouchers, records, and expenditures of a fire protection district. The expense of the examination shall be paid by the political subdivision.

(b) Whenever the expenditures of a fire protection district are one hundred fifty thousand dollars or less per fiscal year, the fire protection district shall be

audited no more than once every five years except as directed by the board of directors of the fire protection district or unless the auditor receives a verifiable report from a third party indicating any irregularities or misconduct of officers or employees of the fire protection district, any misappropriation or misuse of public funds or property, or any improper system or method of bookkeeping or condition of accounts of the fire protection district. In the absence of such a report, the auditor may waive the five-year audit requirement upon the submission of a written request by the fire protection district in a form prescribed by the auditor. The auditor shall notify the fire protection district in writing of the approval or denial of a request for waiver of the five-year audit requirement. Upon approval of the request for waiver of the five-year audit requirement, a new five-year audit period shall begin.

(c) Whenever the expenditures of a fire protection district exceed one hundred fifty thousand dollars in a fiscal year, the auditor may waive the audit requirement upon the submission of a written request by the fire protection district in a form prescribed by the auditor. The auditor shall notify the fire protection district in writing of the approval or denial of a request for waiver. Upon approval of the request for waiver, a new five-year audit period shall begin for the fire protection district if its expenditures are one hundred fifty thousand dollars or less per fiscal year in subsequent years;

(7) To appoint two or more assistant deputies (a) whose entire time shall be devoted to the service of the state as directed by the auditor, (b) who shall be certified public accountants with at least five years' experience, (c) who shall be selected without regard to party affiliation or to place of residence at the time of appointment, (d) who shall promptly report to the auditor the fiscal condition shown by each examination, including any irregularities or misconduct of officers or employees, any misappropriation or misuse of public funds or property, and any improper system or method of bookkeeping or condition of accounts, and it shall be the duty of the auditor to file promptly with the Governor a duplicate of such report, and (e) who shall qualify by taking an oath which shall be filed in the office of the Secretary of State;

(8) To conduct audits and related activities for state agencies, political subdivisions of this state, or grantees of federal funds disbursed by a receiving agency on a contractual or other basis for reimbursement to assure proper accounting by all such agencies, political subdivisions, and grantees for funds appropriated by the Legislature and federal funds disbursed by any receiving agency. The auditor may contract with any political subdivision to perform the audit of such political subdivision required by or provided for in section 23-1608 or 79-1229 or this section and charge the political subdivision for conducting the audit. The fees charged by the auditor for conducting audits on a contractual basis shall be in an amount sufficient to pay the cost of the audit. The fees remitted to the auditor for such audits and services shall be deposited in the Auditor of Public Accounts Cash Fund;

(9)(a) To examine or cause to be examined the books, accounts, vouchers, and records related to any money transferred pursuant to subsection (2) or (4) of section 79-3501, any fund receiving any such transfer, or any subsequent transfer or expenditure of such money when the Auditor of Public Accounts determines such examination necessary or when requested by (i) any department or agency receiving any such transfer or acting as the administrator for a fund receiving any such transfer, (ii) any recipient or subsequent recipient of money disbursed from any such fund, or (iii) any service contractor responsible

for managing, on behalf of any entity, any portion of any such fund or any money disbursed from any such fund.

(b) Any examination pursuant to subdivision (9)(a) of this section shall be made at the expense of the department or agency, recipient or subsequent recipient, or service contractor whose books, accounts, vouchers, or records are being examined.

(c) For purposes of this subdivision, recipient, subsequent recipient, or service contractor means a nonprofit entity that expends funds transferred pursuant to subsection (2) or (4) of section 79-3501 to carry out a state program or function, but does not include an individual who is a direct beneficiary of such a program or function.

(d) The Auditor of Public Accounts shall prescribe the form for the annual reports required in subsection (6) of section 79-3501. Such annual reports shall be published on the website of the Auditor of Public Accounts;

(10) To develop and maintain an annual budget and actual financial information reporting system for political subdivisions that is accessible online by the public;

(11) When authorized, to conduct joint audits with the Legislative Performance Audit Committee as described in section 50-1205;

(12) Unless otherwise specifically provided, to assess the interest rate on delinquent payments of any fees for audits and services owing to the Auditor of Public Accounts at a rate of fourteen percent per annum from the date of billing unless paid within thirty days after the date of billing. For an entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act, any participating public agencies shall be jointly and severally liable for the fees and interest owed if such entity is defunct or unable to pay; and

(13) In consultation with statewide associations representing (a) counties and (b) cities and villages, to approve annual continuing education programs for county treasurers, city treasurers, and village treasurers as required by sections 14-553, 15-317, 16-318, 17-606, and 23-1601. The cost of attending such programs shall be at the expense of the county, city, or village. The auditor shall maintain records of program attendance and notify each county board, city council, or village board of trustees if its treasurer has not completed such program attendance. The auditor shall inform the Attorney General and the county attorney of the county in which a treasurer is located if such treasurer has not completed a required annual continuing education program.

Source: R.S.1866, c. 4, § 4, p. 20; Laws 1907, c. 140, § 1, p. 447; R.S.1913, § 5546; C.S.1922, § 4848; C.S.1929, § 84-304; Laws 1939, c. 28, § 4, p. 142; C.S.Supp.,1941, § 84-304; R.S.1943, § 84-304; Laws 1951, c. 339, § 1, p. 1121; Laws 1953, c. 322, § 2, p. 1065; Laws 1965, c. 538, § 30, p. 1715; Laws 1965, c. 459, § 26, p. 1465; Laws 1967, c. 36, § 8, p. 164; Laws 1974, LB 280, § 3; Laws 1976, LB 759, § 2; Laws 1977, LB 193, § 4; Laws 1979, LB 414, § 5; Laws 1984, LB 473, § 25; Laws 1985, Second Spec. Sess., LB 29, § 5; Laws 1987, LB 183, § 6; Laws 1992, LB 573, § 14; Laws 1993, LB 579, § 4; Laws 1993, LB 516, § 4; Laws 1995, LB 205, § 1; Laws 1995, LB 509, § 1; Laws 1995, LB 572, § 1; Laws 1996, LB 900, § 1069; Laws 1997, LB 250, § 24; Laws 2000, LB 968, § 84; Laws 2000, LB 1304, § 1; Laws 2002, LB 568, § 11; Laws 2003, LB 607, § 20; Laws 2004, LB 1005,

§ 136; Laws 2004, LB 1118, § 3; Laws 2006, LB 588, § 10; Laws 2007, LB603, § 31; Laws 2008, LB822, § 4; Laws 2012, LB782, § 222; Laws 2013, LB40, § 3; Laws 2014, LB759, § 21; Laws 2015, LB539, § 8; Laws 2017, LB151, § 8; Laws 2017, LB415, § 45; Laws 2019, LB492, § 44; Laws 2020, LB781, § 8; Laws 2020, LB1003, § 186; Laws 2021, LB528, § 51; Laws 2023, LB705, § 107; Laws 2024, LB1143, § 3.
Effective date July 19, 2024.

Cross References

Community Development Law, see section 18-2101.

Interlocal Cooperation Act, see section 13-801.

Joint Airport Authorities Act, see section 3-716.

Joint Public Agency Act, see section 13-2501.

Successors, duties relating to, see section 84-604.

Tax returns, audited when, see section 77-27,119.

Duty of Auditor of Public Accounts to audit accounts of holders of public money is primarily to determine that the state has received the public money to which it is entitled. *Campbell v. Douglas County*, 142 Neb. 773, 7 N.W.2d 764 (1943).

Under former law, Auditor of Public Accounts was authorized to issue warrant only when there had been an appropriation for a specific purpose. *Fischer v. Marsh*, 113 Neb. 153, 202 N.W. 422 (1925).

Auditor of Public Accounts should furnish blanks for settlement between State Treasurer and county treasurers. *State v. Ure*, 102 Neb. 648, 168 N.W. 644 (1918).

Under former law, Auditor of Public Accounts could not without specific appropriation, refund money paid into state treasury by mistake. *Providence Washington Ins. Co. v. Weston*, 63 Neb. 764, 89 N.W. 253 (1902).

Officer, under salary fixed by statute, is not accountable to Auditor of Public Accounts for manner in which his duties are discharged. *Cornell v. Irvine*, 56 Neb. 657, 77 N.W. 114 (1898).

County attorney may bring criminal action against officer in default, without direction of Auditor of Public Accounts. *Bartley v. State*, 53 Neb. 310, 73 N.W. 744 (1898).

84-304.01 Auditor; audit, financial, or accounting reports; minimum standards; establish; political subdivisions; failure to file report; late fee; performance audits.

(1) It shall be the duty of the Auditor of Public Accounts to establish, by rule and regulation, minimum standards applicable to all audit, financial, or accounting reports or copies of such reports required to be filed with the Auditor of Public Accounts by any political subdivision of the State of Nebraska. Such minimum standards shall be in accordance with sound accounting principles, in conformity with generally accepted auditing standards and government auditing standards, and designed to bring about uniformity in the content and form of such reports within the same type of political subdivision. Audit reports of any political subdivision required to file such reports with the Auditor of Public Accounts shall be prepared in conformity with generally accepted auditing standards and government auditing standards.

(2) If a political subdivision required to file a report with the Auditor of Public Accounts fails to file such report by the applicable due date, the Auditor of Public Accounts may assess the political subdivision a late fee of twenty dollars per day for each calendar day the required report remains not filed. Such late fee shall begin on the day following the date the report is due. The total late fee assessed under this subsection shall not exceed two thousand dollars per filing. Of the late fee assessed and collected pursuant to this subsection, the Auditor of Public Accounts shall remit to the State Treasurer for credit to the Auditor of Public Accounts Cash Fund an amount sufficient to reimburse the direct costs of administering and enforcing this subsection, but such amount shall not exceed one hundred dollars from such late fee assessed and collected. The Auditor of Public Accounts shall remit the remainder of any late fee assessed and collected under this subsection to the State Treasurer to

be distributed in accordance with Article VII, section 5, of the Constitution of Nebraska.

(3) In connection with his or her duties, but at his or her discretion, the Auditor of Public Accounts may conduct performance audits of all political subdivisions receiving more than twenty-five thousand dollars in the audit year in tax funds from the state including all public utilities and all counties, townships, municipalities, cities, villages, districts, authorities, and other public corporations and entities. The performance audits shall be conducted in conformity with generally accepted auditing standards and government auditing standards.

Source: Laws 1974, LB 922, § 1; Laws 1993, LB 310, § 15; Laws 1995, LB 509, § 2; Laws 2021, LB368, § 1.

84-304.02 Auditor; audit, financial, accounting, or retirement system plan reports; written review; copies; disposition.

The Auditor of Public Accounts, or a person designated by him or her, may prepare a written review of all audit, accounting, or financial reports required to be filed by a political subdivision of the state with the Auditor of Public Accounts and of public retirement system plan reports required to be submitted to the Auditor of Public Accounts pursuant to sections 2-3228, 12-101, 14-567, 14-1805.01, 14-2111, 15-1017, 16-1017, 16-1037, 18-814, 19-3501, 23-1118, 23-3526, 71-1631.02, 79-987, and 84-304 and cause one copy of such written review to be mailed to the political subdivision involved and one copy to the accountant who prepared the report. Such written review shall specifically set forth wherein the audit, accounting, financial, or retirement system plan report fails to comply with the applicable minimum standards and the necessary action to be taken to bring the report into compliance with such standards. The Auditor of Public Accounts may, upon continued failure to comply with such standards, refuse to accept for filing an audit, accounting, financial, or retirement system plan report or any future report submitted for filing by any political subdivision.

Source: Laws 1974, LB 922, § 2; Laws 1993, LB 310, § 16; Laws 2011, LB474, § 13; Laws 2015, LB539, § 9; Laws 2017, LB415, § 46; Laws 2019, LB492, § 45.

84-304.03 Auditor; establish minimum standards.

The Auditor of Public Accounts shall establish minimum standards for all persons identified as auditors or who conduct audits of any agency of state government or of any political subdivision. Such standards shall be established to achieve the goal of assuring a proper level of competency in auditing and shall be distributed to all agencies of state government and all political subdivisions. No agency of state government or political subdivision shall employ any person as an auditor who fails to meet such minimum standards.

Source: Laws 1979, LB 414, § 6; Laws 1984, LB 932, § 4; Laws 1993, LB 579, § 5; Laws 1995, LB 509, § 3; Laws 2000, LB 692, § 11.

84-305 Public entity; access to records; procedure; Auditor of Public Accounts; powers; nonpublic information shall not be made public.

(1) The Auditor of Public Accounts shall have access to any and all information and records, confidential or otherwise, of any public entity, in whatever

form or mode the records may be, unless the auditor is denied such access by federal law or explicitly named and denied such access by state law. If such a law exists, the public entity shall provide the auditor with a written explanation of its inability to produce such information and records and, after reasonable accommodations are made, shall grant the auditor access to all information and records or portions thereof that can legally be reviewed.

(2) Upon receipt of a written request by the Auditor of Public Accounts for access to any information or records, the public entity shall provide to the auditor as soon as is practicable and without delay, but not more than three business days after actual receipt of the request, either (a) the requested materials or (b)(i) if there is a legal basis for refusal to comply with the request, a written denial of the request together with the information specified in subsection (1) of this section or (ii) if the entire request cannot with reasonable good faith efforts be fulfilled within three business days after actual receipt of the request due to the significant difficulty or the extensiveness of the request, a written explanation, including the earliest practicable date for fulfilling the request, and an opportunity for the auditor to modify or prioritize the items within the request. No delay due to the significant difficulty or the extensiveness of any request for access to information or records shall exceed three calendar weeks after actual receipt of such request by any public entity. The three business days shall be computed by excluding the day the request is received, after which the designated period of time begins to run. Business day does not include a Saturday, a Sunday, or a day during which the offices of the custodian of the public records are closed.

(3) When any employee of the Auditor of Public Accounts conducts an audit or examination of any public entity, the public entity shall provide suitable accommodations for such employee of the auditor at the location where the requested information and records are kept or stored. Such accommodations shall include desks or tables and chairs, electrical outlets, and Internet access if such access is available.

(4) The Auditor of Public Accounts may issue subpoenas to compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony, and cause the depositions of witnesses either residing within or without the state to be taken in the manner prescribed by law for taking depositions in civil actions in the district court.

(5) In case of disobedience on the part of any person to comply with any subpoena issued by the Auditor of Public Accounts or of the refusal of any witness to testify on any matters regarding which he or she may be lawfully interrogated, the district court of Lancaster County or the judge thereof, on application of the Auditor of Public Accounts, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

(6) If a witness refuses to testify before the Auditor of Public Accounts on the basis of the privilege against self-incrimination, the Auditor of Public Accounts may request a court order pursuant to sections 29-2011.02 and 29-2011.03.

(7) No provisions of state law shall be construed to change the nonpublic nature of the data obtained as a result of the access. When an audit or investigative finding emanates from nonpublic data which is nonpublic pursu-

ant to federal or state law, all the nonpublic information shall not be made public.

Source: Laws 1995, LB 509, § 4; Laws 2015, LB539, § 10; Laws 2017, LB151, § 9.

84-305.01 Audit report; working papers and audit files; access; request; failure to comply; late fee; refuse report; deficiency; powers and duties.

(1) The Auditor of Public Accounts shall have unrestricted access to the working papers and audit files for any audit report required to be filed with the office of the Auditor of Public Accounts.

(2) Upon receipt of a written request by the Auditor of Public Accounts for access to working papers and audit files, the auditor or auditing firm responsible for preparing such audit report shall provide to the Auditor of Public Accounts as soon as is practicable and without delay, but not more than three business days after receipt of such request, either (a) access to all of the requested materials or (b) a written explanation, including the earliest practicable date for fulfilling the request and an opportunity for the Auditor of Public Accounts to modify or prioritize the items within the request, if the entire request cannot with reasonable, good faith efforts be fulfilled within three business days after actual receipt of the request due to the significant difficulty or extensiveness of fulfilling the request. No delay due to the significant difficulty or extensiveness of any request for access to working papers and audit files shall exceed three calendar weeks after receipt of the written request from the Auditor of Public Accounts. The three business days shall be computed by excluding the day the request is received, after which the designated period of time begins to run. Business day does not include a Saturday, a Sunday, or any of the days enumerated in section 25-2221 or declared by law or proclamation of the President of the United States or Governor to be holidays.

(3) If the auditor or auditing firm responsible for preparing such audit report fails to comply timely and fully with a request for access to working papers and audit files, the Auditor of Public Accounts may:

(a) Assess the auditor or auditing firm a late fee of twenty dollars per day for each calendar day the requested working papers and audit files remain inaccessible. Such late fee shall begin on the same day that the Auditor of Public Accounts notifies the auditor or auditing firm by facsimile transmission, email, or first-class mail of the failure to provide access. The total late fee assessed under this subdivision shall not exceed two thousand dollars per incident. Of the late fee assessed and collected pursuant to this subdivision, the Auditor of Public Accounts shall remit to the State Treasurer for credit to the Auditor of Public Accounts Cash Fund an amount sufficient to reimburse the direct costs of administering and enforcing this section, but such amount shall not exceed one hundred dollars from any such late fee assessed and collected. The Auditor of Public Accounts shall remit the remainder of any late fee assessed and collected under this subdivision to the State Treasurer to be distributed in accordance with Article VII, section 5, of the Constitution of Nebraska; and

(b) Refuse to accept any audit report prepared by the auditor or auditing firm for a period of three calendar years from the date that the notification described in subdivision (3)(a) of this section is received by such auditor or auditing firm.

(4) Any deficiency noted by the Auditor of Public Accounts in reviewing the working papers and audit files may be forwarded to the Nebraska State Board of Public Accountancy for its consideration. The Auditor of Public Accounts may make any information or documents required to investigate such deficiency available to the board.

(5) For purposes of this section, working papers and audit files means those documents containing evidence to support the auditor's findings, opinions, conclusions, and judgments and includes the collection of evidence prepared or obtained by the auditor during the audit.

(6)(a) If any written request made under subsection (2) of this section is sent by either registered or certified United States mail, a record authenticated by the United States Postal Service of delivery of such registered or certified mail shall be considered competent evidence that the request was delivered to the person or entity to whom addressed.

(b) Any notification made under subdivision (3)(a) of this section which is transmitted through the United States mail shall be deemed made on the date it was mailed if the Auditor of Public Accounts provides competent evidence that such notification was deposited in the United States mail on such date.

Source: Laws 2015, LB539, § 11; Laws 2021, LB369, § 1.

84-305.02 Prohibited acts; penalty.

Any person who willfully fails to comply with section 84-305 or 84-305.01, who otherwise willfully obstructs or hinders the conduct of an audit, examination, or related activity by the Auditor of Public Accounts, or who willfully misleads or attempts to mislead any person charged with the duty of conducting such audit, examination, or related activity shall be guilty of a Class II misdemeanor.

Source: Laws 2021, LB369, § 2.

84-306 Transferred to section 81-1170.

84-306.01 Transferred to section 81-1174.

84-306.02 Transferred to section 81-1175.

84-306.03 Transferred to section 81-1176.

84-306.04 Transferred to section 81-1171.

84-306.05 Transferred to section 81-1177.

84-306.06 Transferred to section 81-1178.

84-306.07 Transferred to section 81-1179.

84-306.08 Transferred to section 81-1180.

84-306.09 Transferred to section 81-1181.

84-307 Transferred to section 81-1107.02.

84-308 Transferred to section 81-1107.03.

84-309 Transferred to section 81-1172.

84-310 Transferred to section 81-1173.**84-311 Reports and working papers; disclosure status; penalty.**

(1)(a) All final audit reports issued by the Auditor of Public Accounts shall be maintained permanently as a public record in the office of the Auditor of Public Accounts.

(b) Working papers and other audit files maintained by the Auditor of Public Accounts are not public records and are exempt from sections 84-712 to 84-712.05. The information contained in working papers and audit files prepared pursuant to a specific audit is not subject to disclosure except to a county attorney or the Attorney General in connection with an investigation made or action taken in the course of the attorney's official duties or to the Legislative Performance Audit Committee in the course of the committee's official duties and pursuant to the requirements of subdivision (16) of section 50-1205 or subdivision (5) of section 84-304.

(c) A public entity being audited and any federal agency that has made a grant to such public entity shall also have access to the relevant working papers and audit files, except that such access shall not include information that would disclose or otherwise indicate the identity of any individual who has confidentially provided the Auditor of Public Accounts with allegations of wrongdoing regarding, or other information pertaining to, the public entity being audited.

(d) The Auditor of Public Accounts may, at his or her discretion, share working papers, other than personal information and telephone records, with the Legislative Council. The Auditor of Public Accounts may, at his or her discretion, share working papers with the Attorney General, the Internal Revenue Service, the Tax Commissioner, the Federal Bureau of Investigation, a law enforcement agency as defined in section 28-359, and the Nebraska Accountability and Disclosure Commission. The working papers may be shared with such entities during an ongoing audit or after the final audit report is issued. The Auditor of Public Accounts shall not, under the authority granted in this subdivision, reveal sealed or confidential court records contained in working papers.

(e) For purposes of this subsection, working papers means those documents containing evidence to support the auditor's findings, opinions, conclusions, and judgments and includes the collection of evidence prepared or obtained by the auditor during the audit.

(f) The Auditor of Public Accounts may make the working papers available for purposes of an external quality control review as required by generally accepted government auditing standards. However, any reports made from such external quality control review shall not make public any information which would be considered confidential under this section when in the possession of the Auditor of Public Accounts.

(2) If the Auditor of Public Accounts or any employee of the Auditor of Public Accounts knowingly divulges or makes known in any manner not permitted by law any record, document, or information, the disclosure of which is restricted by law, he or she is subject to the same penalties provided in section 84-712.09.

Source: Laws 1995, LB 509, § 5; Laws 2004, LB 902, § 1; Laws 2006, LB 588, § 11; Laws 2015, LB539, § 12; Laws 2017, LB151, § 10.

84-312 Auditor; oath; power to administer.

The Auditor of Public Accounts shall have power to administer all oaths or affirmations required by law, in matters pertaining to the duties of his office, and may do and perform all acts or duties authorized to be performed by notaries public by the laws of the state, subject, however, to such restrictions as are provided by law for notaries.

Source: R.S.1866, c. 4, § 13, p. 24; R.S.1913, § 5554; C.S.1922, § 4856; C.S.1929, § 84-312; R.S.1943, § 84-312.

84-313 Transferred to section 81-1107.04.

84-314 Auditor; deputy; bond or insurance; compensation; duties; qualifications.

The Auditor of Public Accounts shall have the power to appoint a deputy, who shall give a bond or equivalent commercial insurance policy to the State of Nebraska (1) with good and sufficient surety, (2) in the amount required by section 11-119, (3) to be approved by the Governor, and (4) deposited with the Secretary of State. When so appointed the deputy may do and perform in the absence of the auditor such acts herein authorized and required of the auditor, as the auditor may authorize him or her to do, subject to the same restrictions. The deputy auditor shall receive a salary of such amount as shall be fixed by the Auditor of Public Accounts, to be paid monthly by warrant of the auditor on the State Treasurer. The deputy auditor shall have had not less than five years' experience either as an auditor or in an executive capacity involving responsibility for directing the work of others engaged in governmental accounting or auditing, or both, and in addition shall be a certified public accountant.

Source: R.S.1866, c. 4, § 15, p. 24; R.S.1913, § 5556; Laws 1921, c. 107, § 3, p. 379; C.S.1922, § 4858; C.S.1929, § 84-314; R.S.1943, § 84-314; Laws 1945, c. 254, § 1, p. 793; Laws 1947, c. 347, § 1, p. 1093; Laws 1949, c. 308, § 1, p. 1025; Laws 1951, c. 338, § 9, p. 1119; Laws 1953, c. 356, § 1, p. 1133; Laws 1957, c. 393, § 1, p. 1357; Laws 1959, c. 451, § 2, p. 1503; Laws 1963, c. 536, § 1, p. 1681; Laws 1975, LB 377, § 1; Laws 2004, LB 884, § 49.

Cross References

For bond approval provisions, see Chapter 11, article 2.

For other provisions as to deputy auditor of public accounts, see Chapter 84, article 8.

84-314.01 Repealed. Laws 1959, c. 266, § 1.

84-314.02 Repealed. Laws 1959, c. 266, § 1.

84-315 Auditor; seal; evidentiary effect.

The Auditor of Public Accounts shall keep a seal of office for the authentication of all papers, writings and documents required to be certified by him, and copies, so authenticated and certified, of all papers and documents lawfully deposited in his office, shall be received in evidence as the original.

Source: R.S.1866, c. 4, § 16, p. 24; R.S.1913, § 5557; C.S.1922, § 4859; C.S.1929, § 84-315; R.S.1943, § 84-315.

Bond history was competent evidence to prove village board proceedings. *Belza v. Village of Emerson*, 159 Neb. 651, 68 N.W.2d 272 (1955).

84-316 Auditor of Public Accounts; powers; employees; prohibited acts; violation; penalty.

(1) The Auditor of Public Accounts may decide not to include in any document that will be a public record the names of persons providing information to the Auditor of Public Accounts.

(2) No employee of the State of Nebraska or any of its political subdivisions who provides information to the Auditor of Public Accounts shall be subject to any personnel action, as defined in section 81-2703, in connection with his or her employment as a result of providing such information.

(3) Any person exercising his or her supervisory or managerial authority to recommend, approve, direct, or otherwise take or affect personnel action in violation of subsection (2) of this section shall be guilty of a Class III misdemeanor and shall be subject to personnel action up to and including dismissal from employment with the state or political subdivision.

Source: Laws 2015, LB539, § 13.

84-317 Repealed. Laws 1986, LB 748, § 1.

84-318 Repealed. Laws 1986, LB 748, § 1.

84-319 Repealed. Laws 1986, LB 748, § 1.

84-320 Repealed. Laws 1986, LB 748, § 1.

84-321 Auditor of Public Accounts Cash Fund; created; use.

There is hereby created in the office of the Auditor of Public Accounts a cash fund to be known as the Auditor of Public Accounts Cash Fund. The fund shall be used for payment for services performed by the Auditor of Public Accounts for state agencies, political subdivisions, and grantees of federal funds disbursed by a receiving agency for which he or she is entitled to reimbursement on a contractual or other basis for such reimbursement.

Source: Laws 1972, LB 1283, § 1; Laws 1976, LB 759, § 3; Laws 2017, LB151, § 11.

84-322 Performance audits; authorized; report.

The Auditor of Public Accounts, when expressly authorized by a majority vote of the members of the Legislative Performance Audit Committee, may conduct performance audits of state executive branch offices, state agencies, state bureaus, state boards, state commissions, the state library, societies and associations supported by the state, state institutions, state colleges, and the University of Nebraska. The auditor shall issue the performance audit report to the Governor, the appropriate standing committee of the Legislature, and the Legislative Performance Audit Committee. The report submitted to the committees of the Legislature shall be submitted electronically.

Source: Laws 2003, LB 607, § 21; Laws 2012, LB782, § 223.

84-323 Auditor of Public Accounts; federal funds; Statewide Single Audit; exclusive authority to perform.

The Auditor of Public Accounts shall exercise the exclusive authority to perform, or cause to be performed, the Statewide Single Audit for the Federal Funds allocated to the State of Nebraska from the federal Coronavirus State Fiscal Recovery Fund pursuant to the federal American Rescue Plan Act of 2021, 42 U.S.C. 802, as amended, and all other federal funds appropriated for

state programs, and shall be fully compensated for the cost of such audit work, on a pro rata basis, by each agency audited.

Source: Laws 2024, LB1413, § 57.
Effective date April 2, 2024.

ARTICLE 4

BOARD OF EDUCATIONAL LANDS AND FUNDS

Cross References

Constitutional provisions:

Educational Lands and Funds, Board of, see Article VII, section 6, Constitution of Nebraska.

Expenses, see sections 81-1174 to 81-1177.

Fees, see sections 25-1280 and 33-104.

Impeachment, see section 24-101.

Members, appointment, term, qualifications, compensation, see section 72-201.

Organization, chairperson, meetings, see section 72-201.

Secretary, appointment, compensation, see section 72-201.

Section

- 84-401. Board of Educational Lands and Funds; records of state lands; duty to keep.
- 84-402. Board of Educational Lands and Funds; seal.
- 84-403. Repealed. Laws 1957, c. 394, § 1.
- 84-404. Board of Educational Lands and Funds; field notes of Surveyor General of the United States; receipt.
- 84-405. Board of Educational Lands and Funds; field notes of Surveyor General of the United States; custody.
- 84-406. Board of Educational Lands and Funds; field notes of Surveyor General of the United States; inspection.
- 84-407. State Surveyor; deputy professional land surveyors; duties; compensation.
- 84-407.01. Deputy surveyor; private employment; no additional fees; cost of plat and field notes.
- 84-408. State Surveyor; duties; surveys; prima facie evidence of correctness.
- 84-409. State Surveyor; surveys; fees; amount; disposition; Surveyors' Cash Fund; created; use; investment.
- 84-409.01. Applications for surveys; costs advanced; disposition.
- 84-410. State Surveyor; disputed surveys; how settled; prima facie evidence of correctness; compel testimony; oaths.
- 84-411. State Surveyor; entry upon property authorized; damages.
- 84-412. Survey record repository; established.
- 84-413. Survey record repository; duties.
- 84-414. Survey Record Repository Fund; created; use; investment.
- 84-415. Survey record repository; funding; fees.

84-401 Board of Educational Lands and Funds; records of state lands; duty to keep.

The records appertaining to all public lands of the state shall be kept in the office of the Board of Educational Lands and Funds at the seat of government.

Source: Laws 1877, § 4, p. 173; R.S.1913, § 5559; C.S.1922, § 4863; C.S.1929, § 84-402; R.S.1943, § 84-401.

Cross References

Conveyances of real estate, custody after recording, see section 72-108.

84-402 Board of Educational Lands and Funds; seal.

The Board of Educational Lands and Funds shall procure a seal with proper devices and the words Nebraska State Land Office included thereon, which seal

shall be used by it officially in all matters pertaining to its office wherein a seal is required.

Source: Laws 1877, § 3, p. 173; R.S.1913, § 5567; C.S.1922, § 4871; C.S.1929, § 84-410; R.S.1943, § 84-402; Laws 1971, LB 653, § 11.

84-403 Repealed. Laws 1957, c. 394, § 1.

84-404 Board of Educational Lands and Funds; field notes of Surveyor General of the United States; receipt.

The Board of Educational Lands and Funds shall, as custodian thereof, receive from the Surveyor General of the United States for the State of Nebraska, or from any other authorized officer or agent of the United States having the care, custody and safekeeping of the same, all the field notes, maps, charts, records, and all other papers appertaining or in any manner connected to or with the land titles within the State of Nebraska, including all surveys of lands within the state made under or by authority of the United States.

Source: Laws 1889, c. 84, § 1, p. 567; R.S.1913, § 5560; C.S.1922, § 4864; C.S.1929, § 84-403; R.S.1943, § 84-404.

84-405 Board of Educational Lands and Funds; field notes of Surveyor General of the United States; custody.

The Board of Educational Lands and Funds, as such custodian, shall provide for and safely keep in its office all the surveys, field notes, maps, charts, records, and all other papers mentioned in section 84-404, the same as other public records are kept in its office.

Source: Laws 1889, c. 84, § 3, p. 568; R.S.1913, § 5561; C.S.1922, § 4865; C.S.1929, § 84-404; R.S.1943, § 84-405.

84-406 Board of Educational Lands and Funds; field notes of Surveyor General of the United States; inspection.

The Commissioner of the General Land Office or any Surveyor General or deputy surveyor general or any agent or authority of the United States, or any county surveyor of Nebraska, shall at all times have free access to the surveys, field notes, maps, charts, records, and other papers as provided for in sections 84-404 and 84-405, the reception and safekeeping of which is herein provided for, and which shall be received from the United States under the authority of any Act of Congress.

Source: Laws 1889, c. 84, § 4, p. 568; R.S.1913, § 5562; C.S.1922, § 4866; C.S.1929, § 84-405; R.S.1943, § 84-406.

84-407 State Surveyor; deputy professional land surveyors; duties; compensation.

(1) The Board of Educational Lands and Funds shall appoint a competent and experienced professional land surveyor to be known and designated as the State Surveyor. He or she shall take charge under the supervision of the board of the field notes, maps, charts, and records of the United States surveys and perform such other duties as may be prescribed by the board. He or she shall also provide technical assistance, support, and advice to the various counties,

cities, and other governmental bodies in Nebraska in their endeavors to produce and maintain cadastral or other geo-referenced maps.

(2) The board may, when in its judgment there is need of expediting the execution of surveys applied or petitioned for and of expediting the settlement of the disputes referred to in section 84-410, appoint one or more competent experienced deputy professional land surveyors.

(3) Each of the deputy professional land surveyors shall make such surveys as may be assigned him or her and report his or her work together with all necessary notes and maps to the board. Upon approval of his or her report and accompanying documents by the board, the same shall be used in all respects as though made by the chief State Surveyor. Each deputy appointed under the provisions of this section, except as otherwise provided in section 84-407.01, shall be entitled to compensation as determined by the board and necessary expenses for the time actually engaged in service, to be paid to the State Treasurer by the parties applying for or petitioning for a survey or resurvey, and parties interested in any dispute over surveys or boundaries.

Source: Laws 1903, c. 105, § 1, p. 576; Laws 1909, c. 137, § 1, p. 485; R.S.1913, § 5563; Laws 1919, c. 54, § 1, p. 157; C.S.1922, § 4867; C.S.1929, § 84-406; Laws 1941, c. 188, § 1, p. 757; C.S.Supp.,1941, § 84-406; R.S.1943, § 84-407; Laws 1947, c. 348, § 1, p. 1094; Laws 1951, c. 340, § 1, p. 1124; Laws 1953, c. 357, § 1, p. 1134; Laws 1957, c. 395, § 1, p. 1359; Laws 1959, c. 452, § 1, p. 1505; Laws 1965, c. 569, § 1, p. 1857; Laws 1982, LB 127, § 12; Laws 1998, LB 924, § 51; Laws 2024, LB102, § 51. Operative date September 1, 2024.

84-407.01 Deputy surveyor; private employment; no additional fees; cost of plat and field notes.

Whenever a survey, as provided by section 84-407, is made by a deputy land surveyor who is in the employ of the party requesting the survey, and who is receiving regular compensation from such party while making such survey, such party shall not be required to pay the fees as specified by section 84-407, but shall pay to the State Treasurer the cost of a certified copy of the plat and field notes which shall be based on a fee schedule to be adopted by the Board of Educational Lands and Funds.

Source: Laws 1957, c. 395, § 2, p. 1360.

84-408 State Surveyor; duties; surveys; prima facie evidence of correctness.

The Board of Educational Lands and Funds shall refer to the State Surveyor all questions or inquiries relating to surveys, grievances or disputes growing out of conflicting surveys of lands or lots. The surveyor shall issue and prepare the advice, instruction and opinion, and issue the same under the approval of the board. In case a survey is petitioned for, he shall perform that duty and report the same with necessary notes and maps to the board. When such notes and maps are so approved, filed and recorded in the office of the county surveyor of the county in which the survey was had, such survey shall be prima facie evidence of the correctness thereof. It shall be the duty of the county surveyor to record and file such notes and maps in the county surveyor's records of the county in which the survey is made; *Provided*, any person or persons having an interest in the lands affected by such survey may appeal therefrom in the

manner provided by law. The surveyor shall also prepare and issue, under the authority and direction of the board, a circular of instructions to the county surveyors of the state for their direction and guidance in the restoration and establishment of lines and preservation of corners in conformity with the laws, rules and regulations governing the surveys of the United States and established rules of surveying; and for the concise and comprehensive preparation and recording of field notes and maps of surveys. He shall also perform such other duties as the board may require.

Source: Laws 1903, c. 105, § 2, p. 576; R.S.1913, § 5564; C.S.1922, § 4868; C.S.1929, § 84-407; R.S.1943, § 84-408; Laws 1951, c. 340, § 2, p. 1125.

Retracement survey made by deputy state surveyor was prima facie evidence only of correctness thereof. *McShane v. Murray*, 106 Neb. 512, 184 N.W. 147 (1921).

84-409 State Surveyor; surveys; fees; amount; disposition; Surveyors' Cash Fund; created; use; investment.

There shall be paid to the State Treasurer, for each day the State Surveyor is engaged in making any survey or in settling and disposing of disputes and disagreements, as provided in section 84-410, a per diem rate of compensation as determined by the Board of Educational Lands and Funds for his or her services and the necessary expenses incurred in making the same. All fees received for the services and expenses of the State Surveyor or deputy surveyors shall be paid into the state treasury and by the State Treasurer placed in a fund to be known as Surveyors' Cash Fund, which fund shall be used in paying the salaries and expenses of deputy surveyors, except as provided in section 84-407.01, in making surveys and for making refunds on deposits. All fees and expenses placed in the Surveyors' Cash Fund for the services and expenses of the State Surveyor, after the payments from the cash fund are made as hereinbefore provided, shall be transferred to the General Fund. Transfers may be made from the Surveyors' Cash Fund to the General Fund at the direction of the Legislature. Any money in the Surveyors' 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 1903, c. 195, § 3, p. 577; R.S.1913, § 5565; Laws 1919, c. 54, § 1, p. 158; C.S.1922, § 4869; C.S.1929, § 84-408; R.S.1943, § 84-409; Laws 1947, c. 348, § 2, p. 1095; Laws 1951, c. 340, § 3, p. 1126; Laws 1953, c. 357, § 2, p. 1135; Laws 1957, c. 395, § 3, p. 1360; Laws 1959, c. 452, § 2, p. 1506; Laws 1965, c. 569, § 2, p. 1858; Laws 1982, LB 127, § 13; Laws 2009, First Spec. Sess., LB3, § 90.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

84-409.01 Applications for surveys; costs advanced; disposition.

There shall accompany all applications for surveys, except those from political subdivisions, a sum sufficient to defray the cost of making such surveys as provided by sections 84-407, 84-407.01, and 84-409, and such advance deposits shall be held in the cash fund until the surveys are made.

Source: Laws 1957, c. 395, § 4, p. 1360.

84-410 State Surveyor; disputed surveys; how settled; prima facie evidence of correctness; compel testimony; oaths.

In case of any dispute among owners of and arising for or by reason of any survey of boundaries of lands within this state, or in case of dispute or disagreement between surveyors as to said surveys or boundaries, the same shall be referred to the State Surveyor for settlement. He is hereby appointed as arbitrator to settle and determine such disputes or disagreements as to said surveys and boundaries and his decision shall be prima facie evidence of the correctness thereof. In making such surveys, the State Surveyor and deputies shall each have power in any county of the State of Nebraska to summon and compel the attendance of witnesses before them to testify as to material facts relating to their knowledge of lost or obliterated corners. The State Surveyor and deputies are authorized and empowered to administer oaths and affirmations to their assistants and to witnesses.

Source: Laws 1903, c. 195, § 4, p. 577; Laws 1913, c. 44, § 1, p. 148; R.S.1913, § 5566; Laws 1919, c. 54, § 1, p. 158; C.S.1922, § 4870; C.S.1929, § 84-409; R.S.1943, § 84-410; Laws 1947, c. 348, § 3, p. 1095; Laws 1951, c. 340, § 4, p. 1126.

Statute is permissive and not mandatory. Ejectment may be maintained against occupant by one excluded from land without submitting controversy to State Surveyor under this section. *Whitney v. Wyatt*, 111 Neb. 328, 196 N.W. 322 (1923); *Reed v. Wellman*, 110 Neb. 166, 193 N.W. 261 (1923).

Prima facie case made by survey and report of deputy state surveyor was overcome by evidence of location of original

government corner at variance with survey. *McShane v. Murray*, 106 Neb. 512, 184 N.W. 147 (1921).

Instructions given by trial court as to effect of resurvey made by deputy surveyor were in harmony with the provisions of the statute. *Harris v. Harms*, 105 Neb. 375, 181 N.W. 158 (1920).

84-411 State Surveyor; entry upon property authorized; damages.

The State Surveyor and deputy surveyors in the official performance of their duties shall have authority to enter upon any property to make surveys. Entry upon any property, pursuant to this section, shall not be considered to be legal trespass and no damages shall be recoverable on that account alone. In case of any actual or demonstrable damages to the premises, the owner of the premises shall be paid an amount equal to the damages.

Source: Laws 1982, LB 127, § 14.

84-412 Survey record repository; established.

The State Surveyor shall establish a survey record repository in the city of Lincoln. The State Surveyor shall employ all individuals necessary to staff such repository and may, with the approval of the Board of Educational Lands and Funds, set the salaries of such employees.

Source: Laws 1982, LB 127, § 15.

84-413 Survey record repository; duties.

The survey record repository shall:

(1) Microfilm, index, and file the surveying records of all surveys completed after July 17, 1982, which are filed pursuant to sections 81-8,121 to 81-8,122.01;

(2) Provide a copy of survey records to the county in which the survey was conducted. Such copy shall be transmitted to the county within thirty days of its receipt by the repository and at no cost to the county;

(3) As funds become available from the fees collected pursuant to this section, and at no cost to the counties, request records of all surveys completed prior to July 17, 1982, from the counties and incorporate such records into the repository's files;

(4) Collect a fee not to exceed five dollars for each survey filed with the repository by a professional land surveyor, except that no fee shall be charged for filing surveys pursuant to section 23-1911 when the work is requested by the county and when no fees for the survey are received by the county surveyor or the county from any other persons;

(5) Collect a fee not to exceed five dollars for each search of the repository's files required by any person;

(6) Charge a fee for the reproduction of material equal to the cost of such reproduction; and

(7) Provide information to any person upon request and payment of the appropriate fee.

Source: Laws 1982, LB 127, § 16; Laws 2024, LB102, § 52.
Operative date September 1, 2024.

84-414 Survey Record Repository Fund; created; use; investment.

The State Surveyor, under the direction of the Board of Educational Lands and Funds, shall receive and account for all money derived from the operation of the survey record repository pursuant to sections 84-412 and 84-413, and shall pay such money to the State Treasurer, who shall credit it to the Survey Record Repository Fund which is hereby created. When appropriated by the Legislature, this fund shall be expended only for the purposes of sections 84-412 and 84-413, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. All money in the Survey Record Repository Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1982, LB 127, § 17; Laws 1995, LB 7, § 146; Laws 2009, First Spec. Sess., LB3, § 91.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

84-415 Survey record repository; funding; fees.

No expense for developing or maintaining the survey record repository shall be paid for by funds from the General Fund. The fees for records, searches, and other services related to the repository's files shall be set so that all costs of the survey record repository are paid by the persons requesting such records, searches, or other services.

Source: Laws 1982, LB 127, § 18.

ARTICLE 5

SECRETARY OF STATE

Cross References

Constitutional provisions:

- Election, term, eligibility, see Article IV, section 1, Constitution of Nebraska.
- Great Seal, keeper of, see Article IV, section 24, Constitution of Nebraska.
- Initiative and referendum, duties relating to, see Article III, sections 2 to 4, Constitution of Nebraska.
- Parole and pardons, see Article IV, section 13, Constitution of Nebraska.
- Salary, see Article IV, section 25, Constitution of Nebraska.
- Term of office, begins when, see Article XVII, section 5, Constitution of Nebraska.

Boards, commissions, and committees:

- Accountability and Disclosure Commission, Nebraska, member and duties, see section 49-14,105.
- Board of state canvassers, member, see section 32-1037.
- Brand Committee, Nebraska, member, see section 54-191.
- Pardons, Board of, member, see section 83-1,126.
- State Real Estate Commission, member and chairperson, see section 81-885.07.

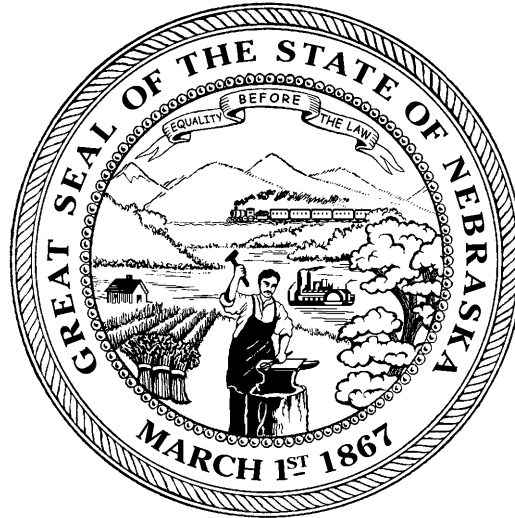
County officers, maintain current list of, see section 23-1306.**Election**, see section 32-507.**Expenses**, see sections 81-1174 to 81-1177.**Fees**, generally, see sections 25-1280, 33-101, and 33-102.**Impeachment**, see section 24-101.**Salary**, see sections 84-721 and 84-723.**Vacancy**, possession and control of office, see section 32-563.

Section

- 84-501. Secretary of State; Great Seal; custodian.
- 84-502. Secretary of State; duties.
- 84-503. Secretary of State; bills passed over Governor's veto; authentication.
- 84-504. Secretary of State; bills not signed or returned to Legislature by Governor; authentication.
- 84-505. Secretary of State; laws, acts, resolutions, bonds, insurance policies, records; custodian; transfer.
- 84-506. Repealed. Laws 1971, LB 36, § 8.
- 84-507. Secretary of State; oaths; acknowledgments; fees.
- 84-508. Secretary of State; deputy; duties.
- 84-509. Secretary of State; deputy; compensation.
- 84-509.01. Restriction on political committee participation.
- 84-509.02. Repealed. Laws 1959, c. 266, § 1.
- 84-510. Repealed. Laws 2020, LB910, § 49.
- 84-511. Electronic transmission and filing of documents.
- 84-512. Secretary of State Cash Fund; created; use; investment.

84-501 Secretary of State; Great Seal; custodian.

The Secretary of State shall safely keep and not suffer to be imitated or counterfeited the Great Seal of the State of Nebraska of the form and design prescribed by the Act approved June 15, 1867, as follows:



Source: Laws 1867, § 1, p. 57; R.S.1913, § 5569; C.S.1922, § 4873; C.S.1929, § 84-501; R.S.1943, § 84-501.

Note: Section 1 of the act of 1867 is as follows: "Section 1. **Be it enacted by the Legislature of the State of Nebraska,** That the Secretary of State be, and he is hereby authorized and required to procure, at the cost and expense of the state, and as soon after the passage of this act as practicable, a seal for the state, to be designated and known as the Great Seal of the State of Nebraska, and of the design and device following, that is to say: The eastern part of the circle to be represented by a steamboat ascending the Missouri river; the mechanic arts to be represented by a smith with hammer and anvil; in the foreground, agriculture to be represented by a settler's cabin, sheaves of wheat and stalks of growing corn; in the background a train of cars heading towards the Rocky Mountains, and on the extreme west, the Rocky Mountains to be plainly in view; around the top of this circle to be in capital letters, the motto. 'EQUALITY BEFORE THE LAW,' and the circle to be surrounded with the words, 'Great Seal of the State of Nebraska, March 1st, 1867.'"

84-502 Secretary of State; duties.

It shall be the duty of the Secretary of State:

- (1) To countersign and affix the seal of the state to all commissions required by law to be issued by the Governor;
- (2) To keep a register of all such commissions specifying the person to whom granted, the office conferred, the date of signing the commission, and, when bond or an equivalent commercial insurance policy is taken, the date and amount thereof and the names of the sureties;
- (3) To make and keep proper indexes to the records and all public acts, resolutions, papers, and documents in his or her office;
- (4) To give any person requiring the same, and paying the lawful fees therefor, a copy of any law, act, resolution, record, or paper in his or her office, and attach thereto his or her certificate under the seal of the state;
- (5) To distribute the laws and journals as authorized by section 49-501 and keep an account thereof; and
- (6)(a) To act as the chief protocol officer of the State of Nebraska;
- (b) In coordination with the Governor, the Department of Economic Development, the Department of Agriculture, and other interested federal, state, and local officials, to actively seek appropriate contacts with other officials in nations with which the state has or desires to have active trade, cultural, or educational relations; and

(c) To help facilitate the interchange of ideas and contacts for betterment of commerce, cultural exchange, or educational studies between such nations and the state.

Source: Laws 1877, § 6, p. 162; R.S.1913, § 5570; C.S.1922, § 4874; C.S.1929, § 84-502; Laws 1939, c. 136, § 1, p. 582; C.S.Supp.,1941, § 84-502; R.S.1943, § 84-502; Laws 1969, c. 831, § 2, p. 3154; Laws 1981, LB 545, § 48; Laws 1996, LB 895, § 1; Laws 2003, LB 430, § 1; Laws 2004, LB 884, § 50.

84-503 Secretary of State; bills passed over Governor's veto; authentication.

Whenever any bill which shall have passed the Legislature shall be returned by the Governor with his objections thereto, and upon reconsideration shall pass the Legislature by the constitutional majority, it shall be authenticated as having become a law by a certificate thereon to the following effect: This bill having been returned by the Governor, with his objections thereto, and, after reconsideration, having passed the Legislature by the constitutional majority, it has become a law this _____ day of _____, A.D., _____, which, being signed by the presiding officer of the Legislature, shall be deemed a sufficient authentication thereof, and the bill shall thereupon be deposited with the laws in the office of the Secretary of State.

Source: Laws 1877, § 6, p. 196; R.S.1913, § 5570; C.S.1922, § 4874; C.S.1929, § 84-502; Laws 1939, c. 136, § 1, p. 582; C.S.Supp.,1941, § 84-502; R.S.1943, § 84-503.

84-504 Secretary of State; bills not signed or returned to Legislature by Governor; authentication.

Whenever any bill which shall have passed the Legislature and shall not be returned by the Governor or filed with his objections in the office of the Secretary of State, as required by Article IV, section 15, Constitution of Nebraska, it shall be the duty of the Secretary of State to authenticate the same by a certificate thereon to the following effect, as the case may be: This bill having remained with the Governor five days, Sunday excepted, the Legislature being in session, the Governor having failed to return this bill to the Legislature during its session, and having failed to file it in my office with his objections within five days after adjournment of the Legislature, it has thereby become a law.

Witness my hand this _____ day of _____, A.D., _____.

Source: Laws 1877, § 6, p. 196; R.S.1913, § 5570; C.S.1922, § 4874; C.S.1929, § 84-502; Laws 1939, c. 136, § 1, p. 582; C.S.Supp.,1941, § 84-502; R.S.1943, § 84-504.

84-505 Secretary of State; laws, acts, resolutions, bonds, insurance policies, records; custodian; transfer.

All public acts, laws, and resolutions passed by the Legislature of the state shall be carefully deposited in the office of the Secretary of State, and the secretary is charged with the safekeeping of such office and all laws, acts, resolutions, bonds or equivalent commercial insurance policies, papers, and records which are or shall be deposited therein. Such records may be transferred to the State Archives of the Nebraska State Historical Society or other

suitable records storage facility, when authorization is given by the State Records Administrator pursuant to the Records Management Act.

Source: Laws 1877, § 3, p. 195; R.S.1913, § 5571; C.S.1922, § 4875; C.S.1929, § 84-503; R.S.1943, § 84-505; Laws 1973, LB 224, § 14; Laws 2004, LB 884, § 51.

Cross References

Records Management Act, see section 84-1220.

Enrolled bills must be filed with Secretary of State, and, with the journal of the Legislature, are the only competent evidence of due passage of bills. *State v. Abbott*, 59 Neb. 106, 80 N.W. 499 (1899).

84-506 Repealed. Laws 1971, LB 36, § 8.

84-507 Secretary of State; oaths; acknowledgments; fees.

The Secretary of State shall have power to administer oaths and affirmations, acknowledgments and proofs of the execution of deeds, mortgages, powers of attorney, and other instruments in writing to be used or recorded in this state. He shall be allowed such fee as is provided for a notary public in such cases made and provided.

Source: Laws 1877, § 9, p. 199; R.S.1913, § 5573; C.S.1922, § 4877; C.S.1929, § 84-505; R.S.1943, § 84-507.

84-508 Secretary of State; deputy; duties.

The Secretary of State shall have power to appoint a deputy, and, when so appointed, the deputy shall do and perform, in case of the absence or disability of the secretary, all the duties herein authorized and required of the secretary, and the secretary shall be responsible for all the official acts of his deputy.

Source: Laws 1877, § 7, p. 199; R.S.1913, § 5574; C.S.1922, § 4878; C.S.1929, § 84-506; R.S.1943, § 84-508.

84-509 Secretary of State; deputy; compensation.

The deputy secretary of state shall receive a salary of such amount as shall be fixed by the Secretary of State, to be paid monthly by warrant of the Director of Administrative Services on the State Treasurer.

Source: Laws 1877, § 8, p. 199; Laws 1909, c. 124, § 1, p. 465; R.S.1913, § 5575; Laws 1921, c. 107, § 6, p. 380; C.S.1922, § 4879; C.S. 1929, § 84-507; R.S.1943, § 84-509; Laws 1945, c. 254, § 2, p. 793; Laws 1947, c. 347, § 2, p. 1093; Laws 1951, c. 338, § 10, p. 1120; Laws 1955, c. 349, § 1, p. 1068; Laws 1957, c. 396, § 1, p. 1361; Laws 1959, c. 451, § 3, p. 1504; Laws 1963, c. 536, § 2, p. 1682.

84-509.01 Restriction on political committee participation.

The Secretary of State shall not be a member or officer of a committee as defined in section 49-1413 other than a committee formed for his or her own candidacy.

Source: Laws 2006, LB 940, § 4.

84-509.02 Repealed. Laws 1959, c. 266, § 1.

84-510 Repealed. Laws 2020, LB910, § 49.**84-511 Electronic transmission and filing of documents.**

The Secretary of State may provide for the electronic transmission and filing of documents delivered for filing under (1) the Joint Public Agency Act, the Nebraska Benefit Corporation Act, the Nebraska Limited Cooperative Association Act, the Nebraska Model Business Corporation Act, the Nebraska Nonprofit Corporation Act, the Nebraska Professional Corporation Act, the Nebraska Uniform Limited Liability Company Act, the Nebraska Uniform Limited Partnership Act, the Nebraska Uniform Protected Series Act, the Nonstock Cooperative Marketing Act, the Trademark Registration Act, and the Uniform Partnership Act of 1998 and (2) any filing provisions of sections 21-1301 to 21-1306, 21-1333 to 21-1339, and 87-208 to 87-219.01. The Secretary of State shall adopt and promulgate rules and regulations to implement this section.

Source: Laws 2010, LB791, § 1; Laws 2011, LB462, § 7; Laws 2012, LB733, § 1; Laws 2013, LB283, § 8; Laws 2014, LB749, § 294; Laws 2014, LB751, § 15; Laws 2020, LB910, § 35.

Cross References

Joint Public Agency Act, see section 13-2501.
Nebraska Benefit Corporation Act, see section 21-401.
Nebraska Limited Cooperative Association Act, see section 21-2901.
Nebraska Model Business Corporation Act, see section 21-201.
Nebraska Nonprofit Corporation Act, see section 21-1901.
Nebraska Professional Corporation Act, see section 21-2201.
Nebraska Uniform Limited Liability Company Act, see section 21-101.
Nebraska Uniform Limited Partnership Act, see section 67-296.
Nebraska Uniform Protected Series Act, see section 21-501.
Nonstock Cooperative Marketing Act, see section 21-1401.
Trademark Registration Act, see section 87-126.
Uniform Partnership Act of 1998, see section 67-401.

84-512 Secretary of State Cash Fund; created; use; investment.

(1) The Secretary of State Cash Fund is created. The State Treasurer shall transfer the balance of the Administration Cash Fund, the Corporation Cash Fund, the Nebraska Collection Agency Fund, the Secretary of State Administration Cash Fund, and the Uniform Commercial Code Cash Fund on July 1, 2021, to the Secretary of State Cash Fund. The fund shall also include fees and revenue collected by the Secretary of State pursuant to sections 13-2525, 21-186, 21-192, 21-205, 21-414, 21-1905, 21-2216, 21-2924, 25-3308, 33-101, 33-102, 45-606, 45-620, 45-806, 48-2609, 52-1004, 52-1312, 52-1313, 52-1316, 52-1602, 64-306, 64-313, 64-405, 64-415, 67-293, 67-462, 69-1204, 69-1206, 71-3204, 77-3903, 81-1921, 81-1922, 84-906.03, 87-130, 87-133, 87-134, and 87-210 to 87-212 and sections 9-525 and 9-528, Uniform Commercial Code, and any other fees and revenue designated for credit to the fund.

(2) The Secretary of State shall use the Secretary of State Cash Fund for the administration of the office of the Secretary of State, including duties of the Secretary of State relating to oaths and bonds under Chapter 11, corporations and other business entities under Chapter 21, address confidentiality under Chapter 42, collection agencies and credit service organizations under Chapter 45, distribution of session laws and legislative journals under Chapter 49, liens, including effective financing statements and the master lien list, under Chapter 52, notaries public under Chapter 64, partnerships under Chapter 67, debt management under Chapter 69, private detectives under Chapter 71, truth and deception examiners under Chapter 81, administrative duties, the Great Seal of

the State of Nebraska, and rules and regulations, under Chapter 84, trade names, trademarks, and service marks under Chapter 87, and the Uniform Commercial Code, and any other administrative duties as deemed necessary by the Secretary of State.

(3) Any money in the Secretary of State 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 2020, LB910, § 1.

Cross References

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

ARTICLE 6
STATE TREASURER

Cross References

Constitutional provisions:

Election, term, eligibility, see Article IV, sections 1 and 3, Constitution of Nebraska.
 Salary, see Article IV, section 25, Constitution of Nebraska.
 Term of office, begins when, see Article XVII, section 5, Constitution of Nebraska.
 Treasury withdrawals, none without specific appropriation, see Article III, section 25, Constitution of Nebraska.

Board of Trustees of the Nebraska State Colleges, treasurer, see section 85-302.

Canvassers, board of state, member, see section 32-1037.

Election, see section 32-507.

Expenses, see sections 81-1174 to 81-1177.

Fiscal agent of state, see section 10-101.

Impeachment, see section 24-101.

Investment Council, Nebraska, member, see section 72-1237.

Salary, see sections 84-721 and 84-723.

Vacancy, possession and control of office, see section 32-563.

Section

- 84-601. State Treasurer; residence office; location.
- 84-602. State Treasurer; duties.
- 84-602.01. Taxpayer Transparency Act.
- 84-602.02. Transferred to section 84-602.04.
- 84-602.03. Taxpayer Transparency Act; terms, defined.
- 84-602.04. Taxpayer Transparency Act; website; contents; link to Department of Administrative Services website; contents; actions by state entity prohibited; Department of Administrative Services; duties.
- 84-603. State Treasurer; seal authentication; copies evidence of original.
- 84-604. State Treasurer and Auditor of Public Accounts; records; delivery to successors.
- 84-605. State Treasurer; records; inspection by Legislature; audit.
- 84-606. State Treasurer; oaths; power to administer.
- 84-607. State Treasurer; refusal to pay lawful warrant; penalty.
- 84-608. State Treasurer; deputy; duties; compensation.
- 84-608.01. Repealed. Laws 1957, c. 397, § 5.
- 84-608.02. Repealed. Laws 1961, c. 286, § 1.
- 84-609. Repealed. Laws 1987, LB 15, § 1.
- 84-610. Repealed. Laws 1987, LB 15, § 1.
- 84-611. Repealed. Laws 1987, LB 15, § 1.
- 84-612. Cash Reserve Fund; created; transfers; limitations; receipt of federal funds.
- 84-613. Cash Reserve Fund; investment; interest.
- 84-614. Unreversed transfer; considered encumbrance; when.
- 84-615. Petty cash fund; authorized.
- 84-616. Judgments and security for debt; authority of State Treasurer to sell and assign.
- 84-617. State Treasurer Administrative Fund; created; use; investment; fee schedule.

Section	
84-617.01.	Returned check or electronic payment not accepted; State Treasurer; state agency; assessment of charge; limitation.
84-618.	Treasury Management Cash Fund; created; use; investment.
84-619.	Repealed. Laws 2006, LB 1061, § 29.
84-620.	State Treasurer; debtor of state agency; fees authorized; payment limitations.
84-621.	Repealed. Laws 2020, LB740, § 1.
84-622.	State Treasurer; duty to transfer funds.

84-601 State Treasurer; residence office; location.

The State Treasurer shall reside and keep his office at the seat of government.

Source: R.S.1866, c. 4, § 17, p. 24; R.S.1913, § 5576; C.S.1922, § 4880; C.S.1929, § 84-601; R.S.1943, § 84-601.

84-602 State Treasurer; duties.

It shall be the duty of the State Treasurer:

- (1) To receive and keep all money of the state not expressly required to be received and kept by some other person;
- (2) To disburse the public money upon warrants drawn upon the state treasury according to law and not otherwise;
- (3) To keep a just, true, and comprehensive account of all money received and disbursed;
- (4) To keep a just account with each fund, and each head of appropriation made by law, and the warrants drawn against them;
- (5) To report electronically to the Legislature as soon as practicable, but within ten days after the commencement of each regular session, a detailed statement of the condition of the treasury and its operations for the preceding fiscal year;
- (6) To give information electronically to the Legislature, whenever required, upon any subject connected with the treasury or touching any duty of his or her office;
- (7) To account for, and pay over, all money received by him or her as such treasurer, to his or her successor in office, and deliver all books, vouchers, and effects of office to him or her; and such successor shall receipt therefor. In accounting for and paying over such money the treasurer shall not be held liable on account of any loss occasioned by any investment, when such investment shall have been made pursuant to the direction of the state investment officer;
- (8) To develop and maintain the website required under the Taxpayer Transparency Act; and
- (9) To award grants as provided under the Municipal Inland Port Authority Act.

Source: R.S.1866, c. 4, § 18, p. 24; R.S.1913, § 5577; C.S.1922, § 4881; C.S.1929, § 84-602; R.S.1943, § 84-602; Laws 1967, c. 617, § 1, p. 2069; Laws 1970, Spec. Sess., c. 3, § 1, p. 67; Laws 2009, LB16, § 2; Laws 2012, LB782, § 224; Laws 2013, LB429, § 1; Laws 2016, LB851, § 1; Laws 2021, LB509, § 21; Laws 2024, LB164, § 29.

Operative date April 17, 2024.

Cross References

Municipal Inland Port Authority Act, see section 13-3301.
Taxpayer Transparency Act, see section 84-602.01.

State Treasurer was necessary party to declaratory judgment action testing constitutionality of statute. *Haynes v. Anderson*, 163 Neb. 50, 77 N.W.2d 674 (1956).

State Treasurer is required to keep a warrant register for registration of unpaid warrants and warrants should be paid in order of their presentation. *State v. Omaha National Bank*, 66 Neb. 857, 93 N.W. 319 (1903).

Appropriation, authorizing State Treasurer to reimburse sinking fund from General Fund, is command to make proper entries on books, and issuance of warrant to him therefor is

void. *State v. Omaha Nat. Bank*, 59 Neb. 483, 81 N.W. 319 (1899).

Turning over certificates of deposits from state depositories is sufficient, without physical transfer of money to successor. In re *State Treasurer's Settlement*, 51 Neb. 116, 70 N.W. 532 (1897).

Requirement to account to successor for all money received can be satisfied only by delivery of actual cash. *State v. Hill*, 47 Neb. 456, 66 N.W. 541 (1896).

Action on bond for money unaccounted for must be brought in county of capital. *State v. Hill*, 38 Neb. 698, 57 N.W. 548 (1894).

84-602.01 Taxpayer Transparency Act.

Sections 84-602.01 to 84-602.04 shall be known and may be cited as the Taxpayer Transparency Act.

Source: Laws 2009, LB16, § 1; Laws 2016, LB851, § 2.

84-602.02 Transferred to section 84-602.04.

84-602.03 Taxpayer Transparency Act; terms, defined.

For purposes of the Taxpayer Transparency Act:

(1)(a) Expenditure of state funds means all expenditures of state receipts, whether appropriated or nonappropriated, by a state entity in forms including, but not limited to:

- (i) Grants;
- (ii) Contracts;
- (iii) Subcontracts;
- (iv) State aid to political subdivisions;

(v) Tax refunds or credits that may be disclosed pursuant to the Nebraska Advantage Act, the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, the Nebraska Advantage Rural Development Act, the ImagiNE Nebraska Act, or the Urban Redevelopment Act; and

(vi) Any other disbursement of state receipts by a state entity in the performance of its functions;

(b) Expenditure of state funds includes expenditures authorized by the Board of Regents of the University of Nebraska, the Board of Trustees of the Nebraska State Colleges, or a public corporation pursuant to sections 85-403 to 85-411; and

(c) Expenditure of state funds does not include the transfer of funds between two state entities, payments of state, federal, or other assistance to an individual, or the expenditure of pass-through funds;

(2) Pass-through funds means any funds received by a state entity if the state entity is acting only as an intermediary or custodian with respect to such funds and is obligated to pay or otherwise return such funds to the person entitled thereto;

(3) State entity means (a) any agency, board, commission, or department of the state and (b) any other body created by state statute that includes a person appointed by the Governor, the head of any state agency or department, an

employee of the State of Nebraska, or any combination of such persons and that is empowered pursuant to such statute to collect and disburse state receipts; and

(4) State receipts means revenue or other income received by a state entity from tax receipts, fees, charges, interest, or other sources which is (a) used by the state entity to pay the expenses necessary to perform the state entity's functions and (b) reported to the State Treasurer in total amounts by category of income. State receipts does not include pass-through funds.

Source: Laws 2016, LB851, § 3; Laws 2020, LB1107, § 140; Laws 2021, LB544, § 35.

Cross References

ImagiNE Nebraska Act, see section 77-6801.
 Nebraska Advantage Act, see section 77-5701.
 Nebraska Advantage Microenterprise Tax Credit Act, see section 77-5901.
 Nebraska Advantage Research and Development Act, see section 77-5801.
 Nebraska Advantage Rural Development Act, see section 77-27,187.
 Urban Redevelopment Act, see section 77-6901.

84-602.04 Taxpayer Transparency Act; website; contents; link to Department of Administrative Services website; contents; actions by state entity prohibited; Department of Administrative Services; duties.

(1) The State Treasurer shall develop and maintain a single, searchable website with information on state receipts, expenditures of state funds, and contracts which is accessible by the public at no cost to access as provided in this section. The website shall be hosted on a server owned and operated by the State of Nebraska or approved by the Chief Information Officer. The naming convention for the website shall identify the website as a state government website. The website shall not include the treasurer's name, the treasurer's image, the treasurer's seal, or a welcome message.

(2)(a) The website established, developed, and maintained by the State Treasurer pursuant to this section shall provide such information as will document the sources of all state receipts and the expenditure of state funds by all state entities.

(b) The State Treasurer shall, in appropriate detail, cause to be published on the website:

(i) The identity, principal location, and amount of state receipts received or expended by the State of Nebraska and all of its state entities;

(ii) The funding or expending state entity;

(iii) The budget program source;

(iv) The amount, date, purpose, and recipient of all expenditures of state funds; and

(v) Such other relevant information as will further the intent of enhancing the transparency of state government financial operations to its citizens and taxpayers. The website shall include data for fiscal year 2008-09 and each fiscal year thereafter, except that for any state entity that becomes subject to this section due to the changes made by Laws 2016, LB851, the website shall include data for such state entity for fiscal year 2016-17 and each fiscal year thereafter.

(3) The data shall be available on the website no later than thirty days after the end of the preceding fiscal year.

(4)(a) The website described in this section shall include a link to the website of the Department of Administrative Services. The department's website shall contain:

(i) A database that includes a copy of each active contract that is a basis for an expenditure of state funds, including any amendment to such contract and any document incorporated by reference in such contract. For purposes of this subdivision, amendment means an agreement to modify a contract which has been reduced to writing and signed by each party to the contract, an agreement to extend the duration of a contract, or an agreement to renew a contract. The database shall be accessible by the public and searchable by vendor, by state entity, and by dollar amount. All state entities shall provide to the Department of Administrative Services, in electronic form, copies of such contracts for inclusion in the database beginning with contracts that are active on and after January 1, 2014, except that for any state entity that becomes subject to this section due to the changes made by Laws 2016, LB851, such state entity shall provide copies of such contracts for inclusion in the database beginning with contracts that are active on and after January 1, 2017; and

(ii) A database that includes copies of all expired contracts which were previously included in the database described in subdivision (4)(a)(i) of this section and which have not been disposed of pursuant to policies and procedures adopted under subdivision (4)(e) of this section. The database required under this subdivision shall be accessible by the public and searchable by vendor, by state entity, and by dollar amount.

(b) The following shall be redacted or withheld from any contract before such contract is included in a database pursuant to subdivision (4)(a) of this section:

(i) The social security number or federal tax identification number of any individual or business;

(ii) Protected health information as such term is defined under the federal Health Insurance Portability and Accountability Act of 1996, as such act existed on January 1, 2013;

(iii) Any information which may be withheld from the public under section 84-712.05; or

(iv) Any information that is confidential under state or federal law, rule, or regulation.

(c) The following contracts shall be exempt from the requirements of subdivision (4)(a) of this section:

(i) Contracts entered into by the Department of Health and Human Services that are letters of agreement for the purpose of providing specific services to a specifically named individual and his or her family;

(ii) Contracts entered into by the University of Nebraska or any of the Nebraska state colleges for the purpose of providing specific services or financial assistance to a specifically named individual and his or her family;

(iii) Contracts entered into by the Department of Veterans' Affairs under section 80-401 or 80-403 for the purpose of providing aid to a specifically named veteran and his or her family;

(iv) Contracts entered into by the Department of Environment and Energy for the purpose of providing financing from the Dollar and Energy Saving Loan program;

(v) Contracts entered into by the State Department of Education under sections 79-11,121 to 79-11,132 for the purpose of providing specific goods, services, or financial assistance on behalf of or to a specifically named individual;

(vi) Contracts entered into by the Commission for the Blind and Visually Impaired under the Commission for the Blind and Visually Impaired Act for the purpose of providing specific goods, services, or financial assistance on behalf of or to a specifically named individual;

(vii) Contracts of employment for employees of any state entity. The exemption provided in this subdivision shall not apply to contracts entered into by any state entity to obtain the services of an independent contractor; and

(viii) Contracts entered into by the Nebraska Investment Finance Authority for the purpose of providing a specific service or financial assistance, including, but not limited to, a grant or loan, to a specifically named individual and his or her family.

(d) No state entity shall structure a contract to avoid any of the requirements of subdivision (4)(a) of this section.

(e) The Department of Administrative Services shall adopt policies and procedures regarding the creation, maintenance, and disposal of records pursuant to section 84-1212.02 for the contracts contained in the databases required under this section and the process by which state entities provide copies of the contracts required under this section.

(5) All state entities shall provide to the State Treasurer, at such times and in such form as designated by the State Treasurer, such information as is necessary to accomplish the purposes of the Taxpayer Transparency Act.

(6) Nothing in this section requires the disclosure of information which is considered confidential under state or federal law or is not a public record under section 84-712.05.

Source: Laws 2009, LB16, § 3; Laws 2013, LB429, § 2; Laws 2015, LB541, § 1; R.S.Supp.,2015, § 84-602.02; Laws 2016, LB694, § 1; Laws 2016, LB851, § 4; Laws 2019, LB123, § 1; Laws 2019, LB302, § 176.

Cross References

Commission for the Blind and Visually Impaired Act, see section 71-8601.

84-603 State Treasurer; seal authentication; copies evidence of original.

The State Treasurer shall keep a seal of office for the authentication of all papers, writings and documents required by law to be certified by him, and copies so authenticated and certified, of all papers and documents lawfully deposited in his office, shall be received in evidence the same as the original papers and documents.

Source: R.S.1866, c. 4, § 22, p. 26; R.S.1913, § 5578; C.S.1922, § 4882; C.S.1929, § 84-603; R.S.1943, § 84-603.

84-604 State Treasurer and Auditor of Public Accounts; records; delivery to successors.

The Auditor of Public Accounts and the State Treasurer shall severally deliver over to their successors in office all books, papers, records, vouchers, presses and furniture appertaining thereto.

Source: R.S.1866, c. 4, § 27, p. 27; R.S.1913, § 5579; C.S.1922, § 4883; C.S.1929, § 84-604; R.S.1943, § 84-604.

Official records are not conclusive against sureties. *State v. Paxton*, 65 Neb. 110, 90 N.W. 983 (1902).

Official records are competent and prima facie evidence against State Treasurer's sureties. *Paxton v. State*, 59 Neb. 460, 81 N.W. 383 (1899).

84-605 State Treasurer; records; inspection by Legislature; audit.

All the books, papers, letters, and transactions pertaining to the office of State Treasurer shall be open to the inspection of a committee of the Legislature to examine and settle all accounts and to count all money. When the successor of any such treasurer shall be elected and qualified, the Auditor of Public Accounts shall examine and settle all accounts of such treasurer remaining unsettled and give him or her a certified statement showing the balance of money, securities, and effects for which he or she is accountable, and which have been delivered to his or her successor, and report the balance electronically to the Legislature.

Source: R.S.1866, c. 4, § 19, p. 26; R.S.1913, § 5580; C.S.1922, § 4884; C.S.1929, § 84-605; R.S.1943, § 84-605; Laws 2012, LB782, § 225.

84-606 State Treasurer; oaths; power to administer.

The State Treasurer shall have power to administer all oaths required by law, in matters pertaining to the duties of his office.

Source: R.S.1866, c. 4, § 21, p. 26; R.S.1913, § 5581; C.S.1922, § 4885; C.S.1929, § 84-606; R.S.1943, § 84-606.

84-607 State Treasurer; refusal to pay lawful warrant; penalty.

If the State Treasurer shall willfully refuse or neglect to pay any warrant lawfully drawn upon the treasury, when the money for the payment of the same is in the treasury, he shall forfeit and pay fourfold the amount to be recovered by action against the treasurer and his sureties, on his official bond or otherwise. He shall also suffer such punishment as the law may provide.

Source: R.S.1866, c. 4, § 23, p. 26; R.S.1913, § 5582; C.S.1922, § 4886; C.S.1929, § 84-607; R.S.1943, § 84-607.

84-608 State Treasurer; deputy; duties; compensation.

The State Treasurer shall have the power to appoint a deputy. The deputy may do and perform, in the absence of the treasurer, all of the acts and duties that he may be authorized to perform by the treasurer, subject to the same restrictions as the treasurer, and the treasurer shall be responsible for all the official acts of his deputy. Such deputy treasurer shall receive a salary of such amount as shall be fixed by the State Treasurer, payable monthly by warrant of the Director of Administrative Services on the State Treasurer.

Source: R.S.1866, c. 4, § 24, p. 26; Laws 1903, c. 102, § 1, p. 573; R.S.1913, § 5583; Laws 1921, c. 107, § 5, p. 380; C.S.1922, § 4887; C.S.1929, § 84-608; R.S.1943, § 84-608; Laws 1945, c. 254, § 3, p. 794; Laws 1947, c. 349, § 1, p. 1096; Laws 1951, c.

338, § 11, p. 1120; Laws 1953, c. 358, § 2, p. 1136; Laws 1957, c. 397, § 1, p. 1362; Laws 1959, c. 451, § 4, p. 1504; Laws 1963, c. 536, § 3, p. 1682.

Cross References

Bonds and oaths, see Chapter 11.

For other provisions as to deputy state treasurer, see Chapter 84, article 8.

Other compensation prohibited, see section 84-723.

84-608.01 Repealed. Laws 1957, c. 397, § 5.

84-608.02 Repealed. Laws 1961, c. 286, § 1.

84-609 Repealed. Laws 1987, LB 15, § 1.

84-610 Repealed. Laws 1987, LB 15, § 1.

84-611 Repealed. Laws 1987, LB 15, § 1.

84-612 Cash Reserve Fund; created; transfers; limitations; receipt of federal funds.

(1) There is hereby created within the state treasury a fund known as the Cash Reserve Fund which shall be under the direction of the State Treasurer. The fund shall only be used pursuant to this section.

(2) The State Treasurer shall transfer funds from the Cash Reserve Fund to the General Fund upon certification by the Director of Administrative Services that the current cash balance in the General Fund is inadequate to meet current obligations. Such certification shall include the dollar amount to be transferred. Any transfers made pursuant to this subsection shall be reversed upon notification by the Director of Administrative Services that sufficient funds are available.

(3) In addition to receiving transfers from other funds, the Cash Reserve Fund shall receive federal funds received by the State of Nebraska for undesignated general government purposes, federal revenue sharing, or general fiscal relief of the state.

(4) The State Treasurer shall transfer fifteen million eight hundred forty-one thousand dollars from the Governor's Emergency Cash Fund to the Cash Reserve Fund on or before June 30, 2024, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

(5) The State Treasurer shall transfer one hundred sixty-six million six hundred seventy-three thousand five hundred eighty dollars from the Cash Reserve Fund to the Nebraska Capital Construction Fund on or after July 1, 2023, but before June 30, 2024, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

(6) No funds shall be transferred from the Cash Reserve Fund to fulfill the obligations created under the Nebraska Property Tax Incentive Act unless the balance in the Cash Reserve Fund after such transfer will be at least equal to five hundred million dollars.

(7) The State Treasurer shall transfer ten million dollars from the Cash Reserve Fund to the School Safety and Security Fund as soon as administratively possible after September 2, 2023, on such dates and in such amounts as

directed by the budget administrator of the budget division of the Department of Administrative Services.

(8) The State Treasurer shall transfer three million dollars from the Cash Reserve Fund to the Risk Loss Trust on or before June 30, 2024, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

(9) The State Treasurer shall transfer eleven million three hundred twenty thousand dollars from the Cash Reserve Fund to the Health and Human Services Cash Fund on or after July 1, 2023, but on or before June 30, 2024, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

(10) The State Treasurer shall transfer five hundred seventy-four million five hundred thousand dollars from the Cash Reserve Fund to the Perkins County Canal Project Fund on or before June 30, 2024, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

(11) The State Treasurer shall transfer one million one hundred fifteen thousand dollars from the Cash Reserve Fund to the Public Safety Cash Fund on or after July 1, 2023, but before June 30, 2024, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

(12) The State Treasurer shall transfer five million dollars from the Cash Reserve Fund to the Nebraska Public Safety Communication System Revolving Fund on or after July 1, 2023, but before June 30, 2024, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

(13) The State Treasurer shall transfer two million four hundred twenty-five thousand dollars from the Cash Reserve Fund to the Nebraska Public Safety Communication System Revolving Fund on or after July 1, 2024, but before June 30, 2025, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

(14) The State Treasurer shall transfer seventy million dollars from the Cash Reserve Fund to the Shovel-Ready Capital Recovery and Investment Fund on or after July 1, 2023, but before June 30, 2024, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

(15) The State Treasurer shall transfer two million dollars from the Cash Reserve Fund to the Site and Building Development Fund on or after July 1, 2023, but before June 30, 2024, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

(16) The State Treasurer shall transfer twenty million dollars from the Cash Reserve Fund to the Economic Development Cash Fund on or after July 1, 2023, but before June 30, 2024, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

(17) The State Treasurer shall transfer two hundred forty million dollars from the Cash Reserve Fund to the Economic Recovery Contingency Fund on or

after July 1, 2023, but before June 30, 2024, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

(18) The State Treasurer shall transfer ten million dollars from the Cash Reserve Fund to the Critical Infrastructure Facilities Cash Fund on or after July 1, 2023, but before June 30, 2024, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

(19) The State Treasurer shall transfer four hundred forty million dollars from the General Fund to the Cash Reserve Fund on or after July 1, 2023, but before June 30, 2024, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

(20) The State Treasurer shall transfer four million dollars from the Cash Reserve Fund to the General Fund on or after July 1, 2024, but before June 30, 2025, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

(21) The State Treasurer shall transfer twenty-nine million four hundred fifty-eight thousand eight hundred dollars from the Cash Reserve Fund to the Nebraska Capital Construction Fund on or after July 1, 2024, but before June 30, 2025, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

(22) The State Treasurer shall transfer two million five hundred thousand dollars from the Cash Reserve Fund to the Materiel Division Revolving Fund on or after July 1, 2023, but before June 30, 2024, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

(23) The State Treasurer shall transfer ten million dollars from the Cash Reserve Fund to the Youth Outdoor Education Innovation Fund on or after July 1, 2023, but before June 30, 2024, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

(24) The State Treasurer shall transfer twenty-eight million dollars from the Jobs and Economic Development Initiative Fund to the Cash Reserve Fund on or before June 30, 2024, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

(25) The State Treasurer shall transfer five million dollars from the Cash Reserve Fund to the State Insurance Fund on or before July 10, 2024, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

(26) The State Treasurer shall transfer three million five hundred thousand dollars from the Cash Reserve Fund to the Health and Human Services Cash Fund on or after July 1, 2024, but on or before June 30, 2025, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

(27) The State Treasurer shall transfer three million two hundred fifty thousand dollars from the Cash Reserve Fund to the State Insurance Fund as

soon as possible after April 2, 2024, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

(28) The State Treasurer shall transfer five million dollars from the Cash Reserve Fund to the Municipality Infrastructure Aid Fund on or after July 1, 2024, but before July 15, 2024, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

(29) The State Treasurer shall transfer twenty-five million dollars from the Cash Reserve Fund to the Governor's Emergency Cash Fund on or before June 30, 2025, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

(30) The State Treasurer shall transfer ten million dollars from the Cash Reserve Fund to the Governor's Emergency Cash Fund on or after July 1, 2025, but before June 30, 2026, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

(31) It is the intent of the Legislature to transfer two hundred million dollars from the Cash Reserve Fund to the General Fund on or after July 1, 2026, but before June 30, 2027, if the balance of the Cash Reserve Fund on July 1, 2026, after accounting for the transfers in this section, does not fall below sixteen percent of the amount appropriated, excluding encumbered and certified reappropriations, from the General Fund for fiscal year 2026-27.

Source: Laws 1983, LB 59, § 5; Laws 1985, LB 713, § 2; Laws 1985, LB 501, § 2; Laws 1986, LB 739, § 1; Laws 1986, LB 870, § 1; Laws 1987, LB 131, § 1; Laws 1988, LB 1091, § 4; Laws 1989, LB 310, § 1; Laws 1991, LB 857, § 1; Laws 1991, LB 783, § 33; Laws 1992, LB 1268, § 1; Laws 1993, LB 38, § 4; Laws 1994, LB 1045, § 1; Laws 1996, LB 1290, § 6; Laws 1997, LB 401, § 5; Laws 1998, LB 63, § 1; Laws 1998, LB 988, § 1; Laws 1998, LB 1104, § 30; Laws 1998, LB 1134, § 5; Laws 1998, LB 1219, § 23; Laws 1999, LB 881, § 9; Laws 2000, LB 1214, § 2; Laws 2001, LB 541, § 6; Laws 2002, LB 1310, § 20; Laws 2003, LB 790, § 74; Laws 2003, LB 798, § 1; Laws 2004, LB 1090, § 2; Laws 2005, LB 427, § 2; Laws 2006, LB 1131, § 1; Laws 2006, LB 1256, § 9; Laws 2007, LB323, § 3; Laws 2008, LB846, § 21; Laws 2008, LB1094, § 8; Laws 2008, LB1116, § 9; Laws 2008, LB1165, § 2; Laws 2009, LB456, § 3; Laws 2009, First Spec. Sess., LB2, § 7; Laws 2010, LB317, § 1; Laws 2011, LB379, § 2; Laws 2012, LB131, § 1; Laws 2013, LB200, § 1; Laws 2014, LB130, § 2; Laws 2014, LB1016, § 3; Laws 2015, LB662, § 1; Laws 2016, LB957, § 13; Laws 2016, LB960, § 31; Laws 2017, LB332, § 1; Laws 2018, LB946, § 1; Laws 2019, LB299, § 1; Laws 2020, LB1107, § 141; Laws 2020, LB1198, § 2; Laws 2021, LB385, § 1; Laws 2021, LB509, § 22; Laws 2022, LB977, § 2; Laws 2022, LB1013, § 1; Laws 2022, LB1024, § 16; Laws 2023, LB531, § 52; Laws 2023, LB705, § 108; Laws 2023, LB818, § 34; Laws 2024, LB600, § 9; Laws 2024, LB1413, § 58; Laws 2024, First Spec. Sess., LB3, § 45.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB600, section 9, with LB1413, section 58, to reflect all amendments.

Note: Changes made by Laws 2024, LB600, became effective April 17, 2024. Changes made by Laws 2024, LB1413, became effective April 2, 2024.

Note: Changes made by Laws 2024, First Spec. Sess., LB3, became effective August 21, 2024.

Cross References

Nebraska Property Tax Incentive Act, see section 77-6701.

84-613 Cash Reserve Fund; investment; interest.

Any money in the Cash Reserve Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Any interest earned by the fund shall accrue to the General Fund.

Source: Laws 1983, LB 59, § 6; Laws 1986, LB 870, § 2; Laws 1987, LB 131, § 2; Laws 1988, LB 391, § 1; Laws 1995, LB 7, § 147; Laws 2004, LB 1090, § 3; Laws 2006, LB 1131, § 2; Laws 2006, LB 1256, § 10; Laws 2007, LB323, § 4; Laws 2009, LB456, § 4.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

84-614 Unreversed transfer; considered encumbrance; when.

Any transfer of funds made pursuant to subsection (2) of section 84-612 and which has not been reversed as provided in such section shall be considered an encumbrance against the General Fund.

Source: Laws 1983, LB 59, § 9; Laws 1986, LB 870, § 3.

84-615 Petty cash fund; authorized.

The State Treasurer may establish a petty cash fund of not to exceed one thousand dollars for the purpose of cashing checks for state senators and state employees. The type of checks and the maximum amount for which such checks may be written shall be prescribed by the State Treasurer. Proof of state employment may be required prior to cashing a check.

Source: Laws 1986, LB 599, § 1.

84-616 Judgments and security for debt; authority of State Treasurer to sell and assign.

The State Treasurer is authorized to sell, assign, and transfer any judgment held and owned by the state against any person and to sell, assign, and transfer any security in the nature of a mortgage held on behalf of the permanent school fund to any person who will pay the full amount thereof. The sale and assignment shall transfer to and confer upon such purchaser all the rights of the state in such judgment or security.

Source: Laws 1877, § 1, p. 207; R.S.1913, § 6679; C.S.1922, § 6216; C.S.1929, § 77-2605; R.S.1943, § 77-2405; R.S.1943, (1986), § 77-2405; Laws 1989, LB 13, § 1.

84-617 State Treasurer Administrative Fund; created; use; investment; fee schedule.

(1) There is hereby created the State Treasurer Administrative Fund. Funds received by the State Treasurer pursuant to his or her administrative duties shall be credited to the fund. Such funds shall include:

- (a) Payments for returned check charges or for electronic payments not accepted;
- (b) Payments for wire transfers initiated by the State Treasurer at the request of state agencies;
- (c) Payments for copies of cashed state warrants;
- (d) Payments for copies, including microfilm, computer disk, or magnetic tape, of listings relating to outstanding state warrants;
- (e) Payments for copies, including microfilm, computer disk, or magnetic tape, of listings of owners of unclaimed property held by the State Treasurer pursuant to the Uniform Disposition of Unclaimed Property Act; and
- (f) Payments under the Interior Design Voluntary Registration Act.

(2) Money in the fund received pursuant to subdivisions (1)(a) through (d) of this section shall be credited to the General Fund quarterly. Money in the State Treasurer Administrative Fund received pursuant to subdivisions (1)(e) and (f) of this section shall be credited to the Unclaimed Property Cash Fund. The State Treasurer may retain such amount as he or she deems appropriate in the State Treasurer Administrative Fund for purposes of making change for cash payments. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(3) The State Treasurer may establish a fee schedule for any of the services listed in subdivisions (1)(a) through (e) of this section. The fees shall approximate the cost of providing the service.

Source: Laws 1993, LB 50, § 1; Laws 1994, LB 1066, § 132; Laws 2003, LB 354, § 1; Laws 2008, LB619, § 1; Laws 2024, LB16, § 3.
Effective date July 19, 2024.

Cross References

Interior Design Voluntary Registration Act, see section 71-6101.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.
Uniform Disposition of Unclaimed Property Act, see section 69-1329.

84-617.01 Returned check or electronic payment not accepted; State Treasurer; state agency; assessment of charge; limitation.

Any time that the State Treasurer assesses a returned check charge or a charge for an electronic payment that is not accepted against a state agency, that agency may assess a charge to the payor of the check or the person who authorized the electronic payment. The charges assessed by the state agency shall be used to make payment to the State Treasurer and to reimburse the state agency for the assessments and any administrative costs incurred by the agency. The charge assessed by the State Treasurer or a state agency shall not exceed thirty dollars. The charge assessed by the State Treasurer shall be credited to the State Treasurer Administrative Fund.

Source: Laws 2008, LB619, § 2.

84-618 Treasury Management Cash Fund; created; use; investment.

(1) The Treasury Management Cash Fund is created. A pro rata share of the budget appropriated for the treasury management functions of the State Treasurer and for the administration of the achieving a better life experience program as provided in sections 77-1401 to 77-1409 shall be charged to the income of each fund held in invested cash, and such charges shall be transferred to the Treasury Management Cash Fund. The allocation of charges may be made by any method determined to be reasonably related to actual costs incurred by the State Treasurer in carrying out the treasury management functions under section 84-602 and in carrying out the achieving a better life experience program as provided in sections 77-1401 to 77-1409. Approval of the agencies, boards, and commissions administering these funds shall not be required.

(2) It is the intent of this section to have funds held in invested cash be charged a pro rata share of such expenses when this is not prohibited by statute or the Constitution of Nebraska.

(3) The Treasury Management Cash Fund shall be used for the treasury management functions of the State Treasurer and for the administration of the achieving a better life experience program as provided in sections 77-1401 to 77-1409. To the extent permitted by section 529A as defined in section 77-1401, the fund may receive gifts for administration, operation, and maintenance of a program established under sections 77-1403 to 77-1409.

(4) Transfers may be made from the Treasury Management Cash Fund to the General Fund at the direction of the Legislature. Any money in the Treasury Management 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.

(5) On or before July 5, 2019, or as soon thereafter as possible, the State Treasurer shall transfer eighty-two thousand one hundred sixty-seven dollars from the Treasury Management Cash Fund to the General Fund. On or before July 1, 2020, the State Treasurer shall transfer twenty-seven thousand six hundred eighty-two dollars from the Treasury Management Cash Fund to the General Fund.

Source: Laws 2003, LB 424, § 1; Laws 2015, LB591, § 15; Laws 2019, LB186, § 24.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

84-619 Repealed. Laws 2006, LB 1061, § 29.

84-620 State Treasurer; debtor of state agency; fees authorized; payment limitations.

(1) The State Treasurer, with state agency approval, may electronically collect a bad debt and a fee from a debtor of the state agency equal to the cost of processing any payments for returned check charges or charges for electronic payments not accepted, except that the fee shall not exceed thirty dollars. The fee shall be remitted to the State Treasurer Administrative Fund.

(2) After the payor has originated two bad debt payments to a state agency in a period of one year, the state agency may refuse to accept future payments by

check and may require a money order, cash, a cashier's check, or a certified check for payment.

Source: Laws 2008, LB620, § 2.

84-621 Repealed. Laws 2020, LB740, § 1.

84-622 State Treasurer; duty to transfer funds.

The State Treasurer shall transfer:

(1) To the Economic Recovery Contingency Fund by October 1, 2024, and on or before June 30 of each year through June 30, 2026, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services, (a) the first thirteen million dollars of any interest earned on or after July 1, 2024, and on or before June 30, 2026, on federal funds allocated to the State of Nebraska from the federal Coronavirus State Fiscal Recovery Fund pursuant to the federal American Rescue Plan Act of 2021, 42 U.S.C. 802, as amended, (b) the first twelve million dollars of any interest earned on or after July 1, 2024, and on or before June 30, 2026, from the investment of money in the Perkins County Canal Project Fund pursuant to section 61-305, and (c) the first five million dollars of any interest earned on or after July 1, 2024, and on or before June 30, 2026, from the investment of money in the Nebraska Capital Construction Fund from transfers credited to such fund that are designated for the construction of a new state prison pursuant to section 72-1001;

(2) To the Museum Construction and Maintenance Fund on or before June 30 of each year through June 30, 2026, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services, the next seven million dollars of any interest earned after the first twelve million dollars of interest earned on or after July 1, 2024, and on or before June 30, 2026, from the investment of money in the Perkins County Canal Project Fund pursuant to section 61-305; and

(3) To the Inland Port Authority Fund on or before June 30 of each year through June 30, 2026, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services, (a) any interest earned after the first thirteen million dollars of interest earned on or after July 1, 2024, and on or before June 30, 2026, on federal funds allocated to the State of Nebraska from the federal Coronavirus State Fiscal Recovery Fund pursuant to the federal American Rescue Plan Act of 2021, 42 U.S.C. 802, as amended, (b) any interest earned after the first nineteen million dollars of interest earned on or after July 1, 2024, and on or before June 30, 2026, from the investment of money in the Perkins County Canal Project Fund pursuant to section 61-305, and (c) any interest earned after the first five million dollars of interest earned on or after July 1, 2024, and on or before June 30, 2026, from the investment of money in the Nebraska Capital Construction Fund from transfers credited to such fund that are designated for the construction of a new state prison pursuant to section 72-1001.

Source: Laws 2024, LB164, § 13.

Operative date April 17, 2024.

GENERAL PROVISIONS AS TO STATE OFFICERS

ARTICLE 7

GENERAL PROVISIONS AS TO STATE OFFICERS

Cross References

Constitutional provisions:

Appointments, see Article IV, section 10, Constitution of Nebraska.

Conflicts of interest, see Article III, section 16, Constitution of Nebraska.

Treasury withdrawals, none without specific appropriation, see Article III, section 25, Constitution of Nebraska.

Vacancies, nonelective state officers, see Article IV, section 12, Constitution of Nebraska.

Expenses, see sections 81-1174 to 81-1177.

Impeachment, see section 24-101.

Indemnification for certain judgments, see sections 81-8,239.05 and 81-8,239.06.

Official bonds, see Chapter 11.

Reports to Governor, when required, see section 84-102.

State funds, deposit and investment of, see Chapter 77, article 23.

Section

- 84-701. Fiscal year; beginning; end.
- 84-702. State officers; biennial reports to Clerk of the Legislature.
- 84-703. Repealed. Laws 1963, c. 339, § 1.
- 84-704. Repealed. Laws 1963, c. 339, § 1.
- 84-705. Repealed. Laws 1947, c. 344, § 8.
- 84-706. Repealed. Laws 1959, c. 265, § 1.
- 84-707. Repealed. Laws 1951, c. 341, § 1.
- 84-708. Repealed. Laws 1951, c. 341, § 1.
- 84-709. Repealed. Laws 1951, c. 341, § 1.
- 84-710. Fees, proceeds, and money due state; payment to State Treasurer; duty of state officers and department heads; exceptions.
- 84-711. Fees; failure to remit to State Treasurer; penalty.
- 84-712. Public records; free examination; memorandum and abstracts; copies; fees.
- 84-712.01. Public records; right of residents; full access; fee authorized.
- 84-712.02. Public records; claimants before United States Department of Veterans Affairs; certified copies free of charge.
- 84-712.03. Public records; denial of rights; remedies.
- 84-712.04. Public records; denial of rights; public body; provide information.
- 84-712.05. Records which may be withheld from the public; enumerated.
- 84-712.06. Public record; portion provided; when.
- 84-712.07. Public records; public access; equitable relief; attorney's fees; costs.
- 84-712.08. Records; federal government; exception.
- 84-712.09. Violation; penalty.
- 84-713. Settled claims; record required; contents; public record; certain settlement agreements; public agency; agenda item; applicability of section.
- 84-713.01. Repealed. Laws 1997, LB 590, § 19.
- 84-713.02. Repealed. Laws 1997, LB 590, § 19.
- 84-713.03. Repealed. Laws 1997, LB 590, § 19.
- 84-713.04. Repealed. Laws 1997, LB 590, § 19.
- 84-713.05. Transferred to section 50-117.
- 84-714. Transferred to section 90-102.
- 84-715. Transferred to section 90-103.
- 84-716. Transferred to section 90-104.
- 84-716.01. Transferred to section 90-105.
- 84-716.02. Repealed. Laws 1965, c. 571, § 1.
- 84-716.03. Transferred to section 90-106.
- 84-717. Transferred to section 90-107.
- 84-718. Elective constitutional state officer; status; effect of bond or insurance policy; right of action to establish; consent of state to suit.
- 84-719. Elective constitutional state officer; status; effect of bond; action to establish; notice and hearing; service.
- 84-720. Elective constitutional state officer; status; effect of bond; action to establish; notice; service upon Attorney General.
- 84-721. Secretary of State; Auditor of Public Accounts; State Treasurer; Lieutenant Governor; salaries.
- 84-721.01. Repealed. Laws 1965, c. 567, § 3.

§ 84-701**STATE OFFICERS**

Section

- 84-721.02. Repealed. Laws 1961, c. 286, § 1.
- 84-721.03. Repealed. Laws 1963, c. 341, § 1.
- 84-722. Repealed. Laws 1959, c. 266, § 1.
- 84-723. State officers; other compensation from state; prohibition.
- 84-724. Repealed. Laws 1959, c. 266, § 1.
- 84-725. Transferred to section 90-108.
- 84-726. Transferred to section 90-109.
- 84-727. Transferred to section 90-110.
- 84-728. Transferred to section 90-111.
- 84-729. Transferred to section 90-112.
- 84-730. Transferred to section 90-113.
- 84-731. Governor; duty to implement laws; exceptions; Attorney General; action to implement.
- 84-732. Governor or Attorney General; duty to implement laws; violation; penalty.
- 84-733. Advertising or promotional materials; state funds; limitation.

84-701 Fiscal year; beginning; end.

The fiscal year shall commence on July 1 in each year and end on June 30 in each year.

Source: R.S.1866, c. 4, § 28, p. 27; R.S.1913, § 5584; Laws 1921, c. 212, § 1, p. 751; C.S.1922, § 4891; C.S.1929, § 84-701; R.S.1943, § 84-701.

84-702 State officers; biennial reports to Clerk of the Legislature.

Each member of the Legislature shall receive an electronic copy of a biennial report required to be submitted by a state officer to the Clerk of the Legislature by making a request for it to the state officer responsible for the report.

Source: Laws 1881, c. 80, § 3, p. 390; R.S.1913, § 5585; Laws 1915, c. 100, § 1, p. 243; C.S.1922, § 4892; C.S.1929, § 84-702; R.S.1943, § 84-702; Laws 1947, c. 344, § 6, p. 1088; Laws 1955, c. 231, § 23, p. 729; Laws 1979, LB 322, § 73; Laws 1981, LB 545, § 49; Laws 2012, LB782, § 226.

84-703 Repealed. Laws 1963, c. 339, § 1.

84-704 Repealed. Laws 1963, c. 339, § 1.

84-705 Repealed. Laws 1947, c. 344, § 8.

84-706 Repealed. Laws 1959, c. 265, § 1.

84-707 Repealed. Laws 1951, c. 341, § 1.

84-708 Repealed. Laws 1951, c. 341, § 1.

84-709 Repealed. Laws 1951, c. 341, § 1.

84-710 Fees, proceeds, and money due state; payment to State Treasurer; duty of state officers and department heads; exceptions.

It shall be unlawful for any executive department, state institution, board, or officer acting under or by virtue of any statute or authority of the state, including the State Racing and Gaming Commission, to receive any fees, proceeds from the sale of any public property, or any money belonging to the state or due for any service rendered by virtue of state authority without paying

the same into the state treasury within three business days of the receipt thereof when the aggregate amount is five hundred dollars or more and within seven days of the receipt thereof when the aggregate amount is less than five hundred dollars. The State Treasurer may, upon a written request from an executive department, state institution, board, or officer stating that the applicable time period cannot be met, grant additional time to remit the funds to the state treasury. Funds received by an executive department, state institution, board, or officer for a good or service which may or may not be delivered contingent upon a selection process shall not be subject to this section until the selection period is over.

The provisions of this section and section 84-711 shall not apply to money received as proceeds of any fair, exposition, or exhibition held by any state board or society or of membership contributions to or receipts from miscellaneous sales by the Nebraska State Historical Society.

Such money so paid into the treasury shall be withdrawn therefrom or paid out only upon proper voucher and warrant.

The head of any institution receiving, from any source, funds to be held in trust and expended for the benefit of any inmate thereof shall not be required to pay such trust funds into the state treasury as provided in this section but shall, at the end of each month, file with the Director of Administrative Services a detailed and attested statement of all such money received and expended by him or her.

Source: Laws 1911, c. 132, § 1, p. 442; R.S.1913, § 5593; C.S.1922, § 4900; C.S.1929, § 84-710; R.S.1943, § 84-710; Laws 1961, c. 453, § 1, p. 1381; Laws 1961, c. 418, § 3, p. 1280; Laws 1984, LB 933, § 19; Laws 1999, LB 61, § 1; Laws 2021, LB561, § 49.

84-711 Fees; failure to remit to State Treasurer; penalty.

The failure or refusal of an employee or officer of an executive department, state institution, or board to pay over the public money, or any part thereof, belonging to the state or to account to or to make settlement with the State Treasurer upon demand shall be prima facie evidence of embezzlement, and such person shall be punished, as provided by law, for the embezzlement of public funds.

Source: Laws 1911, c. 132, § 2, p. 443; R.S.1913, § 5594; C.S.1922, § 4901; C.S.1929, § 84-711; R.S.1943, § 84-711; Laws 1999, LB 61, § 2.

84-712 Public records; free examination; memorandum and abstracts; copies; fees.

(1) Except as otherwise expressly provided by statute, all residents of this state and all other persons interested in the examination of the public records as defined in section 84-712.01 are hereby fully empowered and authorized to (a) examine such records, and make memoranda, copies using their own copying or photocopying equipment in accordance with subsection (2) of this section, and abstracts therefrom, all free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business and (b) except if federal copyright law otherwise provides, obtain copies of public records in accordance with subsection (3) of this section during the hours the respective offices may be kept open for the ordinary transaction of business.

(2) Copies made by residents or other persons using their own copying or photocopying equipment pursuant to subdivision (1)(a) of this section shall be made on the premises of the custodian of the public record or at a location mutually agreed to by the requester and the custodian.

(3)(a) Copies may be obtained pursuant to subdivision (1)(b) of this section only if the custodian has copying equipment reasonably available. Such copies may be obtained in any form designated by the requester in which the public record is maintained or produced, including, but not limited to, printouts, electronic data, discs, tapes, and photocopies. This section shall not be construed to require a custodian to copy any public record that is available to the requester on the custodian's website on the Internet. The custodian of the public record is required to provide the location of the public record on the Internet to the requester. If the requester does not have reasonable access to the Internet due to lack of computer, lack of Internet availability, or inability to use a computer or the Internet, the custodian shall produce copies for the requester as provided in this section.

(b) Except as otherwise provided by statute, the public body, public entity, or public official which is the custodian of a public record may charge a fee for providing copies of such public record pursuant to subdivision (1)(b) of this section, which fee shall not exceed the actual added cost of making the copies available. For purposes of this subdivision, (i) for photocopies, the actual added cost of making the copies available shall not exceed the amount of the reasonably calculated actual added cost of the photocopies, which may include a reasonably apportioned cost of the supplies, such as paper, toner, and equipment, used in preparing the copies, as well as any additional payment obligation of the custodian for time of contractors necessarily incurred to comply with the request for copies, (ii) for printouts of computerized data on paper, the actual added cost of making the copies available shall include the reasonably calculated actual added cost of computer run time and the cost of materials for making the copy, and (iii) for electronic data, the actual added cost of making the copies available shall include the reasonably calculated actual added cost of the computer run time, any necessary analysis and programming by the public body, public entity, public official, or third-party information technology services company contracted to provide computer services to the public body, public entity, or public official, and the production of the report in the form furnished to the requester.

(c) For residents of Nebraska, the actual added cost used as the basis for the calculation of a fee for records shall not include any charge for the existing salary or pay obligation to the public officers or employees with respect to the first eight cumulative hours of searching, identifying, physically redacting, or copying. A special service charge reflecting the calculated labor cost may be included in the fee for time required in excess of eight cumulative hours, since that large of a request may cause some delay or disruption of the other responsibilities of the custodian's office, except that the fee for records shall not include any charge for the services of an attorney or any other person to review the requested public records seeking a legal basis to withhold the public records from the public. No special service charge or fee shall be charged for copies of blank forms or pages that have all meaningful information redacted.

(d) For nonresidents of Nebraska, the actual added cost used as the basis for the calculation of a fee for records may include a charge for the proportion of the existing salary or pay obligation to the public officers or employees,

including a proportional charge for the services of an attorney to review the requested public records, for the time spent searching, identifying, physically redacting, copying, or reviewing such records.

(e) State agencies which provide electronic access to public records through a portal established under section 84-1204 shall obtain approval of their proposed reasonable fees for such records pursuant to sections 84-1205.02 and 84-1205.03, if applicable, and the actual added cost of making the copies available may include the approved fee for the portal.

(f) This section shall not be construed to require a public body or custodian of a public record to produce or generate any public record in a new or different form or format modified from that of the original public record.

(g) If copies requested in accordance with subdivision (1)(b) of this section are estimated by the custodian of such public records to cost more than fifty dollars, the custodian may require the requester to furnish a deposit prior to fulfilling such request.

(h) The custodian may waive or reduce any fee described in this section if the waiver or reduction of the fee would be in the public interest. Waiver or reduction of the fee is in the public interest if disclosure of the public record at issue is likely to contribute to the understanding of the operations or activities of government and is not primarily in the commercial interest of the person requesting such records.

(4) Upon receipt of a written request for access to or copies of a public record, the custodian of such record shall provide to the requester as soon as is practicable and without delay, but not more than four business days after actual receipt of the request, an estimate of the expected cost of the copies and either (a) access to or, if copying equipment is reasonably available, copies of the public record, (b) if there is a legal basis for denial of access or copies, a written denial of the request together with the information specified in section 84-712.04, or (c) if the entire request cannot with reasonable good faith efforts be fulfilled within four business days after actual receipt of the request due to the significant difficulty or the extensiveness of the request, a written explanation, including the earliest practicable date for fulfilling the request, an estimate of the expected cost of any copies, and an opportunity for the requester to modify or prioritize the items within the request. The requester shall have ten business days to review the estimated costs, including any special service charge, and request the custodian to fulfill the original request, negotiate with the custodian to narrow or simplify the request, or withdraw the request. If the requester does not respond to the custodian within ten business days, the custodian shall not proceed to fulfill the request. The four business days shall be computed by excluding the day the request is received, after which the designated period of time begins to run. Business day does not include a Saturday, a Sunday, or a day during which the offices of the custodian of the public records are closed.

(5) For purposes of sections 84-712 to 84-712.09, resident means a person domiciled in this state and includes news media without regard to domicile.

Source: R.S.1866, c. 44, § 1, p. 297; R.S.1913, § 5595; C.S.1922, § 4902; Laws 1925, c. 146, § 1, p. 381; Laws 1927, c. 193, § 1, p. 551; C.S.1929, § 84-712; R.S.1943, § 84-712; Laws 1961, c. 454, § 3, p. 1383; Laws 1979, LB 86, § 1; Laws 2000, LB 628, § 1; Laws

2012, LB719, § 6; Laws 2013, LB363, § 1; Laws 2024, LB43, § 8.

Operative date July 19, 2024.

Section 83-1,125.01(2) is an “other statute” under subsection (1) of this section that expressly provides individual files shall not be made public. *Jacob v. Nebraska Bd. of Parole*, 313 Neb. 109, 982 N.W.2d 815 (2022).

A statute qualifies as an “other statute” under subsection (1) of this section when the plain language of a statute makes it clear that a record, or portions thereof, is exempt from disclosure in response to a public records request. *State ex rel. BH Media Group v. Frakes*, 305 Neb. 780, 943 N.W.2d 231 (2020).

An “other statute” exemption does not allow a court to imply an exemption, but only allows a specific exemption to stand. *State ex rel. BH Media Group v. Frakes*, 305 Neb. 780, 943 N.W.2d 231 (2020).

A party seeking a writ of mandamus under section 84-712.03 has the burden to satisfy three elements: (1) The requesting party is a citizen of the state or the other person interested in the examination of the public records; (2) the document sought is a public record as defined by section 84-712.01; and (3) the requesting party has been denied access to the public record as

guaranteed by this section. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

Dockets of justice containing entry of judgments are public records. *State ex rel. Newby v. Ellsworth*, 61 Neb. 444, 85 N.W. 439 (1901).

Party was not entitled to inspection of certified copy of court reporter’s record before same is offered in evidence. *Spielman v. Flynn*, 19 Neb. 342, 27 N.W. 224 (1886).

Any person interested may examine records without charge, and fee book of clerk of court is public record. *State ex rel. Griggs v. Meeker*, 19 Neb. 106, 26 N.W. 620 (1886).

Numerical indexes of instruments concerning title to real estate kept by county clerk are public records. *State ex rel. Miller v. Sovereign*, 17 Neb. 173, 22 N.W. 353 (1885).

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

84-712.01 Public records; right of residents; full access; fee authorized.

(1) Except when any other statute expressly provides that particular information or records shall not be made public, public records shall include all records and documents, regardless of physical form, of or belonging to this state, any county, city, village, political subdivision, or tax-supported district in this state, or any agency, branch, department, board, bureau, commission, council, subunit, or committee of any of the foregoing. Data which is a public record in its original form shall remain a public record when maintained in computer files.

(2) When a custodian of a public record of a county provides to a member of the public, upon request, a copy of the public record by transmitting it from a modem to an outside modem, a reasonable fee may be charged for such specialized service. Such fee may include a reasonable amount representing a portion of the amortization of the cost of computer equipment, including software, necessarily added in order to provide such specialized service. This subsection shall not be construed to require a governmental entity to acquire computer capability to generate public records in a new or different form when that new form would require additional computer equipment or software not already possessed by the governmental entity.

(3) Sections 84-712 to 84-712.03 shall be liberally construed whenever any state, county, or political subdivision fiscal records, audit, warrant, voucher, invoice, purchase order, requisition, payroll, check, receipt, or other record of receipt, cash, or expenditure involving public funds is involved in order that the residents of this state shall have the full right to know of and have full access to information on the public finances of the government and the public bodies and entities created to serve them.

Source: Laws 1961, c. 454, § 2, p. 1383; Laws 1979, LB 86, § 2; Laws 1994, LB 1275, § 12; Laws 2000, LB 628, § 2; Laws 2024, LB43, § 9.

Operative date July 19, 2024.

The Legislature intended that courts liberally construe the public records statutes in favor of disclosure whenever the

expenditure of public funds is involved. *State ex rel. BH Media Group v. Frakes*, 305 Neb. 780, 943 N.W.2d 231 (2020).

If each branch of government could shield its records simply by appealing to the fact that they were created in the course of any number of essential branch functions, then the protections of the public interest embodied in the public records statutes would be a nullity. *State ex rel. Veskrna v. Steel*, 296 Neb. 581, 894 N.W.2d 788 (2017).

Under subsection (1) of this section, the Judicial Branch Education advisory committee's unwritten policy of keeping its records confidential did not, in light of section 24-205.01, governing the committee's power to develop standards and policies for review by the Nebraska Supreme Court, render such records confidential under the statutory exception to the public records laws for records not to be made public according to this section, although subdivision (2)(a) of section 24-205.01 contemplated promulgation of rules regarding the confidentiality of Judicial Branch Education records, where no such rules had been adopted by the Nebraska Supreme Court. *State ex rel. Veskrna v. Steel*, 296 Neb. 581, 894 N.W.2d 788 (2017).

Presence reports are not "public records" under this section. *State ex rel. Unger v. State*, 293 Neb. 549, 878 N.W.2d 540 (2016).

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

A party seeking a writ of mandamus under section 84-712.03 has the burden to satisfy three elements: (1) The requesting party is a citizen of the state or other person interested in the examination of the public records; (2) the document sought is a public record as defined by this section; and (3) the requesting party has been denied access to the public record as guaranteed by section 84-712. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

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

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

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

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

84-712.02 Public records; claimants before United States Department of Veterans Affairs; certified copies free of charge.

When it is requested by any claimant before the United States Department of Veterans Affairs or his or her agent or attorney that certified copies of any public record be furnished for the proper and effective presentation of any such claim in such department, the officer in charge of such public records shall furnish or cause to be furnished to such claimant or his or her agent or attorney a certified copy thereof free of charge.

Source: Laws 1961, c. 454, § 4, p. 1384; Laws 1991, LB 2, § 30.

84-712.03 Public records; denial of rights; remedies.

(1) Any person denied any rights granted by sections 84-712 to 84-712.03 may elect to:

(a) File for speedy relief by a writ of mandamus in the district court within whose jurisdiction the state, county, or political subdivision officer who has custody of the public record can be served; or

(b) Petition the Attorney General to review the matter to determine whether a record may be withheld from public inspection or whether the public body that is custodian of such record has otherwise failed to comply with such sections, including whether the fees estimated or charged by the custodian are actual added costs or special service charges as provided under section 84-712. This determination shall be made within fifteen calendar days after the submission of the petition. If the Attorney General determines that the record may not be withheld or that the public body is otherwise not in compliance, the public body shall be ordered to disclose the record immediately or otherwise comply.

If the public body continues to withhold the record or remain in noncompliance, the person seeking disclosure or compliance may (i) bring suit in the trial court of general jurisdiction or (ii) demand in writing that the Attorney General bring suit in the name of the state in the trial court of general jurisdiction for the same purpose. If such demand is made, the Attorney General shall bring suit within fifteen calendar days after its receipt. The requester shall have an absolute right to intervene as a full party in the suit at any time.

(2) In any suit filed under this section, the court has jurisdiction to enjoin the public body from withholding records, to order the disclosure, and to grant such other equitable relief as may be proper. The court shall determine the matter de novo and the burden is on the public body to sustain its action. The court may view the records in controversy in camera before reaching a decision, and in the discretion of the court other persons, including the requester, counsel, and necessary expert witnesses, may be permitted to view the records, subject to necessary protective orders.

(3) Proceedings arising under this section shall be advanced on the trial docket and heard and decided by the court as soon as reasonably possible and shall take precedence on the trial docket over all other cases and shall be assigned for hearing, trial, or argument at the earliest practicable date and expedited in every way.

Source: Laws 1961, c. 454, § 5, p. 1384; Laws 1977, LB 39, § 316; Laws 1979, LB 86, § 3; Laws 2000, LB 628, § 3; Laws 2013, LB363, § 2; Laws 2018, LB193, § 93; Laws 2024, LB43, § 10.
Operative date July 19, 2024.

A person choosing to seek speedy relief by a writ of mandamus, pursuant to subdivision (1)(a) of this section, must follow the procedural requirements set forth in sections 25-2156 through 25-2169. State ex rel. Malone v. Baldonado-Bellamy, 307 Neb. 549, 950 N.W.2d 81 (2020).

In the context of a public records denial, a district court's jurisdiction over a writ of mandamus is governed by this section, and such jurisdiction does not turn on whether the claim advanced by the relator has merit. State ex rel. BH Media Group v. Frakes, 305 Neb. 780, 943 N.W.2d 231 (2020).

It is well-understood that the public records statutes place the burden of proof upon the public body to justify nondisclosure. State ex rel. BH Media Group v. Frakes, 305 Neb. 780, 943 N.W.2d 231 (2020).

A party seeking a writ of mandamus under this section has the burden to satisfy three elements: (1) The requesting party is a citizen of the state or other person interested in the examination of the public records, (2) the document sought is a public record as defined by section 84-712.01, and (3) the requesting party has been denied access to the public record as guaranteed by section 84-712. Huff v. Brown, 305 Neb. 648, 941 N.W.2d 515 (2020).

If the public body holding the record wishes to oppose the issuance of a writ of mandamus, the public body must show, by clear and conclusive evidence, that the public record at issue is exempt from the disclosure requirement under one of the exceptions provided by section 84-712.05 or section 84-712.08. Huff v. Brown, 305 Neb. 648, 941 N.W.2d 515 (2020).

Under subdivision (1)(a) of this section, the requesting party's initial responsibility includes demonstrating that the requested record is a public record that he or she has a clear right to access under the public records statutes and that the public

body or custodian against whom mandamus is sought has a clear duty to provide such public records. Huff v. Brown, 305 Neb. 648, 941 N.W.2d 515 (2020).

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

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

When a writ of mandamus is sought pursuant to this section, the party seeking the writ must first show (1) that the party is a citizen of the state or other person interested in the examination of the public records, (2) that the document sought by the party is a public record as defined by section 84-712.01, and (3) that the party has been denied the access to the public record guaranteed by section 84-712; thereafter, if the public body holding the record wishes to oppose the issuance of a writ of mandamus, the public body must show, by clear and convincing evidence, that the public record at issue is exempt from the disclosure requirement under one of the exceptions provided by section 84-712.05 or section 84-712.08. *State ex rel. Neb. Health Care Assn. v. Dept. of Health and Human Services Finance and Support*, 255 Neb. 784, 587 N.W.2d 100 (1998).

84-712.04 Public records; denial of rights; public body; provide information.

(1) Any person denied any rights granted by sections 84-712 to 84-712.03 shall receive in written form from the public body which denied the request for records at least the following information:

(a) A description of the contents of the records withheld and a statement of the specific reasons for the denial, correlating specific portions of the records to specific reasons for the denial, including citations to the particular statute and subsection thereof expressly providing the exception under section 84-712.01 relied on as authority for the denial;

(b) The name of the public official or employee responsible for the decision to deny the request; and

(c) Notification to the requester of any administrative or judicial right of review under section 84-712.03.

(2) Each public body shall maintain a file of all letters of denial of requests for records. This file shall be made available to any person on request.

Source: Laws 1979, LB 86, § 4; Laws 1983, LB 3, § 1.

84-712.05 Records which may be withheld from the public; enumerated.

The following records, unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties, may be withheld from the public by the lawful custodian of the records:

(1) Personal information in records regarding a student, prospective student, or former student of any educational institution or exempt school that has effectuated an election not to meet state approval or accreditation requirements pursuant to section 79-1601 when such records are maintained by and in the possession of a public entity, other than routine directory information specified and made public consistent with 20 U.S.C. 1232g, as such section existed on February 1, 2013, and regulations adopted thereunder;

(2) Medical records, other than records of births and deaths and except as provided in subdivisions (5) and (27) of this section, in any form concerning any person; records of elections filed under section 44-2821; and patient safety work product under the Patient Safety Improvement Act;

(3) Trade secrets, academic and scientific research work which is in progress and unpublished, and other proprietary or commercial information which if released would give advantage to business competitors and serve no public purpose;

(4) Records which represent the work product of an attorney and the public body involved which are related to preparation for litigation, labor negotiations, or claims made by or against the public body or which are confidential communications as defined in section 27-503;

(5) Records developed or received by law enforcement agencies and other public bodies charged with duties of investigation or examination of persons, institutions, or businesses, when the records constitute a part of the examination, investigation, intelligence information, complaints or inquiries from residents of this state or other interested persons, informant identification, or strategic or tactical information used in law enforcement training, except that this subdivision shall not apply to records so developed or received:

(a) Relating to the presence of and amount or concentration of alcohol or drugs in any body fluid of any person; or

(b) Relating to the cause of or circumstances surrounding the death of an employee arising from or related to his or her employment if, after an

investigation is concluded, a family member of the deceased employee makes a request for access to or copies of such records. This subdivision does not require access to or copies of informant identification, the names or identifying information of members of the public making complaints or inquiries, other information which would compromise an ongoing criminal investigation, or information which may be withheld from the public under another provision of law. For purposes of this subdivision, family member means a spouse, child, parent, sibling, grandchild, or grandparent by blood, marriage, or adoption;

(6) The identity and personal identifying information of an alleged victim of sexual assault or sex trafficking as provided in section 29-4316;

(7) Appraisals or appraisal information and negotiation records concerning the purchase or sale, by a public body, of any interest in real or personal property, prior to completion of the purchase or sale;

(8) Personal information in records regarding personnel of public bodies other than salaries and routine directory information;

(9) Information solely pertaining to protection of the security of public property and persons on or within public property, such as specific, unique vulnerability assessments or specific, unique response plans, either of which is intended to prevent or mitigate criminal acts the public disclosure of which would create a substantial likelihood of endangering public safety or property; computer or communications network schema, passwords, and user identification names; guard schedules; lock combinations; or public utility infrastructure specifications or design drawings the public disclosure of which would create a substantial likelihood of endangering public safety or property, unless otherwise provided by state or federal law;

(10) Information that relates details of physical and cyber assets of critical energy infrastructure or critical electric infrastructure, including (a) specific engineering, vulnerability, or detailed design information about proposed or existing critical energy infrastructure or critical electric infrastructure that (i) relates details about the production, generation, transportation, transmission, or distribution of energy, (ii) could be useful to a person in planning an attack on such critical infrastructure, and (iii) does not simply give the general location of the critical infrastructure and (b) the identity of personnel whose primary job function makes such personnel responsible for (i) providing or granting individuals access to physical or cyber assets or (ii) operating and maintaining physical or cyber assets, if a reasonable person, knowledgeable of the electric utility or energy industry, would conclude that the public disclosure of such identity could create a substantial likelihood of risk to such physical or cyber assets. Subdivision (10)(b) of this section shall not apply to the identity of a chief executive officer, general manager, vice president, or board member of a public entity that manages critical energy infrastructure or critical electric infrastructure. The lawful custodian of the records must provide a detailed job description for any personnel whose identity is withheld pursuant to subdivision (10)(b) of this section. For purposes of subdivision (10) of this section, critical energy infrastructure and critical electric infrastructure mean existing and proposed systems and assets, including a system or asset of the bulk-power system, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of such matters;

(11) The security standards, procedures, policies, plans, specifications, diagrams, access lists, and other security-related records of the Lottery Division of the Department of Revenue and those persons or entities with which the division has entered into contractual relationships. Nothing in this subdivision shall allow the division to withhold from the public any information relating to:

(a) Amounts paid persons or entities with which the division has entered into contractual relationships;

(b) Amounts of prizes paid; or

(c) The name of any prize winner awarded a prize of less than two hundred fifty thousand dollars, and the city, village, or county where the prize winner resides;

(12) With respect to public utilities and except as provided in sections 43-512.06 and 70-101, personally identified private customer account payment and customer use information, credit information on others supplied in confidence, and customer lists;

(13) Records or portions of records kept by a publicly funded library which, when examined with or without other records, reveal the identity of any library patron using the library's materials or services;

(14) Correspondence, memoranda, and records of telephone calls related to the performance of duties by a member of the Legislature in whatever form. The lawful custodian of the correspondence, memoranda, and records of telephone calls, upon approval of the Executive Board of the Legislative Council, shall release the correspondence, memoranda, and records of telephone calls which are not designated as sensitive or confidential in nature to any person performing an audit of the Legislature. A member's correspondence, memoranda, and records of confidential telephone calls related to the performance of his or her legislative duties shall only be released to any other person with the explicit approval of the member;

(15) Records or portions of records kept by public bodies which would reveal the location, character, or ownership of any known archaeological, historical, or paleontological site in Nebraska when necessary to protect the site from a reasonably held fear of theft, vandalism, or trespass. This section shall not apply to the release of information for the purpose of scholarly research, examination by other public bodies for the protection of the resource or by recognized tribes, the Unmarked Human Burial Sites and Skeletal Remains Protection Act, or the federal Native American Graves Protection and Repatriation Act;

(16) Records or portions of records kept by public bodies which maintain collections of archaeological, historical, or paleontological significance which reveal the names and addresses of donors of such articles of archaeological, historical, or paleontological significance unless the donor approves disclosure, except as the records or portions thereof may be needed to carry out the purposes of the Unmarked Human Burial Sites and Skeletal Remains Protection Act or the federal Native American Graves Protection and Repatriation Act;

(17) Library, archive, and museum materials acquired from nongovernmental entities and preserved solely for reference, research, or exhibition purposes, for the duration specified in subdivision (17)(b) of this section, if:

(a) Such materials are received by the public custodian as a gift, purchase, bequest, or transfer; and

(b) The donor, seller, testator, or transferor conditions such gift, purchase, bequest, or transfer on the materials being kept confidential for a specified period of time;

(18) Job application materials submitted by applicants, other than finalists or a priority candidate for a position described in section 85-106.06 selected using the enhanced public scrutiny process in section 85-106.06, who have applied for employment by any public body as defined in section 84-1409. For purposes of this subdivision, (a) job application materials means employment applications, resumes, reference letters, and school transcripts and (b) finalist means any applicant who is not an applicant for a position described in section 85-106.06 and (i) who reaches the final pool of applicants, numbering four or more, from which the successful applicant is to be selected, (ii) who is an original applicant when the final pool of applicants numbers less than four, or (iii) who is an original applicant and there are four or fewer original applicants;

(19)(a) Records obtained by the Public Employees Retirement Board pursuant to section 84-1512 and (b) records maintained by the board of education of a Class V school district and obtained by the board of trustees or the Public Employees Retirement Board for the administration of a retirement system provided for under the Class V School Employees Retirement Act pursuant to section 79-989;

(20) Social security numbers; credit card, charge card, or debit card numbers and expiration dates; and financial account numbers supplied to state and local governments;

(21) Information exchanged between a jurisdictional utility and city pursuant to section 66-1867;

(22) Draft records obtained by the Nebraska Retirement Systems Committee of the Legislature and the Governor from Nebraska Public Employees Retirement Systems pursuant to subsection (4) of section 84-1503;

(23) All prescription drug information submitted pursuant to section 71-2454, all data contained in the prescription drug monitoring system, and any report obtained from data contained in the prescription drug monitoring system;

(24) Information obtained by any government entity, whether federal, state, county, or local, regarding firearm registration, possession, sale, or use that is obtained for purposes of an application permitted or required by law or contained in a permit or license issued by such entity. Such information shall be available upon request to any federal, state, county, or local law enforcement agency;

(25) The security standards, procedures, policies, plans, specifications, diagrams, and access lists and other security-related records of the State Racing and Gaming Commission, those persons or entities with which the commission has entered into contractual relationships, and the names of any individuals placed on the list of self-excluded persons with the commission as provided in section 9-1118. Nothing in this subdivision shall allow the commission to withhold from the public any information relating to the amount paid any person or entity with which the commission has entered into a contractual relationship, the amount of any prize paid, the name of the prize winner, and the city, village, or county where the prize winner resides;

(26) Records relating to the nature, location, or function of cybersecurity by the State of Nebraska or any of its political subdivisions or any other public

entity subject to sections 84-712 to 84-712.09, including, but not limited to, devices, programs, or systems designed to protect computer, information technology, or communications systems against terrorist or other attacks. The Nebraska Information Technology Commission shall adopt and promulgate rules and regulations to implement this subdivision;

(27) Vital event records, unless all information designated as confidential under the Vital Statistics Act or all personally identifiable information is redacted by the Department of Health and Human Services;

(28) Information or records from historical indexes within one hundred years after the event date of the information or record; and

(29) The certificate number for any vital event certificate.

Source: Laws 1979, LB 86, § 5; Laws 1983, LB 108, § 1; Laws 1983, LB 565, § 1; Laws 1993, LB 579, § 6; Laws 1993, LB 590, § 6; Laws 1993, LB 719, § 2; Laws 1994, LB 1061, § 7; Laws 1994, LB 1224, § 88; Laws 1995, LB 343, § 7; Laws 1995, LB 509, § 6; Laws 1999, LB 137, § 1; Laws 2002, LB 276, § 7; Laws 2004, LB 236, § 1; Laws 2004, LB 868, § 3; Laws 2005, LB 361, § 37; Laws 2007, LB389, § 1; Laws 2009, LB188, § 8; Laws 2009, LB658, § 7; Laws 2011, LB230, § 1; Laws 2013, LB410, § 17; Laws 2016, LB447, § 45; Laws 2016, LB471, § 3; Laws 2016, LB1109, § 1; Laws 2018, LB859, § 1; Laws 2018, LB902, § 1; Laws 2019, LB16, § 1; Laws 2019, LB33, § 6; Laws 2019, LB375, § 1; Laws 2021, LB147, § 44; Laws 2022, LB876, § 25; Laws 2022, LB1246, § 5; Laws 2024, LB43, § 11; Laws 2024, LB1074, § 98; Laws 2024, LB1204, § 37.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB43, section 11, with LB1074, section 98, and LB1204, section 37, to reflect all amendments.

Note: Changes made by LB43 became operative March 28, 2024. Changes made by LB1074 became operative January 1, 2025. Changes made by LB1204 became effective July 19, 2024.

Cross References

Class V School Employees Retirement Act, see section 79-978.01.

Patient Safety Improvement Act, see section 71-8701.

Unmarked Human Burial Sites and Skeletal Remains Protection Act, see section 12-1201.

Vital Statistics Act, see section 71-601.

Unless disclosed in open court, any record of the interview described by section 83-1,111 as part of a first-stage parole review proceeding falls under the plain language of subsection (5) of this section, exempting it from disclosure under the public records statutes. *Jacob v. Nebraska Bd. of Parole*, 313 Neb. 109, 982 N.W.2d 815 (2022).

Disclosure, within the meaning of the public records statutes, refers to the exposure of documents to public view. An exemption from disclosure should not be misunderstood as an exception to the laws of the public records statutes. *State ex rel. BH Media Group v. Frakes*, 305 Neb. 780, 943 N.W.2d 231 (2020).

Under subdivision (3) of this section, a public power district could not withhold its proprietary or commercial information that would give advantage to business competitors, because the district failed to demonstrate by clear and conclusive evidence that the information would serve no public purpose. *Aksamit Resource Mgmt. v. Nebraska Pub. Power Dist.*, 299 Neb. 114, 907 N.W.2d 301 (2018).

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

If a requesting party satisfies its prima facie claim for release of public records under section 84-712.03, the public body opposing disclosure must show by clear and convincing evi-

dence that this section or section 84-712.08 exempts the records from disclosure. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

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

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

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

A public record is an investigatory record under this section where (1) the activity giving rise to the document sought is related to the duty of investigation or examination with which

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the public body is charged and (2) the relationship between the investigation or examination and that public body's duty to investigate or examine supports a colorable claim of rationality. When an inquiry by an administrative agency departs from the routine and focuses with special intensity on a particular party, an investigation is underway for purposes of this section. Records that have been "disclosed" within the meaning of this section are only those records that a public body has, in its

official capacity, already made available to the general public. State ex rel. Neb. Health Care Assn. v. Dept. of Health and Human Services Finance and Support, 255 Neb. 784, 587 N.W.2d 100 (1998).

Court upheld Attorney General's refusal to disclose requested documents pursuant to subsections (4) and (5) of this section. State ex rel. Sileven v. Spire, 243 Neb. 451, 500 N.W.2d 179 (1993).

84-712.06 Public record; portion provided; when.

Any reasonably segregable public portion of a record shall be provided to the public as a public record upon request after deletion of the portions which may be withheld.

Source: Laws 1979, LB 86, § 6.

In order for an agency to carry its burden before the district court, the agency must provide a reasonably detailed justification rather than conclusory statements to support its claim that the nonexempt material in a document is not reasonably segregable. State ex rel. BH Media Group v. Frakes, 305 Neb. 780, 943 N.W.2d 231 (2020).

The withholding of an entire document by an agency is not justifiable simply because some of the material therein is subject to an exemption. Agencies are required to disclose nonexempt portions of a document, unless those nonexempt portions are inextricably intertwined with exempt portions. State ex rel. BH Media Group v. Frakes, 305 Neb. 780, 943 N.W.2d 231 (2020).

84-712.07 Public records; public access; equitable relief; attorney's fees; costs.

The provisions of sections 84-712, 84-712.01, 84-712.03 to 84-712.09, and 84-1413 pertaining to the rights of residents of this state and all other interested persons to access to public records may be enforced by equitable relief, whether or not any other remedy is also available. In any case in which the complainant seeking access has substantially prevailed, the court may assess against the public body which had denied access to their records, reasonable attorney fees and other litigation costs reasonably incurred by the complainant.

Source: Laws 1979, LB 86, § 7; Laws 2024, LB43, § 12.
Operative date July 19, 2024.

84-712.08 Records; federal government; exception.

If it is determined by any federal department or agency or other federal source of funds, services, or essential information, that any provision of sections 84-712, 84-712.01, 84-712.03 to 84-712.09, and 84-1413 would cause the denial of any funds, services, or essential information from the United States Government which would otherwise definitely be available to an agency of this state, such provision shall be suspended as to such agency, but only to the extent necessary to prevent denial of such funds, services, or essential information.

Source: Laws 1979, LB 86, § 8.

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

opposing disclosure must show by clear and convincing evidence that section 84-712.05 or this section exempts the records from disclosure. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

If a requesting party satisfies its prima facie claim for release of public records under section 84-712.03, the public body

84-712.09 Violation; penalty.

Any official who shall violate the provisions of sections 84-712, 84-712.01, and 84-712.03 to 84-712.08 shall be subject to removal or impeachment and in addition shall be deemed guilty of a Class III misdemeanor.

Source: Laws 1979, LB 86, § 10.

84-713 Settled claims; record required; contents; public record; certain settlement agreements; public agency; agenda item; applicability of section.

(1) A public entity or public agency providing coverage to a public entity, public official, or public employee shall maintain a public written or electronic record of all settled claims. The record for all such claims settled in the amount of fifty thousand dollars or more, or one percent of the total annual budget of the public entity, whichever is less, shall include a written executed settlement agreement. The settlement agreement shall contain a brief description of the claim, the party or parties released under the settlement, and the amount of the financial compensation, if any, paid by or to the public entity or on its behalf.

(2) Any claim or settlement agreement involving a public entity shall be a public record but, to the extent permitted by sections 84-712.04 and 84-712.05 and as otherwise provided by statute, specific portions of the claim or settlement agreement may be withheld from the public. A private insurance company or public agency providing coverage to the public entity shall, without delay, provide to the public entity a copy of any claim or settlement agreement to be maintained as a public record.

(3) Except for settlement agreements involving the state, any state agency, or any employee of the state or pursuant to claims filed under the State Tort Claims Act, any settlement agreement with an amount of financial consideration of fifty thousand dollars or more, or one percent of the total annual budget of the public entity, whichever is less, shall be included as an agenda item at the next meeting of a public agency providing coverage to a public entity and as an agenda item on the next regularly scheduled public meeting of the public body for informational purposes or for approval if required.

(4) For purposes of this section, a confidentiality or nondisclosure clause or provision contained in or relating to a settlement agreement shall neither cause nor permit a settlement agreement or the claim or any other public record to be withheld from the public. Nothing in this section shall require a public official or public employee or any party to the settlement agreement to comment on the settlement agreement.

(5) For purposes of this section:

(a) Confidentiality or nondisclosure clause or provision means any covenant or stipulation adopted by parties to a settlement agreement that designates the settlement agreement, the claim, or any other public record as confidential, or in any other way restricts public access to information concerning the settlement agreement or claim;

(b) Public body means public body as defined in subdivision (1) of section 84-1409;

(c) Public entity means a public entity listed in subdivision (1) of section 84-712.01; and

(d) Settlement agreement means any contractual agreement to settle or resolve a claim involving a public entity or on behalf of the public entity, a public official, or a public employee by (i) the public entity, (ii) a private insurance company, or (iii) a public agency providing coverage.

(6) This section does not apply to claims made in connection with insured or self-insured health insurance contracts.

Source: Laws 2010, LB742, § 1.

Cross References

State Tort Claims Act, see section 81-8,235.

84-713.01 Repealed. Laws 1997, LB 590, § 19.

84-713.02 Repealed. Laws 1997, LB 590, § 19.

84-713.03 Repealed. Laws 1997, LB 590, § 19.

84-713.04 Repealed. Laws 1997, LB 590, § 19.

84-713.05 Transferred to section 50-117.

84-714 Transferred to section 90-102.

84-715 Transferred to section 90-103.

84-716 Transferred to section 90-104.

84-716.01 Transferred to section 90-105.

84-716.02 Repealed. Laws 1965, c. 571, § 1.

84-716.03 Transferred to section 90-106.

84-717 Transferred to section 90-107.

84-718 Elective constitutional state officer; status; effect of bond or insurance policy; right of action to establish; consent of state to suit.

Whenever an issue arises involving the status or other legal relations of an elective constitutional state officer, or the validity, terms, or duration of his or her official bond or equivalent commercial insurance policy, and the issue is within the original jurisdiction of the Supreme Court of Nebraska, such officer is authorized to institute an action in his or her own name in such court for the purpose of determining such issues, and to make the State of Nebraska and any other person, firm, or corporation parties defendant therein. The State of Nebraska consents to be sued in any such action.

Source: Laws 1935, c. 187, §§ 1, 2, p. 693; C.S.Supp.,1941, §§ 84-727, 84-728; R.S.1943, § 84-718; Laws 2004, LB 884, § 52.

84-719 Elective constitutional state officer; status; effect of bond; action to establish; notice and hearing; service.

Upon the filing of a petition, the Supreme Court shall by order fix the time for hearing thereon, which shall be not less than three days nor more than ten days from the filing of the petition. A copy of the order, certified by the clerk of the court, shall be served by the bailiff of the court, or other person appointed by the court for that purpose, upon the defendants in the manner provided for service of a summons in a civil action, not less than two days before said hearing, unless service is waived and voluntary appearance entered.

Source: Laws 1935, c. 187, § 3, p. 693; C.S.Supp.,1941, § 84-729; R.S. 1943, § 84-719; Laws 1983, LB 447, § 101.

84-720 Elective constitutional state officer; status; effect of bond; action to establish; notice; service upon Attorney General.

In such action the state hereby enters its voluntary appearance, and notice of hearing shall be served on the Attorney General within the time provided for service on other defendants in said proceedings.

Source: Laws 1935, c. 187, § 4, p. 693; C.S.Supp.,1941, § 84-730; R.S. 1943, § 84-720.

84-721 Secretary of State; Auditor of Public Accounts; State Treasurer; Lieutenant Governor; salaries.

Until January 4, 2007, there shall be paid as salaries to certain constitutional officers as follows: Secretary of State, the sum of sixty-five thousand dollars per year; Auditor of Public Accounts, the sum of sixty thousand dollars per year; State Treasurer, the sum of sixty thousand dollars per year; and Lieutenant Governor, the sum of sixty thousand dollars per year. Commencing January 4, 2007, there shall be paid as salaries to certain constitutional officers as follows: Secretary of State, the sum of eighty-five thousand dollars per year; Auditor of Public Accounts, the sum of eighty-five thousand dollars per year; State Treasurer, the sum of eighty-five thousand dollars per year; and Lieutenant Governor, the sum of seventy-five thousand dollars per year. Such salaries shall be payable in equal monthly installments.

Source: Laws 1951, c. 333, § 1, p. 1108; Laws 1957, c. 397, § 2, p. 1363; Laws 1959, c. 454, § 1, p. 1508; Laws 1961, c. 456, § 1, p. 1394; Laws 1963, c. 538, § 2, p. 1684; Laws 1963, c. 537, § 1, p. 1683; Laws 1965, c. 567, § 2, p. 1853; Laws 1969, c. 834, § 1, p. 3157; Laws 1969, c. 835, § 1, p. 3158; Laws 1969, c. 836, § 1, p. 3159; Laws 1973, LB 246, § 3; Laws 1978, LB 541, § 2; Laws 1986, LB 43, § 5; Laws 1990, LB 503, § 4; Laws 2000, LB 956, § 4; Laws 2006, LB 817, § 4.

Cross References

For salaries of other constitutional officers:

Attorney General, see section 84-201.01.

Governor, see section 84-101.01.

84-721.01 Repealed. Laws 1965, c. 567, § 3.

84-721.02 Repealed. Laws 1961, c. 286, § 1.

84-721.03 Repealed. Laws 1963, c. 341, § 1.

84-722 Repealed. Laws 1959, c. 266, § 1.

84-723 State officers; other compensation from state; prohibition.

No officer whose salary is fixed by sections 84-608, 84-721, and 84-723 shall receive any compensation from the State of Nebraska other than the salary as fixed by sections 84-608, 84-721, and 84-723.

Source: Laws 1957, c. 397, § 3, p. 1363.

84-724 Repealed. Laws 1959, c. 266, § 1.

84-725 Transferred to section 90-108.

84-726 Transferred to section 90-109.

84-727 Transferred to section 90-110.

84-728 Transferred to section 90-111.

84-729 Transferred to section 90-112.

84-730 Transferred to section 90-113.

84-731 Governor; duty to implement laws; exceptions; Attorney General; action to implement.

Pursuant to his constitutional duty to take care that the laws be faithfully executed, whenever it shall come to the attention of the Governor that any agency charged with the implementation of any act of the Legislature is failing to implement such act, he shall immediately in writing order the agency to commence implementation unless (1) the act shall have been held unconstitutional by final judgment of the Supreme Court, (2) the agency shall have been enjoined from implementation by court order, or (3) an action challenging the constitutionality of the act is pending in a court of competent jurisdiction. He shall furnish a copy of such letter to the Attorney General together with a written order to commence or cause to be commenced an action in a court of competent jurisdiction to compel implementation if the agency has not, within ten working days, commenced implementation. It shall be the duty of the Attorney General to comply with such order.

Source: Laws 1978, LB 98, § 1.

84-732 Governor or Attorney General; duty to implement laws; violation; penalty.

The knowing failure or refusal of either the Governor or Attorney General to perform the duties imposed upon them by section 84-731 shall constitute a misdemeanor in office within the meaning of section 5 of Article IV of the Constitution of Nebraska and render the offender liable to a fine of one hundred dollars and to impeachment.

Source: Laws 1978, LB 98, § 2.

84-733 Advertising or promotional materials; state funds; limitation.

Beginning January 1 of the year in which the Governor is elected and continuing through the day of the general election during such year, no state funds shall be used for any radio, television, or print media advertising or promotional materials which refer to any one or more of the following state officeholders by name: Governor, Lieutenant Governor, Secretary of State, State Treasurer, Attorney General, or Auditor of Public Accounts.

Source: Laws 2002, LB 1086, § 1.

ARTICLE 8

DEPUTIES

Cross References

Attorney General, deputy, appointment, duties, compensation, see section 84-206.

Auditor of Public Accounts, deputy, appointment, duties, compensation, see section 84-314.

Secretary of State, deputy, appointment, duties, compensation, see sections 84-508 and 84-509.

State Treasurer, deputy, appointment, duties, compensation, see sections 84-608 and 84-723.

Section

84-801. State officers; deputies; appointment; bond or insurance.

84-802. Deputies; duties.

Section	
84-803.	State officers; appointment as deputy prohibited.
84-804.	Transferred to section 23-1704.01.
84-805.	Transferred to section 23-1704.02.
84-806.	Transferred to section 23-1704.03.
84-806.01.	Repealed. Laws 1976, LB 782, § 16.
84-807.	Deputies; oath.
84-808.	Transferred to section 23-1115.
84-809.	Transferred to section 24-403.
84-810.	Repealed. Laws 1959, c. 266, § 1.
84-811.	Repealed. Laws 1967, c. 402, § 1.

84-801 State officers; deputies; appointment; bond or insurance.

The Auditor of Public Accounts, State Treasurer, and State Librarian respectively, may appoint a deputy for whose acts he or she shall be responsible. The appointment shall be in writing and shall be revocable in writing by the principal. The deputy shall be bonded or insured as required by section 11-201. Both the appointment and revocation shall be filed and kept by the principal.

Source: R.S.1866, c. 15, § 1, p. 127; R.S.1913, § 5735; C.S.1922, § 5064; C.S.1929, § 84-801; R.S.1943, § 84-801; Laws 1978, LB 653, § 39; Laws 1990, LB 821, § 52; Laws 2004, LB 884, § 53.

84-802 Deputies; duties.

In the absence or disability of the principal, the deputy shall perform the duties of the principal pertaining to the office, but when the officer is required to act in conjunction with or in place of another officer, the deputy cannot act in the officer's place.

Source: R.S.1866, c. 16, § 2, p. 127; R.S.1913, § 5736; C.S.1922, § 5065; C.S.1929, § 84-802; R.S.1943, § 84-802; Laws 1990, LB 821, § 53.

When the Tax Commissioner holds factfinding hearings he is not acting as a member of the State Board of Equalization. Therefore, delegation of that duty to his deputy does not violate

this section. *Box Butte County v. State Board of Equalization and Assessment*, 206 Neb. 696, 295 N.W.2d 670 (1980).

84-803 State officers; appointment as deputy prohibited.

The Auditor of Public Accounts, State Treasurer, and State Librarian cannot appoint any of the others his or her deputy.

Source: R.S.1866, c. 15, § 3, p. 127; R.S.1913, § 5737; C.S.1922, § 5066; C.S.1929, § 84-803; R.S.1943, § 84-803; Laws 1990, LB 821, § 54.

84-804 Transferred to section 23-1704.01.

84-805 Transferred to section 23-1704.02.

84-806 Transferred to section 23-1704.03.

84-806.01 Repealed. Laws 1976, LB 782, § 16.

84-807 Deputies; oath.

Each deputy shall take the same oath as the principal which shall be endorsed upon and filed with the certificate of appointment.

Source: R.S.1866, c. 15, § 5, p. 127; R.S.1913, § 5741; C.S.1922, § 5070; C.S.1929, § 84-807; R.S.1943, § 84-807; Laws 1990, LB 821, § 55.

Under prior law no distinction is made between state and county officers under this section. Baker v. State, 112 Neb. 654, 200 N.W. 876 (1924).

84-808 Transferred to section 23-1115.

84-809 Transferred to section 24-403.

84-810 Repealed. Laws 1959, c. 266, § 1.

84-811 Repealed. Laws 1967, c. 402, § 1.

ARTICLE 9

RULES OF ADMINISTRATIVE AGENCIES

(a) ADMINISTRATIVE PROCEDURE ACT

- Section
- 84-901. Terms, defined.
- 84-901.01. Adoption and promulgation of rules and regulations; time; failure to adopt and promulgate; explanation; contents; hearing by standing committee of the Legislature; effect of legislative changes.
- 84-901.02. Legislative findings.
- 84-901.03. Agency; guidance document; issuance; availability; notice; request to revise or repeal; response; agency publish index.
- 84-901.04. Emergency rule or regulation; factors; procedure; duration; renewal; filing; publication.
- 84-902. Agency; rules and regulations; certified copies filed with Secretary of State; manner; open to public inspection.
- 84-903. Agency; rules and regulations; publish.
- 84-904. Repealed. Laws 1986, LB 992, § 11.
- 84-905. Agency; rules and regulations; availability required; price.
- 84-905.01. Rule or regulation; review by Attorney General.
- 84-906. Rule or regulation; when valid; presumption; limitation of action.
- 84-906.01. Official rulemaking or regulationmaking record; agency maintain; contents.
- 84-906.02. Public comments; notice; agency; powers.
- 84-906.03. Secretary of State; duties.
- 84-906.04. Secretary of State; maintain docket for pending proceedings; contents.
- 84-906.05. Rule or regulation; judicial notice.
- 84-906.06. Repealed. Laws 1982, LB 784, § 2.
- 84-906.07. Charitable organization; annual filing or reporting requirements.
- 84-907. Rule or regulation; adoption; amendment; repeal; hearing; notice; procedure; exemption.
- 84-907.01. Repealed. Laws 2016, LB867, § 21.
- 84-907.02. Repealed. Laws 2016, LB867, § 21.
- 84-907.03. Repealed. Laws 2020, LB910, § 49.
- 84-907.04. Proposed rule or regulation; explanatory statement; contents; use; agency; written report; contents.
- 84-907.05. Proposed rule or regulation; substantially different from published notice; considerations; limitation on agency.
- 84-907.06. Adoption, amendment, or repeal of rule or regulation; notice to Executive Board of the Legislative Council and Secretary of State.
- 84-907.07. Executive Board of the Legislative Council; standing committees of the Legislature; powers and duties.
- 84-907.08. Petition to adopt a rule or regulation; form; procedure.
- 84-907.09. Adoption, amendment, or repeal of rule or regulation; provide information to Governor.
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- 84-908. Rule or regulation; adoption; amendment; repeal; considerations; when effective; approval by Governor; filing.
- 84-908.01. Repealed. Laws 1986, LB 992, § 11.
- 84-908.02. Repealed. Laws 1986, LB 992, § 11.

RULES OF ADMINISTRATIVE AGENCIES

- Section
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 - 84-908.04. Repealed. Laws 1986, LB 992, § 11.
 - 84-908.05. Repealed. Laws 1986, LB 992, § 11.
 - 84-909. Agency; rules and regulations governing procedure; adoption.
 - 84-909.01. Model rules of procedure; Attorney General; agency; duties.
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 - 84-911. Validity of rule or regulation; declaratory judgment; procedure.
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 - 84-912.03. Tax Equalization and Review Commission; exemption.
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(a) ADMINISTRATIVE PROCEDURE ACT

84-901 Terms, defined.

For purposes of the Administrative Procedure Act:

(1) Agency shall mean each board, commission, department, officer, division, or other administrative office or unit of the state government authorized by law to make rules and regulations, except the Adjutant General's office as provided in Chapter 55, the courts including the Nebraska Workers' Compensation Court, the Commission of Industrial Relations, the Legislature, and the Secretary of State with respect to the duties imposed by the act;

(2) Rule or regulation shall mean any standard of general application adopted by an agency in accordance with the authority conferred by statute and includes, but is not limited to, the amendment or repeal of a rule or regulation. Rule or regulation shall not include (a) internal procedural documents which provide guidance to staff on agency organization and operations, lacking the force of law, and not relied upon to bind the public, (b) guidance documents as issued by an agency in accordance with section 84-901.03, and (c) forms and instructions developed by an agency. For purposes of the act, every standard which prescribes a penalty shall be presumed to have general applicability and any standard affecting private rights, private interests, or procedures available to the public is presumed to be relied upon to bind the public. Nothing in this section shall be interpreted to require an agency to adopt and promulgate rules and regulations when statute authorizes but does not require it;

(3) Contested case shall mean a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing;

(4) Ex parte communication shall mean an oral or written communication which is not on the record in a contested case with respect to which reasonable notice to all parties was not given. Filing and notice of filing provided under subdivision (6)(d) of section 84-914 shall not be considered on the record and reasonable notice for purposes of this subdivision. Ex parte communication shall not include:

- (a) Communications which do not pertain to the merits of a contested case;
 - (b) Communications required for the disposition of ex parte matters as authorized by law;
 - (c) Communications in a ratemaking or rulemaking proceeding; and
 - (d) Communications to which all parties have given consent;
- (5) Guidance document shall mean any statement developed by an agency which lacks the force of law but provides information or direction of general application to the public to interpret or implement statutes or such agency's rules or regulations. A guidance document is binding on an agency until amended by the agency. A guidance document shall not give rise to any legal right or duty or be treated as authority for any standard, requirement, or policy. Internal procedural documents which provide guidance to staff on agency organization and operations shall not be considered guidance documents; and
- (6) Hearing officer shall mean the person or persons conducting a hearing, contested case, or other proceeding pursuant to the act, whether designated as the presiding officer, administrative law judge, or some other title designation.

Source: Laws 1945, c. 255, § 1, p. 795; Laws 1947, c. 350, § 1, p. 1097; Laws 1951, c. 342, § 1, p. 1128; Laws 1959, c. 456, § 1, p. 1510; Laws 1974, LB 819, § 11; Laws 1978, LB 44, § 1; Laws 1981, LB 130, § 1; Laws 1986, LB 992, § 1; Laws 1987, LB 253, § 1; Laws 1994, LB 414, § 135; Laws 1994, LB 446, § 14; Laws 2016, LB867, § 4; Laws 2017, LB209, § 1.

- 1. Contested case
- 2. Agency subject to act or not
- 3. Rules
- 4. Miscellaneous

1. Contested case

Pursuant to subsection (3) of this section, a proceeding becomes a contested case when notice and a hearing are required. *Stoneman v. United Neb. Bank*, 254 Neb. 477, 577 N.W.2d 271 (1998).

At a hearing before the Nebraska Liquor Control Commission on a contested case, the applicant is entitled to notice of the issues. *J K & J, Inc. v. Nebraska Liquor Control Commission*, 194 Neb. 413, 231 N.W.2d 694 (1975).

The selection of a site for a public improvement was legislative in nature and was not a contested case. *Stones v. Platts-mouth Airport Authority*, 193 Neb. 552, 228 N.W.2d 129 (1975).

Application of two public power districts to Nebraska Power Review Board for approval of an agreement limiting the areas in which and the customers to whom they would furnish electrical energy at wholesale, and opposition thereto by affected cities, was a contested case hereunder. *City of Lincoln v. Nebraska P.P. Dist.*, 191 Neb. 556, 216 N.W.2d 722 (1974).

The words contested case are defined by this section. *School Dist. No. 8 v. State Board of Education*, 176 Neb. 722, 127 N.W.2d 458 (1964).

2. Agency subject to act or not

A natural resources district is not an agency within the meaning of the Administrative Procedure Act. *Lingenfelter v. Lower Elkhorn NRD*, 294 Neb. 46, 881 N.W.2d 892 (2016).

The Administrative Procedure Act does not apply to state agencies without authority to make rules and regulations affecting private rights, private interests, or procedures available to the public. *Hoiengs v. County of Adams*, 245 Neb. 877, 516 N.W.2d 223 (1994).

The State Board of Equalization and Assessment is a state agency so as to be subject to the Administrative Procedure Act. *Pentzien, Inc. v. State*, 227 Neb. 434, 418 N.W.2d 546 (1988).

The Administrative Procedure Act and its appeal procedures are applicable only to agencies of the state, and not to administrative agencies of municipal government, i.e., the personnel board of the City of Omaha. *Hammann v. City of Omaha*, 227 Neb. 285, 417 N.W.2d 323 (1987); *Harnett v. City of Omaha*, 188 Neb. 449, 197 N.W.2d 375 (1972).

The State Racing Commission is an administrative agency as defined in subsection (1) of this section. *B.T. Energy Corp. v. Marcus*, 222 Neb. 207, 382 N.W.2d 616 (1986).

The Commission of Industrial Relations is an administrative agency within the purview of the Administrative Procedure Act. *Lincoln Co. Sheriff's Emp. Assn. v. Co. of Lincoln*, 216 Neb. 274, 343 N.W.2d 735 (1984).

Appeals taken under the Administrative Procedure Act may only be taken from agencies of the state. The Omaha Housing Authority is not such an agency. *Fisher v. Housing Auth. of City of Omaha*, 214 Neb. 499, 334 N.W.2d 636 (1983).

Court of Industrial Relations is an agency within provisions of this section. *School Dist. of Seward Education Assn. v. School Dist. of Seward*, 188 Neb. 772, 199 N.W.2d 752 (1972).

This case refers to a district court decision which held that a board of county commissioners is not a state agency under this and related sections. *State ex rel. Southeast Rural Fire P. Dist. v. Grossman*, 188 Neb. 424, 197 N.W.2d 398 (1972).

State Board of Equalization and Assessment subject to this act. *County of Gage v. State Board of Equalization & Assessment*, 185 Neb. 749, 178 N.W.2d 759 (1970).

The Nebraska Liquor Control Commission is an administrative agency as defined in this section. *The Flamingo, Inc. v.*

Nebraska Liquor Control Commission, 185 Neb. 22, 173 N.W.2d 369 (1969).

Provisions of this section disclose that act was intended to apply to the State Railway Commission. *Yellow Cab Co. v. Nebraska State Railway Commission*, 175 Neb. 150, 120 N.W.2d 922 (1963).

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

3. Rules

A Department of Correctional Services policy that merely summarizes the seven statutes relevant to the release of all inmates and explains the effect of these statutes does not constitute a rule or regulation under this section. *Heist v. Nebraska Dept. of Corr. Servs.*, 312 Neb. 480, 979 N.W.2d 772 (2022).

This section provides a definition of only the term "rule" and does not create any affirmative duties for the Public Service Commission to engage in rulemaking when interpreting a federal statute. In re Application No. C-1889, 264 Neb. 167, 647 N.W.2d 45 (2002).

Subsection (2) of this section does not limit the definition of "private rights and interests" to those rights and interests that are unrelated to the workplace; if a rule or regulation prescribes a penalty, it is presumed to affect private rights and interests, regardless of whether the rights or interests at stake are those of an agency employee or some other individual. *McAllister v. Nebraska Dept. of Corr. Servs.*, 253 Neb. 910, 573 N.W.2d 143 (1998).

To be valid, an administrative rule or regulation must be properly promulgated, approved, and filed. *Haven Home, Inc. v. Department of Pub. Welfare*, 216 Neb. 731, 346 N.W.2d 225 (1984).

This act requires Department of Banking to establish procedural rules providing for notice and hearing. *First Fed. Sav. & Loan Assn. v. Department of Banking*, 187 Neb. 562, 192 N.W.2d 736 (1971).

Failure of State Board of Vocational Education to promulgate rules pursuant to this section immaterial in situation where hearing and notice not required. *Chaloupka v. Area Vocational Technical School No. 2*, 184 Neb. 196, 165 N.W.2d 719 (1969).

Rules of railway commission applied to controversy between railroads and motor carriers. *Ready Mix, Inc. v. Nebraska Railroads*, 181 Neb. 697, 150 N.W.2d 275 (1967).

Liquor Control Commission is an administrative agency required to file rules. *Terry Carpenter, Inc. v. Nebraska Liquor Control Commission*, 175 Neb. 26, 120 N.W.2d 374 (1963).

Administrative agencies are required to adopt regulations which have the force and effect of a statute. *Farmers Co-op. Elevator Assn. of Big Springs v. Strand*, 382 F.2d 224 (8th Cir. 1967).

Rates of carriers are rules which are required to be filed. *Mogis v. Lyman-Richey Sand & Gravel Corp.*, 90 F.Supp. 251 (D. Neb. 1950).

4. Miscellaneous

The Nebraska Quality Jobs Board is not an "agency" subject to the Administrative Procedure Act, and an application to the Nebraska Quality Jobs Board is not a "contested case", within the meaning of this section. *Wasikowski v. Nebraska Quality Jobs Bd.*, 264 Neb. 403, 648 N.W.2d 756 (2002).

In an action brought under the Administrative Procedure Act, it is the responsibility of the agency to provide the transcript in a timely fashion. The failure to do so subjects the agency to the disciplinary powers of the court. *James v. Harvey*, 246 Neb. 329, 518 N.W.2d 150 (1994).

Neither the Administrative Procedure Act nor the regulations of the Department of Water Resources provide for any time limits on the rights of parties to intervene either as a matter of right or permissively. Nonetheless, the department as an agency of the State of Nebraska must have sufficient latitude in its operation in matters under its jurisdiction to exercise that jurisdiction fairly. *Basin Elec. Power Co-op. v. Little Blue N.R.D.*, 219 Neb. 372, 363 N.W.2d 500 (1985).

It does not constitute an improper delegation of authority to permit matters of enforcement, such as the manner and the method, to be left to the reasonable discretion of administrative officers. *State v. Sprague*, 213 Neb. 581, 330 N.W.2d 739 (1983).

Where there is a specific statute for an agency, setting out the method and scope of appeal, it should be applied instead of this act. *Duffy v. Physicians Mut. Ins. Co.*, 191 Neb. 233, 214 N.W.2d 471 (1974).

There were practical difficulties which prevented a strict application of Administrative Procedure Act to proceedings before the State Board of Equalization and Assessment. *County of Kimball v. State Board of Equalization & Assessment*, 180 Neb. 482, 143 N.W.2d 893 (1966); *County of Blaine v. State Board of Equalization & Assessment*, 180 Neb. 471, 143 N.W.2d 880 (1966).

Rate tariffs of telephone companies are excepted from requirements of filing in office of Secretary of State. *City of Scottsbluff v. United Telephone Co. of the West*, 171 Neb. 229, 106 N.W.2d 12 (1960).

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

84-901.01 Adoption and promulgation of rules and regulations; time; failure to adopt and promulgate; explanation; contents; hearing by standing committee of the Legislature; effect of legislative changes.

(1) When legislation is enacted requiring the adoption and promulgation of rules and regulations by an agency, such agency shall adopt and promulgate such rules and regulations within one year after the public hearing required under subsection (2) of section 84-907. Such time shall not include the time necessary for submission of the rules and regulations to the Attorney General pursuant to section 84-905.01 or submission of the rules and regulations to the Governor pursuant to section 84-908. Any agency which does not adopt and promulgate such rules and regulations as required by this section shall, upon request, submit an explanation to the Executive Board of the Legislative Council and the standing committee of the Legislature which has subject matter

jurisdiction over the issue involved in the legislation, stating the reasons why it has not adopted such rules and regulations as required by this section, the date by which the agency expects to adopt such rules and regulations, and any suggested statutory changes that may enable the agency to adopt such rules and regulations.

(2) If such agency has not adopted and promulgated such rules and regulations within three years after the operative or effective date of such enacting legislation, the standing committee of the Legislature which has subject matter jurisdiction over the matters included in the legislation shall hold a public hearing to determine the reason that such rules and regulations have not been enacted.

(3) The changes made to the Administrative Procedure Act by Laws 2011, LB617, shall not affect the validity or effectiveness of a rule or regulation adopted prior to May 25, 2011.

(4) The changes made to this section by Laws 2013, LB242, shall apply to legislation enacted before, on, or after September 6, 2013.

Source: Laws 2011, LB617, § 1; Laws 2012, LB782, § 227; Laws 2013, LB222, § 42; Laws 2013, LB242, § 2; Laws 2018, LB751, § 1.

84-901.02 Legislative findings.

The Legislature finds that:

(1) The regulatory authority given to agencies has a significant impact on the people of the state;

(2) When agencies create substantive standards by which Nebraskans are expected to abide, it is essential that those standards be adopted through the rules and regulations process to enable the public to be aware of the standards and have an opportunity to participate in the approval or repeal process;

(3) Agencies should be encouraged to advise the public of current opinions, interpretations, approaches, and likely courses of action by means of guidance documents; and

(4) Oversight of the regulatory authority over occupations and professions given to agencies is required to ensure respect for the fundamental right of an individual to pursue an occupation.

Source: Laws 2016, LB867, § 3; Laws 2018, LB299, § 17.

84-901.03 Agency; guidance document; issuance; availability; notice; request to revise or repeal; response; agency publish index.

(1) Upon the issuance of a guidance document, an agency shall make such document available at one public location and on the agency's website. The agency shall also publish on its website an index summarizing the subject matter of all currently applicable rules and regulations and guidance documents. Such agency shall provide the index electronically to the Clerk of the Legislature by December 31 of each year.

(2) An agency shall ensure that the first page of each guidance document includes the following notice: This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or

penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

(3) A person may request in writing that an agency revise or repeal a guidance document or convert a guidance document into a rule or regulation. No later than sixty calendar days after the agency receives such a request, the agency shall advise the requestor in writing of its decision to (a) revise or repeal the guidance document, (b) initiate a proceeding to consider a revision or repeal of a guidance document, (c) initiate the rulemaking or regulationmaking process to convert the guidance document into a rule or regulation, or (d) deny the request and state the reason for the denial.

(4) All decisions made by an agency under this section shall be made available at one public location and on the agency's website.

Source: Laws 2016, LB867, § 5; Laws 2017, LB209, § 2.

84-901.04 Emergency rule or regulation; factors; procedure; duration; renewal; filing; publication.

(1) If an agency determines that the adoption, amendment, or repeal of a rule or regulation is necessitated by an emergency situation, the agency may adopt, amend, or repeal a rule or regulation upon approval of the Governor. Such agency's request shall be submitted to the Governor in writing and include a justification as to why the emergency rule or regulation is necessary. Factors for the justification shall include:

- (a) Imminent peril to the public health, safety, or welfare; or
- (b) The unforeseen loss of federal funding for an agency program.

(2) Any agency may use the emergency rule or regulation procedure as provided in this section. However, no agency shall use such procedure to avoid the consequences for failing to timely adopt and promulgate rules and regulations.

(3) Rules and regulations adopted, amended, or repealed under this section shall be exempted from the notice and hearings requirements of section 84-907 and the review process required under section 84-905.01 and shall be valid upon approval of the Governor. An emergency rule or regulation shall remain in effect for a period of ninety calendar days and is renewable once for a period not to exceed ninety calendar days.

(4) Any agency which adopts, amends, or repeals a rule or regulation under this section shall file such rule or regulation with the Secretary of State. The agency shall also publish such rule or regulation on the agency's website.

Source: Laws 2016, LB867, § 6.

84-902 Agency; rules and regulations; certified copies filed with Secretary of State; manner; open to public inspection.

(1) Each agency shall file in the office of the Secretary of State a certified copy of the rules and regulations in force and effect in such agency. The Secretary of State shall keep a permanent file of all such rules and regulations. Such file shall be updated and kept current upon receipt of any rules and regulations adopted, amended, or repealed and filed with the Secretary of State as provided in the Administrative Procedure Act and shall be open to public

inspection during regular business hours of his or her office. The Secretary of State, in order to maintain and keep such files current, shall be empowered to require new and amended rules and regulations to be filed as complete chapters or sections as directed by the Secretary of State.

(2) Rules and regulations filed with the Secretary of State pursuant to the Administrative Procedure Act shall be filed in the manner and form prescribed by the Secretary of State including electronic filing if so directed by the Secretary of State. The Secretary of State shall issue instructions to all state agencies setting forth the format to be followed by all agencies in submitting rules and regulations to the Secretary of State. Such instructions shall provide for a uniform page size, a generally uniform and clear indexing system, and annotations including designation of enabling legislation and court or agency decisions interpreting the particular rule or regulation. For good cause shown, the Secretary of State may grant exceptions to the uniform page size requirement and the general indexing instructions for any agency.

Source: Laws 1945, c. 255, § 2, p. 795; Laws 1947, c. 350, § 2, p. 1098; Laws 1973, LB 134, § 1; Laws 1974, LB 604, § 1; Laws 1976, LB 615, § 1; Laws 1978, LB 44, § 8; Laws 1986, LB 992, § 2; Laws 1987, LB 253, § 2; Laws 2004, LB 915, § 1; Laws 2016, LB867, § 7.

The procedural rules to be applied are those in effect at time of hearing or proceeding, not those in effect when the act or violation is charged to have taken place. *Durousseau v. Nebraska State Racing Commission*, 194 Neb. 288, 231 N.W.2d 566 (1975).

Rates of carriers must be filed with Secretary of State as a rule to be valid. *Mogis v. Lyman-Richey Sand & Gravel Corp.*, 90 F.Supp. 251 (D. Neb. 1950).

Where penal provisions of statute are operative independently of rules, failure to file any rules does not bar prosecution. *Scherer v. State*, 168 Neb. 127, 95 N.W.2d 329 (1959).

84-903 Agency; rules and regulations; publish.

Each agency shall cause its rules and regulations to be published in such manner as the agency shall determine to bring, as far as practicable, the existence and scope of the rules and regulations to the attention of all persons affected thereby.

Source: Laws 1945, c. 255, § 3, p. 795; Laws 1987, LB 253, § 3.

84-904 Repealed. Laws 1986, LB 992, § 11.

84-905 Agency; rules and regulations; availability required; price.

Each agency shall make copies of the rules and regulations in force and effect for such agency available to all interested persons on request, at a price fixed to cover costs of publication and mailing, except that any such agency may furnish the same without charge if funds are available. No rule or regulation shall be effective unless copies thereof are available for distribution by the agency to persons requesting the same.

Source: Laws 1945, c. 255, § 5, p. 795; Laws 1947, c. 350, § 4, p. 1099; Laws 1967, c. 618, § 2, p. 2071; Laws 1969, c. 837, § 2, p. 3161; Laws 1973, LB 134, § 3; Laws 1987, LB 253, § 4.

84-905.01 Rule or regulation; review by Attorney General.

A copy of each amendment or rule or regulation to be adopted under the Administrative Procedure Act, prior to the date of filing with the Secretary of

State, shall be submitted to the Attorney General for his or her consideration as to the statutory authority and constitutionality of such amendment or rule or regulation and his or her approval or disapproval thereof, including a determination as to whether or not the rule or regulation submitted is substantially different from the published proposed rule or regulation. If the amendment or rule or regulation to be filed is approved as to legality by the Attorney General, he or she shall so indicate with his or her stamp of approval which shall be dated and signed.

Source: Laws 1947, c. 350, § 5, p. 1099; Laws 1969, c. 837, § 3, p. 3161; Laws 1974, LB 604, § 3; Laws 1986, LB 992, § 3; Laws 1987, LB 253, § 5; Laws 1994, LB 446, § 17.

84-906 Rule or regulation; when valid; presumption; limitation of action.

(1) No rule or regulation of any agency shall be valid as against any person until five days after such rule or regulation has been filed with the Secretary of State except for rules and regulations adopted, amended, or repealed pursuant to section 84-901.04. No rule or regulation required under the Administrative Procedure Act to be filed with the Secretary of State shall remain valid as against any person until the certified copy of the rule or regulation has been so filed on the date designated and in the form prescribed by the Secretary of State. The filing of any rule or regulation shall give rise to a rebuttable presumption that it was duly and legally adopted.

(2) A rule or regulation adopted after August 1, 1994, shall be invalid unless adopted in substantial compliance with the provisions of the act, except that inadvertent failure to mail a notice of the proposed rule or regulation to any person shall not invalidate a rule or regulation.

(3) Any action to contest the validity of a rule or regulation on the grounds of its noncompliance with any provision of the act shall be commenced within four years after the effective date of the rule or regulation.

(4) The changes made to the act by Laws 1994, LB 446, shall not affect the validity or effectiveness of a rule or regulation adopted prior to August 1, 1994, or noticed for hearing prior to such date.

(5) The changes made to the act by Laws 2005, LB 373, shall not affect the validity or effectiveness of a rule or regulation adopted prior to October 1, 2005, or noticed for hearing prior to such date.

Source: Laws 1945, c. 255, § 6, p. 796; Laws 1947, c. 350, § 6, p. 1100; Laws 1973, LB 134, § 4; Laws 1986, LB 992, § 4; Laws 1987, LB 253, § 6; Laws 1994, LB 446, § 18; Laws 2005, LB 373, § 2; Laws 2016, LB867, § 8.

To be valid, administrative rules and regulations must be filed with the Secretary of State, and it is irrelevant whether or not an individual has actually been prejudiced by the agency's failure to do so. *McAllister v. Nebraska Dept. of Corr. Servs.*, 253 Neb. 910, 573 N.W.2d 143 (1998).

The failure of the Department of Motor Vehicles to comply with this section's requirements regarding the filing of rules with the Secretary of State is a denial of due process. *Gausman v. Department of Motor Vehicles*, 246 Neb. 677, 522 N.W.2d 417 (1994).

Rules of State Board of Education were not effective until filed. *School Dist. No. 228 v. State Board of Education*, 164 Neb. 148, 82 N.W.2d 8 (1957).

Due process is denied where the rules and regulations governing the administrative license revocation procedure were not on file with the Secretary of State for at least 5 days at the time of the arrest. *Dannehl v. Department of Motor Vehicles*, 3 Neb. App. 492, 529 N.W.2d 100 (1995).

Under former law, rates of carriers not filed with Secretary of State were invalid. *Mogis v. Lyman-Richey Sand & Gravel Corp.*, 90 F.Supp. 251 (D. Neb. 1950).

84-906.01 Official rulemaking or regulationmaking record; agency maintain; contents.

(1) An agency shall maintain an official rulemaking or regulationmaking record for each rule or regulation it adopts or proposes by publication of a notice. The record and materials incorporated by reference shall be available for public inspection and shall be maintained for at least four years after the effective date of the rule or regulation.

(2) The record shall contain:

- (a) Copies of all publications with respect to the rule or regulation;
- (b) Copies of any portions of the public rulemaking or regulationmaking docket containing entries relating to the rule or regulation;
- (c) All written petitions, requests, submissions, and comments received by the agency and all other written materials prepared by or for the agency in connection with the proposal or adoption of the rule or regulation;
- (d) Any official transcript of oral presentations made in a proceeding about the proposed rule or regulation or, if not transcribed, any tape recording or stenographic record of those presentations, and any memorandum prepared by the hearing officer summarizing the contents of those presentations;
- (e) A copy of the rule or regulation and the concise explanatory statement filed with the Secretary of State;
- (f) All petitions for adoption of, exceptions to, amendments of, or repeal or suspension of, the rule or regulation;
- (g) A copy of any comments on the rule or regulation filed by a legislative committee; and
- (h) A description, including an estimated quantification, of the fiscal impact on state agencies, political subdivisions, and regulated persons.

(3) Upon judicial review, the record required by this section shall constitute the official agency rulemaking or regulationmaking record with respect to a rule or regulation. Except as provided in section 84-907.04 or as otherwise required by law, the agency rulemaking or regulationmaking record need not constitute the exclusive basis for agency action on that rule or regulation or for judicial review thereof.

Source: Laws 1994, LB 446, § 19; Laws 2005, LB 373, § 3.

84-906.02 Public comments; notice; agency; powers.

In addition to seeking information by other methods and before publication of a notice under section 84-907, an agency is encouraged to and may solicit comments from the public on a subject matter of possible rule or regulation making by causing notice to be published in a newspaper of general circulation of the subject matter and indicating where, when, and how persons may comment.

Source: Laws 1994, LB 446, § 20.

84-906.03 Secretary of State; duties.

It shall be the duty of the Secretary of State:

(1) To establish and cause to be compiled, indexed by subject, and published a codification system for all rules and regulations filed to be designated the Nebraska Administrative Code;

(2) To cause the Nebraska Administrative Code to be computerized to facilitate agencies in revision of their rules and regulations and provide research capabilities;

(3) To post a current copy of existing rules and regulations as accepted by the Secretary of State as filed on the website of the Secretary of State; to distribute a current copy of any existing rules and regulations as accepted by the Secretary of State as filed to all interested persons on request at a price fixed to cover costs of printing, handling, and mailing; and to distribute, on a regular basis, copies of any or all modifications or amendments to agency rules and regulations as accepted by the Secretary of State as filed to all interested persons on request at a price fixed to cover costs of printing, handling, and mailing; and

(4) To remit fees collected pursuant to this section to the State Treasurer for credit to the Secretary of State Cash Fund.

Source: Laws 1973, LB 134, § 6; Laws 1975, LB 267, § 1; Laws 1980, LB 712, § 1; Laws 1981, LB 130, § 2; Laws 1982, LB 784, § 1; Laws 1986, LB 992, § 5; Laws 2016, LB867, § 9; Laws 2020, LB910, § 36.

84-906.04 Secretary of State; maintain docket for pending proceedings; contents.

(1) The Secretary of State shall maintain a current public rulemaking or regulationmaking docket for each pending rulemaking or regulationmaking proceeding. A rulemaking or regulationmaking proceeding is pending from the time it is commenced by publication of a notice of proposed rule or regulation making to the time it is terminated by publication of a notice of termination or the rule or regulation becoming effective.

(2) For each rulemaking or regulationmaking proceeding, the docket shall indicate:

- (a) The subject matter of the proposed rule or regulation;
- (b) The time, date, and location of the public hearing regarding the proposed rule or regulation;
- (c) The name and address of agency personnel with whom people may communicate regarding the proposed rule or regulation;
- (d) Where written comments on the proposed rule or regulation may be inspected;
- (e) The time during which written comments may be made;
- (f) Where the description of the fiscal impact may be inspected and obtained;
- (g) The current status of the proposed rule or regulation and any agency determinations with respect thereto;
- (h) Any known timetable for agency decisions or other action in the proceeding;
- (i) The date of the rule's or regulation's adoption;
- (j) The date of the rule's or regulation's filing, indexing, and publication; and
- (k) The operative date of the rule or regulation if such date is later than the effective date prescribed in sections 84-906 and 84-911.

Source: Laws 1994, LB 446, § 16; Laws 2016, LB867, § 10.

84-906.05 Rule or regulation; judicial notice.

(1) Every court of this state may take judicial notice of any rule or regulation that is signed by the Governor and filed with the Secretary of State pursuant to section 84-906.

(2) The court may inform itself of such rules and regulations in such manner as it may deem proper, and the court may call upon counsel to aid it in obtaining such information.

Source: Laws 1974, LB 604, § 5; Laws 1986, LB 992, § 6; Laws 1987, LB 253, § 7; Laws 1999, LB 320, § 1.

This court will take judicial notice of general rules and regulations established and published by Nebraska state agencies under authority of law. Raben v. Dittenber, 230 Neb. 822, 434 N.W.2d 11 (1989).

84-906.06 Repealed. Laws 1982, LB 784, § 2.

84-906.07 Charitable organization; annual filing or reporting requirements.

(1) The Legislature finds that this section is necessary to minimize burdens on the charitable sector and encourage a grantmaking environment that is free and independent from intrusive or politically motivated regulation.

(2) For purposes of this section:

(a) Agency means each board, commission, department, officer, division, or other administrative office or unit of the state government authorized by law to adopt and promulgate rules and regulations, except the Adjutant General's office as provided in Chapter 55, the Legislature, the courts, including the Nebraska Workers' Compensation Court, and the Commission of Industrial Relations; and

(b) Agency includes the Secretary of State and the Attorney General.

(3) Absent the showing of a compelling state interest or federal funding requirement, an agency shall not require any annual filing or reporting by a charitable organization, whether regulated or specifically exempted from regulation, that is more burdensome than any requirements authorized by state law. Any such filing or reporting requirement shall be narrowly tailored to achieve such compelling state interest.

(4) This section shall not be construed to limit or restrict the powers, duties, remedies, or penalties available to the Attorney General or Secretary of State under statute or common law, including, but not limited to, issuance of a civil investigative demand or subpoena.

Source: Laws 2024, LB43, § 15.
Operative date July 19, 2024.

84-907 Rule or regulation; adoption; amendment; repeal; hearing; notice; procedure; exemption.

(1) Except as provided in section 84-901.04, no rule or regulation shall be adopted, amended, or repealed by any agency except after public hearing on the question of adopting, amending, or repealing such rule or regulation. Notice of such hearing shall be given at least thirty days prior thereto to the Secretary of State and by publication in a newspaper having general circulation in the state. All such hearings shall be open to the public.

(2) The public hearing on a rule or regulation that is required to be adopted, amended, or repealed based upon a legislative bill shall be held within twelve

months after the effective or operative date of the legislative bill. If there is more than one applicable effective or operative date, the twelve-month period shall be calculated using the latest date. In addition to the requirements of section 84-906.01, draft copies or working copies of all rules and regulations to be adopted, amended, or repealed by any agency shall be available to the public in the office of the Secretary of State at the time of giving notice. The notice shall include: (a) A declaration of availability of such draft or work copies for public examination; (b) a short explanation of the purpose of the proposed rule or regulation or the reason for the amendment or repeal of the rule or regulation; and (c) a description, including an estimated quantification, of the fiscal impact on state agencies, political subdivisions, and persons being regulated or an explanation of where the description of the fiscal impact may be inspected and obtained. No person may challenge the validity of any rule or regulation, the adoption, amendment, or repeal of any rule or regulation, or any determination of the applicability of any rule or regulation on the basis of the explanation or description provided pursuant to subdivisions (b) and (c) of this subsection.

(3) A change to an existing rule or regulation to (a) alter the style or form of such rule or regulation, (b) correct a technical error, or (c) alter a citation or reference to make such citation or reference consistent with state or federal law but which does not affect the substance of the rule or regulation is exempt from the requirements of this section. Such change shall not alter the rights or obligations of the public.

(4) Agencies shall be exempt from promulgating security policies and procedures which, if made public, would create a substantial likelihood of endangering public safety or property.

Source: Laws 1953, c. 359, § 1, p. 1138; Laws 1977, LB 462, § 1; Laws 1978, LB 585, § 1; Laws 1980, LB 846, § 1; Laws 1986, LB 992, § 7; Laws 1987, LB 253, § 8; Laws 1987, LB 487, § 1; Laws 1994, LB 446, § 21; Laws 2005, LB 373, § 4; Laws 2011, LB617, § 2; Laws 2016, LB867, § 11.

This section is in pari materia with section 84-901. City of Scottsbluff v. United Telephone Co. of the West, 171 Neb. 229, 106 N.W.2d 12 (1960).

84-907.01 Repealed. Laws 2016, LB867, § 21.

84-907.02 Repealed. Laws 2016, LB867, § 21.

84-907.03 Repealed. Laws 2020, LB910, § 49.

84-907.04 Proposed rule or regulation; explanatory statement; contents; use; agency; written report; contents.

(1) At the time an agency finalizes a proposed rule or regulation and prior to submission to the Secretary of State, Attorney General, and Governor, the agency shall attach to the proposed rule or regulation a concise explanatory statement containing:

(a) Its reasons for adopting the rule or regulation;

(b) An indication of any change between the text of the proposed rule or regulation contained or referenced in the published notice and the text of the rule or regulation to be adopted, with the reasons for any change; and

(c) When procedural rules differ from the model rules, the agency's reasons why relevant portions of the model rules were impracticable under the circumstances.

(2) Only the reasons contained in the concise explanatory statement may be used by an agency as justifications for the adoption of the rule or regulation in any proceeding in which its validity is at issue.

(3) The agency shall also attach to the proposed rule or regulation a written report that includes a summary of the testimony offered at the public hearing and that lists any specific issues or questions that were presented by individuals or representatives of organizations at the hearing or in written testimony submitted as part of the public hearing process. The report shall also include a response from the agency proposing the regulatory change to the questions and issues that were presented by individuals or representatives of organizations at the hearing or in written testimony submitted as part of the public hearing process. The written report shall also be submitted to the Executive Board of the Legislative Council. The chairperson of the executive board or committee staff member of the executive board shall refer each written report received pursuant to this subsection for review (a) to the chairperson of the standing committee of the Legislature which has subject matter jurisdiction over the issue involved in the rule or regulation or which has traditionally handled the issue and (b) if practicable, to the member of the Legislature who was the primary sponsor of a legislative bill that granted the agency the rulemaking authority if the member is still serving or, if the legislative bill was amended to include the rulemaking authority, to the member of the Legislature who was the primary sponsor of the amendment that granted rulemaking authority if the member is still serving.

Source: Laws 1994, LB 446, § 22; Laws 2014, LB719, § 1.

84-907.05 Proposed rule or regulation; substantially different from published notice; considerations; limitation on agency.

(1) An agency may not adopt a rule or regulation that is substantially different from the proposed rule or regulation contained or referenced in the published notice. An agency may terminate a rulemaking or regulationmaking proceeding and commence a new rulemaking or regulationmaking proceeding for the purpose of adopting a substantially different rule or regulation.

(2) In determining whether a rule or regulation is substantially different from the proposed rule or regulation contained or referenced in the published notice, the following shall be considered:

(a) The extent to which all persons affected by the adopted rule or regulation should have had adequate notice from the published notice and the proposed rule or regulation contained or referenced in the published notice that their interests would be affected;

(b) The extent to which the subject matter of the adopted rule or regulation or the issues determined by the rule or regulation are different from the subject matter or issues involved in the proposed rule or regulation contained or referenced in the published notice; and

(c) The extent to which the effects of the adopted rule or regulation differ from the effects of the proposed rule or regulation contained or referenced in the published notice had it been adopted instead.

Source: Laws 1994, LB 446, § 23.

84-907.06 Adoption, amendment, or repeal of rule or regulation; notice to Executive Board of the Legislative Council and Secretary of State.

Whenever an agency proposes to adopt, amend, or repeal a rule or regulation, the agency shall (1) at least thirty days before the public hearing, when notice of a proposed rule or regulation is sent out, or (2) at the same time the agency requests approval from the Governor for an emergency rule or regulation under section 84-901.04, send to the Executive Board of the Legislative Council for purposes of section 84-907.07 if applicable, to the Executive Board of the Legislative Council to be forwarded to the relevant standing committee of the Legislature for purposes of the Occupational Board Reform Act if applicable, and to the Secretary of State to be made available to the public by means which include, but are not limited to, publication on the Secretary of State's website, if applicable, the following information: A copy of the hearing notice required by section 84-907; a draft copy of the rule or regulation; and the information provided to the Governor pursuant to section 84-907.09.

Source: Laws 1994, LB 446, § 24; Laws 2005, LB 373, § 5; Laws 2012, LB782, § 228; Laws 2013, LB222, § 43; Laws 2016, LB867, § 12; Laws 2017, LB464, § 1; Laws 2018, LB299, § 18.

Cross References

Occupational Board Reform Act, see section 84-933.

84-907.07 Executive Board of the Legislative Council; standing committees of the Legislature; powers and duties.

The chairperson of the Executive Board of the Legislative Council or committee staff member of the board shall refer materials received pursuant to section 84-907.06 for review (1) to the chairperson of the standing committee of the Legislature which has subject matter jurisdiction over the issue involved in the rule or regulation or which has traditionally handled the issue and (2) if practicable, to the member of the Legislature who was the primary sponsor of the legislative bill that granted the agency the rulemaking authority if the member is still serving or, if the legislative bill was amended to include the rulemaking authority, to the primary sponsor of the amendment granting rulemaking authority if the member is still serving. The committee or committee chairperson of such standing committee of the Legislature having subject matter jurisdiction may submit a written or oral statement at the public hearing on the rule or regulation or, if the Governor approves an emergency rule or regulation under section 84-901.04, may submit a written statement to the agency and to the Secretary of State to be entered in the records relating to the rule or regulation.

Source: Laws 1994, LB 446, § 25; Laws 2005, LB 373, § 6; Laws 2016, LB867, § 13.

84-907.08 Petition to adopt a rule or regulation; form; procedure.

Any person may petition an agency requesting the adoption of a rule or regulation. Each agency shall prescribe by rule or regulation the form of the petition and the procedure for its submission, consideration, and disposition. Within sixty days after submission of a petition, the agency shall (1) deny the petition in writing, stating its reasons therefor, (2) initiate rulemaking or

regulationmaking proceedings in accordance with the Administrative Procedure Act, or (3) if otherwise lawful, adopt a rule or regulation.

Source: Laws 1994, LB 446, § 26.

84-907.09 Adoption, amendment, or repeal of rule or regulation; provide information to Governor.

Whenever an agency proposes to adopt, amend, or repeal a rule or regulation, (1) at least thirty days before the public hearing, when notice of a proposed rule or regulation is sent out, or (2) at the same time the agency requests approval from the Governor for an emergency rule or regulation under section 84-901.04, the agency shall provide to the Governor for review (a) a description of the proposed rule or regulation and the entity or entities it will impact, (b) an explanation of the necessity of the proposed rule or regulation, including the identification of the specific legislative bill if applicable, or the authorizing statute when there is no legislative bill applicable, (c) a statement that the proposed rule or regulation is consistent with legislative intent, (d) a statement indicating whether the proposed rule or regulation is the result of a state mandate on a local governmental subdivision and if the mandate is funded, (e) a statement indicating if the proposed rule or regulation is the result of a federal mandate on state government or on a local governmental subdivision and if the mandate is funded, (f) a description, including an estimated quantification, of the fiscal impact on state agencies, political subdivisions, and regulated persons, (g) a statement that the agency will solicit public comment on the proposed rule or regulation before the public hearing, and (h) a statement indicating whether or not the agency has utilized the negotiated rulemaking process as provided for in the Negotiated Rulemaking Act with respect to the proposed rule or regulation.

Source: Laws 2005, LB 373, § 1; Laws 2011, LB617, § 3; Laws 2016, LB867, § 14.

Cross References

Negotiated Rulemaking Act, see section 84-921.

84-907.10 Member of the Legislature; complaint; procedure.

(1) If any member of the Legislature feels aggrieved by a rule or regulation or by the proposed adoption, amendment, or repeal of a rule or regulation pursuant to section 84-907.06 or believes that (a) a rule or regulation or the adoption, amendment, or repeal of a rule or regulation is in excess of the statutory authority or jurisdiction of the agency, is unconstitutional, is inconsistent with the legislative intent of the authorizing statute, or creates an undue burden in a manner that significantly outweighs its benefit to the public, (b) circumstances have changed since the passage of the statute which a rule or regulation implements, or (c) a rule or regulation or an amendment or repeal overlaps, duplicates, or conflicts with federal, state, or local laws, rules, regulations, or ordinances, the member may file a complaint with the Chairperson of the Executive Board of the Legislative Council. The complaint shall explain in detail the member’s contentions.

(2) The chairperson of the executive board or a committee staff member of the executive board shall refer the complaint to the chairperson of the standing committee of the Legislature which has subject matter jurisdiction over the issue involved in the rule or regulation or which has traditionally handled the

issue and, if practicable, to the member of the Legislature who was the primary sponsor of the legislative bill that granted the agency the rulemaking authority if the member is still serving or, if the legislative bill was amended to include the rulemaking authority, to the primary sponsor of the amendment granting rulemaking authority if the member is still serving.

(3) The standing committee and primary sponsor of the legislative bill or amendment granting rulemaking authority may consider the complaint and, if such committee or primary sponsor concludes that the complaint has merit, then such committee or primary sponsor may request a written response from the agency which shall include, but not be limited to (a) a description of the amendment or rule or regulation, (b) when applicable, a description of the legislative intent of the statute granting the agency rulemaking authority and a statement explaining how the rule or regulation or the adoption, amendment, or repeal of the rule or regulation is within the authority or jurisdiction of the agency, is constitutional, is consistent with legislative intent, or is not an undue burden, (c) if the description required in subdivision (b) of this subsection is inapplicable, an explanation as to why the rule or regulation or the adoption, amendment, or repeal is necessary, and (d) an explanation of the extent to which and how any public comment was taken into consideration by the agency with respect to the rule or regulation or the adoption, amendment, or repeal. The agency shall respond within sixty days of a request, and such response shall be a public record.

(4) Nothing in this section shall be construed to prohibit the adoption or promulgation of the rule or regulation in accordance with other provisions of the Administrative Procedure Act.

Source: Laws 2005, LB 373, § 7; Laws 2014, LB719, § 2.

84-908 Rule or regulation; adoption; amendment; repeal; considerations; when effective; approval by Governor; filing.

(1) Except as provided in section 84-901.04, no adoption, amendment, or repeal of any rule or regulation shall become effective until the same has been approved by the Governor and filed with the Secretary of State after a hearing has been set on such rule or regulation pursuant to section 84-907. When determining whether to approve the adoption, amendment, or repeal of any rule or regulation relating to an issue of unique interest to a specific geographic area, the Governor's considerations shall include, but not be limited to: (a) Whether adequate notice of hearing was provided in the geographic area affected by the rule or regulation. Adequate notice shall include, but not be limited to, the availability of copies of the rule or regulation at the time notice was given pursuant to section 84-907; and (b) whether reasonable and convenient opportunity for public comment was provided for the geographic area affected by the rule or regulation. If a public hearing was not held in the affected geographic area, reasons shall be provided by the agency to the Governor. Any rule or regulation properly adopted by any agency shall be filed with the Secretary of State.

(2) Except as provided in section 84-901.04, no agency shall utilize, enforce, or attempt to enforce any rule or regulation or proposed rule or regulation unless the rule, regulation, or proposed rule or regulation has been approved by

the Governor and filed with the Secretary of State after a hearing pursuant to section 84-907.

Source: Laws 1953, c. 359, § 2, p. 1138; Laws 1972, LB 373, § 1; Laws 1974, LB 604, § 4; Laws 1975, LB 316, § 1; Laws 1978, LB 44, § 10; Laws 1986, LB 992, § 10; Laws 1987, LB 253, § 10; Laws 1987, LB 189, § 1; Laws 2013, LB242, § 3; Laws 2016, LB867, § 15.

Rate tariffs, and any rules of interpretation thereof, are excepted from requirements of filing with Secretary of State. City of Scottsbluff v. United Telephone Co. of the West, 171 Neb. 229, 106 N.W.2d 12 (1960).

84-908.01 Repealed. Laws 1986, LB 992, § 11.

84-908.02 Repealed. Laws 1986, LB 992, § 11.

84-908.03 Repealed. Laws 1986, LB 992, § 11.

84-908.04 Repealed. Laws 1986, LB 992, § 11.

84-908.05 Repealed. Laws 1986, LB 992, § 11.

84-909 Agency; rules and regulations governing procedure; adoption.

In addition to other requirements imposed by law:

(1) Each agency shall adopt rules and regulations governing the formal and informal procedures prescribed or authorized by the Administrative Procedure Act. Such rules and regulations shall include rules of practice before the agency together with forms and instructions; and

(2) To assist interested persons dealing with it, each agency shall so far as deemed practicable supplement its rules and regulations with descriptive statements of its procedures.

Source: Laws 1959, c. 456, § 2, p. 1511; Laws 1980, LB 846, § 2; Laws 1987, LB 253, § 11; Laws 1994, LB 446, § 33.

Neither the Administrative Procedure Act nor the regulations of the Department of Water Resources provide for any time limits on the rights of parties to intervene either as a matter of right or permissively. Nonetheless, the department as an agency of the State of Nebraska must have sufficient latitude in its operation in matters under its jurisdiction to exercise that jurisdiction fairly. Basin Elec. Power Co-op. v. Little Blue N.R.D., 219 Neb. 372, 363 N.W.2d 500 (1985).

This section only applicable to procedures which have not been specifically covered by statute. Weiner v. State Real Estate Commission, 184 Neb. 752, 171 N.W.2d 783 (1969).

The provisions of Administrative Procedure Act may be considered with other legislation in determining whether due process of law has been afforded. School Dist. No. 8 v. State Board of Education, 176 Neb. 722, 127 N.W.2d 458 (1964).

The 1959 amendment to the act prescribing rules for administrative agencies did not contain more than one subject in violation of the Constitution. Yellow Cab Co. v. Nebraska State Railway Commission, 175 Neb. 150, 120 N.W.2d 922 (1963).

84-909.01 Model rules of procedure; Attorney General; agency; duties.

In accordance with the rulemaking and regulationmaking requirements of the Administrative Procedure Act, the Attorney General shall prepare and promulgate model rules of procedure appropriate for use by as many agencies as possible and shall file the model rules with the Secretary of State. The model rules shall deal with all general functions and duties performed in common by several agencies. For rules of procedure adopted on or after August 1, 1994, each agency shall adopt as many of the model rules as is practicable under its circumstances. To the extent an agency adopts the model rules, it shall do so in accordance with the rulemaking and regulationmaking requirements of the act. Any agency adopting a rule of procedure that differs from the model rules shall include in the explanatory statement provided for in section 84-907.04 a finding

stating the reasons why the relevant portions of the model rules were impracticable under the circumstances.

Source: Laws 1994, LB 446, § 15.

84-910 Agency; notification to Legislative Performance Audit Committee; contents; format; notice to Executive Board of the Legislative Council.

(1) On or before July 1 of each year, each agency shall notify the Legislative Performance Audit Committee of the status of all rules and regulations pending before the agency that are required by law and that have not been adopted and promulgated. If such rules and regulations have not been adopted and promulgated within the time required pursuant to section 84-901.01, the agency shall provide an explanation to the committee stating why the agency has not adopted and promulgated such rules and regulations. If an additional appropriation was made with respect to legislation enacted to provide funding for or additional staff to implement a program for which rules and regulations are required to be adopted, the notification shall include what the funding has been used for and what functions the staff have been performing while such rules and regulations are pending. The format of the notification shall be established by the committee and shall be updated periodically.

(2) On or before July 1 of each year, each agency shall notify the Executive Board of the Legislative Council of the status of any rule or regulation pending before the agency that constitutes an occupational regulation as defined in section 84-940 and that has not been adopted and promulgated. The executive board shall forward any notification received pursuant to this subsection to the standing committee of the Legislature with jurisdiction over such rule or regulation.

Source: Laws 2011, LB617, § 4; Laws 2012, LB782, § 229; Laws 2013, LB222, § 44; Laws 2018, LB299, § 19; Laws 2018, LB751, § 2; Laws 2024, LB909, § 1.
Effective date March 12, 2024.

84-911 Validity of rule or regulation; declaratory judgment; procedure.

(1) The validity of any rule or regulation may be determined upon a petition for a declaratory judgment thereon addressed to the district court of Lancaster County if it appears that the rule or regulation or its threatened application interferes with or impairs or threatens to interfere with or impair the legal rights or privileges of the petitioner. The agency shall be made a party to the proceeding. The declaratory judgment may be rendered whether or not the petitioner has first requested the agency to pass upon the validity of the rule or regulation in question.

(2) The court shall declare the rule or regulation invalid if it finds that it violates constitutional provisions, exceeds the statutory authority of the agency, or was adopted without compliance with the statutory procedures. For purposes of this subsection, statutory procedures shall not include procedures provided under the Negotiated Rulemaking Act.

Source: Laws 1959, c. 456, § 4, p. 1511; Laws 1987, LB 253, § 13; Laws 1994, LB 446, § 34.

Cross References

Negotiated Rulemaking Act, see section 84-921.

An agency policy that does not constitute a rule or regulation under section 84-901(2) is not subject to judicial review under this section. *Schaeffer v. Frakes*, 313 Neb. 337, 984 N.W.2d 290 (2023).

Citizens lacked standing under the Administrative Procedure Act to challenge the validity of a regulation where they alleged an infringement of a procedural right to informed participation in the regulation-making process but did not show that the challenged regulation itself threatened or violated their rights. *Griffith v. Nebraska Dept. of Corr. Servs.*, 304 Neb. 287, 934 N.W.2d 169 (2019).

Common-law exceptions to injury-in-fact standing do not apply in actions brought under the Administrative Procedure Act provision that permits the validity of any rule or regulation to be determined upon a petition for declaratory judgment if it appears that the rule or regulation or its threatened application interferes with legal rights or privileges of the petitioner, overruling *Project Extra Mile v. Nebraska Liquor Control Comm.*, 283 Neb. 379, 810 N.W.2d 149 (2012). *Griffith v. Nebraska Dept. of Corr. Servs.*, 304 Neb. 287, 934 N.W.2d 169 (2019).

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

When this section is read consistently with the declaratory judgment statutes, the only limitations placed on the relief that a plaintiff can obtain in a declaratory judgment action under this section are the limitations imposed by sovereign immunity prin-

ciples. Neither this section nor sovereign immunity bars injunctive relief in a declaratory judgment action under this section when such relief would not require state officials to expend public funds. *Project Extra Mile v. Nebraska Liquor Control Comm.*, 283 Neb. 379, 810 N.W.2d 149 (2012).

This section provides a limited statutory waiver of sovereign immunity and confers subject matter jurisdiction for a declaratory judgment concerning the validity of a state agency's rule or regulation, but does not confer jurisdiction for declaratory relief concerning judicial interpretation of a statute. *Perryman v. Nebraska Dept. of Corr. Servs.*, 253 Neb. 66, 568 N.W.2d 241 (1997).

This section provides a limited statutory waiver of sovereign immunity and confers subject matter jurisdiction for a declaratory judgment concerning the validity of a state agency's rule or regulation. This section is limited to judicial determination of the validity of any rule or regulation of a state agency and does not confer jurisdiction for judicial resolution of a factual question pertaining to the merits of a controversy. *Riley v. State*, 244 Neb. 250, 506 N.W.2d 45 (1993).

Under this section, which allows for a declaratory judgment on the validity of an administrative rule, such a ruling is discretionary with the court. A court may refuse to enter a declaratory judgment where it would not end or resolve the controversy. *Beatrice Manor v. Department of Health*, 219 Neb. 141, 362 N.W.2d 45 (1985).

A court may refuse to enter a declaratory judgment on the validity of an administrative rule when the petition essentially presents a claim against the state for money. *Millard School District v. State Department of Education*, 202 Neb. 707, 277 N.W.2d 71 (1979).

A prisoner is not entitled to a declaratory judgment under this section as to the validity of a regulation limiting the amount of property that can be possessed by an inmate, because a prisoner does not enjoy the unqualified right to possess property while in prison. *Meis v. Houston*, 19 Neb. App. 504, 808 N.W.2d 897 (2012).

84-912 Repealed. Laws 1994, LB 446, § 40.

84-912.01 Petition for declaratory order; issuance by agency; duties; effect.

(1) Any person may petition an agency for a declaratory order as to the applicability to specified circumstances of a statute, rule, regulation, or order within the primary jurisdiction of the agency. An agency shall issue a declaratory order in response to a petition for that order unless the agency determines that issuance of the order under the circumstances would be contrary to a rule or regulation adopted in accordance with subsection (2) of this section. An agency may not issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

(2) Each agency shall issue rules or regulations that provide for: (a) The form, contents, and filing of petitions for declaratory orders; (b) the procedural rights of persons in relation to the petitions; (c) the disposition of the petitions; and (d) notice to necessary parties for matters set for hearing or specified proceedings. The rules or regulations shall describe the classes of circumstances in which the agency will not issue a declaratory order and be consistent with the public interest and with the general policy of the Administrative Procedure Act to facilitate and encourage agency issuance of reliable advice.

(3) Persons who qualify for intervention and file timely petitions for intervention according to agency rules and regulations may intervene in proceedings for declaratory orders.

(4) Within thirty days after receipt of a petition for a declaratory order, an agency shall, in writing:

(a) Issue an order or agree to issue a declaratory order by a specified time declaring the applicability of the statute, rule, regulation, or order in question to the specified circumstances;

(b) Set the matter for specified proceedings; or

(c) Decline to issue a declaratory order, stating the reasons for its action.

(5) A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the petitioner and any other parties.

(6) A declaratory order shall have the same status and binding effect as any other order issued in a contested case. A declaratory order shall contain the names of all parties to the proceeding on which it is based, the particular facts on which it is based, and the reasons for its conclusion.

(7) If an agency has not issued a declaratory order within sixty days after receipt of a petition therefor, the petition shall be deemed to have been denied.

Source: Laws 1994, LB 446, § 27.

This section did not require a hearing before the Department of Administrative Services to decide the issues raised by the petitioners, the petition for a declaratory order did not require the department to act in a quasi-judicial manner, and the

proceeding was not a contested case under the Administrative Procedure Act. *Kaplan v. McClurg*, 271 Neb. 101, 710 N.W.2d 96 (2006).

84-912.02 Petition for intervention; hearing officer or designee; grant petition; conditions; powers and duties; order.

(1) A hearing officer or designee shall grant a petition for intervention if:

(a) The petition is submitted in writing to the hearing officer or designee, with copies mailed to all parties named in the hearing officer's notice of the hearing, at least five days before the hearing;

(b) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

(c) The hearing officer or designee determines that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

(2) The hearing officer or designee may grant a petition for intervention at any time upon determining that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

(3) If a petitioner qualifies for intervention, the hearing officer or designee may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

(b) Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(c) Requiring two or more intervenors to combine their presentation of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

(4) The hearing officer or designee, at least twenty-four hours before the hearing, shall issue an order granting or denying each pending petition for intervention, specifying any conditions and briefly stating the reasons for the order. The hearing officer or designee may modify the order at any time, stating the reasons for the modification. The hearing officer or designee shall promptly give notice of an order granting, denying, or modifying intervention to the petitioner for intervention and to all parties.

Source: Laws 1994, LB 446, § 28.

The Administrative Procedure Act grants agencies the power to impose conditions upon an intervenor’s participation, and this action is distinct from granting or denying a petition for intervention. In re Application No. OP-0003, 303 Neb. 872, 932 N.W.2d 653 (2019).

Under the Administrative Procedure Act, an agency may modify an order imposing conditions on intervention at any time. In re Application No. OP-0003, 303 Neb. 872, 932 N.W.2d 653 (2019).

84-912.03 Tax Equalization and Review Commission; exemption.

Sections 84-912.01 and 84-913 to 84-919 do not apply to the Tax Equalization and Review Commission.

Source: Laws 1995, LB 490, § 190; Laws 2004, LB 973, § 68.

Cross References

Tax Equalization and Review Commission Act, see section 77-5001.

84-913 Contested cases; notice of hearing; record; transcript.

In any contested case all parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall state the time, place, and issues involved, but if, by reason of the nature of the proceeding, the issues cannot be fully stated in advance of the hearing or if subsequent amendment of the issues is necessary, they shall be fully stated as soon as practicable. Opportunity shall be afforded all parties to present evidence and argument with respect thereto. The agency shall prepare an official record, which shall include testimony and exhibits, in each contested case, but it shall not be necessary to transcribe shorthand notes unless requested for purpose of rehearing, in which event the transcript and record shall be furnished by the agency upon request and tender of the cost of preparation. Informal disposition may also be made of any contested case by stipulation, agreed settlement, consent order, or default. Each agency shall adopt appropriate rules and regulations for notice and hearing in contested cases.

Source: Laws 1959, c. 456, § 6, p. 1512; Laws 1969, c. 838, § 1, p. 3162; Laws 1987, LB 253, § 15.

Where the Nebraska Liquor Control Commission failed to provide the appellant with notice as required under this section and the commission’s own regulations, the appellant was denied due process, and as a result of such denial, the commission’s decision with regard to the appellant’s liquor license did not conform to the law. *Lariat Club v. Nebraska Liquor Control Comm.*, 267 Neb. 179, 673 N.W.2d 29 (2004).

Administrative bodies have only that authority specifically conferred upon them by statute or by construction necessary to achieve the purpose of the relevant act, and as such, the Department of Revenue is not statutorily authorized to grant motions for summary judgment. *Southeast Rur. Vol. Fire Dept. v. Neb. Dept. of Rev.*, 251 Neb. 852, 560 N.W.2d 436 (1997).

On objection to application for liquor license, where hearing is required, the matter becomes a contested case under section 84-901(3), and notice to applicant of the issues is necessary. *J K & J, Inc. v. Nebraska Liquor Control Commission*, 194 Neb. 413, 231 N.W.2d 694 (1975).

The procedural rules to be applied are those in effect at time of hearing or proceeding, not those in effect when the act or violation is charged to have taken place. *Durousseau v. Nebraska State Racing Commission*, 194 Neb. 288, 231 N.W.2d 566 (1975).

Department of Banking required to establish procedural rules providing for notice and hearing. *First Fed. Sav. & Loan Assn.*

v. Department of Banking, 187 Neb. 562, 192 N.W.2d 736 (1971).

In contested case, common carriers are entitled to present argument. Ready Mix, Inc. v. Nebraska Railroads, 181 Neb. 697, 150 N.W.2d 275 (1967).

In hearing before the Liquor Control Commission where no notice of hearing is required, this section would not be applicable. City of Lincoln v. Nebraska Liquor Control Commission, 181 Neb. 277, 147 N.W.2d 803 (1967).

Notice of hearing in a contested case is required to state the issues involved. County of Lancaster v. State Board of Equalization & Assessment, 180 Neb. 497, 143 N.W.2d 885 (1966); County of Brown v. State Board of Equalization & Assessment, 180 Neb. 487, 143 N.W.2d 896 (1966); County of Blaine v. State Board of Equalization & Assessment, 180 Neb. 471, 143 N.W.2d 880 (1966).

In contested case before administrative board, notice and hearing are required. School Dist. No. 8 v. State Board of Education, 176 Neb. 722, 127 N.W.2d 458 (1964).

84-913.01 Hearing officer; prehearing conference; procedure.

(1) The hearing officer designated to conduct the hearing may determine, subject to the agency's rules and regulations, whether a prehearing conference will be conducted. If the conference is conducted:

(a) The hearing officer shall promptly notify the agency of the determination that a prehearing conference will be conducted. The agency may assign another hearing officer for the prehearing conference; and

(b) The hearing officer for the prehearing conference shall set the time and place of the conference and give reasonable written notice to all parties and to all persons who have filed written petitions to intervene in the matter. The agency shall give notice to other persons entitled to notice.

(2) The notice shall include:

(a) The names and mailing addresses of all parties and other persons to whom notice is being given by the hearing officer;

(b) The name, official title, mailing address, and telephone number of any counsel or employee who has been designated to appear for the agency;

(c) The official file or other reference number, the name of the proceeding, and a general description of the subject matter;

(d) A statement of the time, place, and nature of the prehearing conference;

(e) A statement of the legal authority and jurisdiction under which the prehearing conference and the hearing are to be held;

(f) The name, official title, mailing address, and telephone number of the hearing officer for the prehearing conference; and

(g) A statement that a party who fails to attend or participate in a prehearing conference, hearing, or other stage of a contested case or who fails to make a good faith effort to comply with a prehearing order may be held in default under the Administrative Procedure Act.

The notice may include any other matters that the hearing officer considers desirable to expedite the proceedings.

Source: Laws 1994, LB 446, § 29.

84-913.02 Hearing officer; prehearing conference; powers and duties; orders.

(1) The hearing officer shall conduct the prehearing conference, as may be appropriate, to deal with such matters as exploration of settlement possibilities, preparation of stipulations, clarification of issues, rulings on identity and limitation of the number of witnesses, objections to proffers of evidence, determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form and the extent to which telephone, television, or other electronic means will be used as a substitute for proceedings in person, order of presentation of evidence and cross-examina-

tion, rulings regarding issuance of subpoenas, discovery orders, and protective orders, and such other matters as will promote the orderly and prompt conduct of the hearing. The hearing officer shall issue a prehearing order incorporating the matters determined at the prehearing conference.

(2) If a prehearing conference is not held, a hearing officer for the hearing may issue a prehearing order, based on the pleadings, to regulate the conduct of the proceedings.

Source: Laws 1994, LB 446, § 30.

84-913.03 Hearing officer; prehearing conference and hearing; how conducted.

The hearing officer may conduct all or part of the prehearing conference and the hearing by telephone, television, or other electronic means if each participant in the conference or hearing has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place. This section does not apply to a prehearing conference or a hearing held under sections 60-498.01 to 60-498.04.

Source: Laws 1994, LB 446, § 31; Laws 2003, LB 209, § 20.

Telephonic hearings under this section are permitted when a formal "rules of evidence" hearing is requested pursuant to section 84-914(1). *Kimball v. Nebraska Dept. of Motor Vehicles*, 255 Neb. 430, 586 N.W.2d 439 (1998).

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

84-913.04 Proceedings; limitation on participation.

(1) A person who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may not serve as hearing officer or assist or advise a hearing officer in the same proceeding except as provided in subsection (3) of this section.

(2) A person who is subject to the authority, direction, or discretion of one who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may not serve as hearing officer or assist or advise a hearing officer in the same proceeding except as provided in subsection (3) of this section.

(3) If all parties consent, a person who has served as, or who is subject to the authority, direction, or discretion of one who has served as, investigator, prosecutor, or advocate in a contested case or in its prehearing stage may assist a hearing officer in the preparation of orders.

(4) A person who has participated in a determination of probable cause or other equivalent preliminary determination in a contested case may serve as hearing officer or assist or advise a hearing officer in the same proceeding.

(5) A person may serve as hearing officer at successive stages of the same contested case.

Source: Laws 1994, LB 446, § 32.

The Legislature specifically barred only prosecutors, investigators, and advocates from participating as hearing officers in administrative hearings. *City of Lincoln v. Central Platte NRD*, 263 Neb. 141, 638 N.W.2d 839 (2002).

prosecutors, or assisting hearing officers, in administrative hearings. *Saunders Cty. v. Metropolitan Utilities Dist.-A*, 11 Neb. App. 138, 645 N.W.2d 805 (2002).

In this section, the Legislature has barred only prosecutors, investigators, and advocates from participating as hearing offi-

84-914 Contested cases; evidence; procedure; ex parte communications.

In contested cases:

(1) An agency may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs and exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. An agency shall give effect to the rules of privilege recognized by law. Any party to a formal hearing before an agency, from which a decision may be appealed to the courts of this state, may request that the agency be bound by the rules of evidence applicable in district court by delivering to the agency at least three days prior to the holding of the hearing a written request therefor. Such request shall include the requesting party's agreement to be liable for the payment of costs incurred thereby and upon any appeal or review thereof, including the cost of court reporting services which the requesting party shall procure for the hearing. All costs of a formal hearing shall be paid by the party or parties against whom a final decision is rendered;

(2) The hearing officer or a designee, at the request of any party or upon the hearing officer's own motion, may administer oaths and issue subpoenas, discovery orders, and protective orders in accordance with the rules of civil procedure except as may otherwise be prescribed by law. Subpoenas and orders issued under this subsection may be enforced by the district court;

(3) All evidence including records and documents in the possession of the agency of which it desires to avail itself shall be offered and made a part of the record in the case. No factual information or evidence other than the record shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts or incorporated by reference;

(4) Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence;

(5) An agency may take official notice of cognizable facts and in addition may take official notice of general, technical, or scientific facts within its specialized knowledge and the rules and regulations adopted and promulgated by such agency. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of material so noticed. Parties shall be afforded an opportunity to contest facts so noticed. The record shall contain a written record of everything officially noticed. An agency may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it; and

(6)(a) No party in a contested case or other person outside the agency having an interest in the contested case shall make or knowingly cause to be made an ex parte communication to the hearing officer or to an agency head or employee who is or may reasonably be expected to be involved in the decision-making process of the contested case.

(b) No hearing officer or agency head or employee who is or may reasonably be expected to be involved in the decisionmaking process of the contested case shall make or knowingly cause to be made an ex parte communication to any party in a contested case or other person outside the agency having an interest in the contested case.

(c) No agency head or employee engaged in the investigation or enforcement of a contested case shall make or knowingly cause to be made an ex parte communication to a hearing officer or agency head or employee who is or may reasonably be expected to be involved in the decisionmaking process of the contested case.

(d) The hearing officer or agency head or employee who is or may reasonably be expected to be involved in the decisionmaking process of the contested case who receives or who makes or knowingly causes to be made an ex parte communication set forth in subdivisions (6)(a) through (c) of this section shall file in the record of the contested case (i) all such written communications, (ii) memoranda stating the substance of all such oral communications, and (iii) all written responses and memoranda stating the substance of all oral responses to all the ex parte communications. The filing shall be made within two working days of the receipt or making of the ex parte communication. Notice of the filing, with an opportunity to respond, shall be given to all parties of record.

(e) The prohibitions of subdivision (6) of this section shall apply beginning at the time notice for hearing is given. An agency may designate an earlier time, but such earlier time shall be required to be set forth in the agency’s rules of procedure.

(f) The prohibitions contained in subdivisions (6)(a) and (b) of this section shall not apply to ex parte communications to or from an elected official. However, the disclosure requirements contained in subdivision (6)(d) of this section shall apply to ex parte communications to or from an elected official.

Source: Laws 1959, c. 456, § 7, p. 1513; Laws 1967, c. 618, § 3, p. 2072; Laws 1987, LB 253, § 16; Laws 1994, LB 414, § 136; Laws 1994, LB 446, § 35.

- 1. Rules of evidence
- 2. Evidentiary and trial procedures
- 3. Judicial notice
- 4. Miscellaneous

1. Rules of evidence

The “rules of evidence applicable in district court” are the Nebraska Evidence Rules codified in Chapter 27 of the Nebraska Revised Statutes. *Kimball v. Nebraska Dept. of Motor Vehicles*, 255 Neb. 430, 586 N.W.2d 439 (1998).

The Board of Nursing is not bound by the law of evidence unless a party so requests. *Scott v. State ex rel. Board of Nursing*, 196 Neb. 681, 244 N.W.2d 683 (1976).

Prior to hearing before Director of Banking, protestants requested that rules of evidence applicable to the district court be made binding and district court on appeal made findings in accordance with applicable statute and affirmed order of the director. *Gateway Bank v. Department of Banking*, 192 Neb. 109, 219 N.W.2d 211 (1974).

The Administrative Procedure Act controls the appeal of prison disciplinary cases, but not the conduct of an initial prison disciplinary hearing. An inmate is not entitled to the application of the rules of evidence at a prison disciplinary committee hearing. *Dailey v. Nebraska Dept. of Corr. Servs.*, 6 Neb. App. 919, 578 N.W.2d 869 (1998).

2. Evidentiary and trial procedures

Evidentiary and trial procedures herein govern proceeding before Nebraska Power Review Board on application for approval of agreement between public power districts limiting areas in which and customers to whom electrical energy would be furnished at wholesale. *City of Lincoln v. Nebraska P.P. Dist.*, 191 Neb. 556, 216 N.W.2d 722 (1974).

Section details evidentiary and trial procedures for all administrative agencies. *Weiner v. State Real Estate Commission*, 184 Neb. 752, 171 N.W.2d 783 (1969).

3. Judicial notice

In a contested case, all evidence in possession of the agency, of which it desires to avail itself, shall be made a part of the record and applicant is also entitled to notice of any facts which

will be judicially noticed by the commission. *J K & J, Inc. v. Nebraska Liquor Control Commission*, 194 Neb. 413, 231 N.W.2d 694 (1975).

The Nebraska State Racing Commission could properly take judicial notice that the electrical device in possession of jockey was designed to increase or decrease the speed of a horse. *Durousseau v. Nebraska State Racing Commission*, 194 Neb. 288, 231 N.W.2d 566 (1975).

4. Miscellaneous

Pursuant to subsection (5) of this section, a district court, in its de novo review of a disciplinary adjudication by the Department of Health and Human Services, properly took into consideration the expert opinions of the Director of Health and Human Services because the director was not substituting his expert knowledge for evidence in the record of the hearing; rather, the director used his experience and knowledge in evaluating the facts in the record. Pursuant to subsection (5) of this section, notification of parties is required when an agency intends to take notice of facts within its specialized knowledge; however, notification of parties is not required when an agency merely utilizes its expertise in evaluating evidence presented to it. *Langvardt v. Horton*, 254 Neb. 878, 581 N.W.2d 60 (1998).

Policy behind this statute is to give full and fair warning of Public Service Commission’s intention to take notice of a matter so as to avoid prejudice or surprise. In this case method of taking notice may have been technically improper; nonetheless, taking notice caused no unfair surprise or prejudice to the parties and therefore was permissible. In re Application of *ATS Mobile Telephone*, 213 Neb. 403, 330 N.W.2d 123 (1983).

Presumed that Department of Banking offered only records or documents in its possession of which it desired to avail itself, and any not offered were not considered. *Douglas County Bank v. Department of Banking*, 187 Neb. 545, 192 N.W.2d 401 (1971).

Study based on information compiled from unsworn statements and involving many judgment decisions wherein basic

data used was not available at the time of hearing could not be used to sustain action of State Board of Equalization and Assessment. *County of Sarpy v. State Board of Equalization & Assessment*, 185 Neb. 760, 178 N.W.2d 765 (1970); *County of Sioux v. State Board of Equalization & Assessment*, 185 Neb. 741, 178 N.W.2d 754 (1970).

An agency is required to make an official record containing all the factual information or evidence required to be determined after an agency hearing. *County of Lancaster v. State Board of Equalization & Assessment*, 180 Neb. 497, 143 N.W.2d 885 (1966); *County of Brown v. State Board of Equalization &*

Assessment, 180 Neb. 487, 143 N.W.2d 896 (1966); *County of Blaine v. State Board of Equalization & Assessment*, 180 Neb. 471, 143 N.W.2d 880 (1966).

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

84-915 Contested cases; orders; findings of fact; conclusions of law; notification.

Every decision and order adverse to a party to the proceeding, rendered by an agency in a contested case, 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 and accompanying findings and conclusions shall be delivered or mailed upon request to each party or his or her attorney of record.

Source: Laws 1959, c. 456, § 8, p. 1513; Laws 1987, LB 253, § 17.

- 1. Sufficiency
- 2. Miscellaneous

1. Sufficiency

In order to provide a clear basis for an order granting or denying an instream flow application, the Director of Water Resources is required to discuss each of the elements listed in section 46-2,115. However, the director is not required to include, as part of his public interest analysis, to discuss forgone uses. An order which does no more than state its ultimate conclusion -- "application granted" or "application denied" -- clearly fails to provide a sufficient basis for the order. An order which fails to make findings on each required element also fails to provide a sufficient basis for the order. *Central Platte NRD v. State of Wyoming*, 245 Neb. 439, 513 N.W.2d 847 (1994).

Conclusions of law found sufficient when considered with findings of fact. *Douglas County Bank v. Department of Banking*, 187 Neb. 545, 192 N.W.2d 401 (1971).

Findings of fact in order entered by Director of Motor Vehicles are sufficient if they consist of a concise statement of the conclusions upon each contested issue of fact. *Doran v. Johns*, 186 Neb. 321, 182 N.W.2d 900 (1971).

Findings of fact must show validity of order; failure to make findings of fact and conclusions of law in implied consent proceeding caused order to be set aside on appeal. *Prigge v. Johns*, 184 Neb. 103, 165 N.W.2d 559 (1969).

Every decision under this act must be in writing, and shall make findings of fact and conclusions of law. *County of Lancaster v. State Board of Equalization & Assessment*, 180 Neb. 497, 143 N.W.2d 885 (1966); *County of Brown v. State Board of Equalization & Assessment*, 180 Neb. 487, 143 N.W.2d 896 (1966); *County of Blaine v. State Board of Equalization & Assessment*, 180 Neb. 471, 143 N.W.2d 880 (1966).

State Railway Commission is required in a final order to make findings of fact and conclusions of law. *Yellow Cab Co. v. Nebraska State Railway Commission*, 176 Neb. 711, 127 N.W.2d 211 (1964).

Under this section, the State Railway Commission is required to make findings of fact and conclusions of law in cases before it. *Yellow Cab Co. v. Nebraska State Railway Commission*, 175 Neb. 150, 120 N.W.2d 922 (1963).

Findings made by State Railway Commission were sufficient to comply with this section. *Young v. Morgan Drive Away, Inc.*, 171 Neb. 784, 107 N.W.2d 752 (1961).

2. Miscellaneous

Chapter 84, article 9, applies to agencies of state government, not to city zoning board of adjustment. *South Maple Street Assn. v. Board of Adjustment*, 194 Neb. 118, 230 N.W.2d 471 (1975).

State Railway Commission may correct findings to comply with this section without giving notice of hearing. *Petroleum Transp. Co. v. All Class I Rail Carriers*, 173 Neb. 564, 114 N.W.2d 34 (1962).

On appeal from order of State Railway Commission, time commenced to run from date of mailing of notice of order. *Denver Chicago Transp. Co., Inc. v. Poulson*, 172 Neb. 862, 112 N.W.2d 410 (1961).

Order of railway commission that fails to make findings of ultimate facts is irregular and will be set aside upon appeal. *Basin Truck Co. v. All Class I Rail Carriers*, 172 Neb. 28, 108 N.W.2d 388 (1961).

84-915.01 Official record of contested cases; agency maintain; contents; use.

(1) An agency shall maintain an official record of each contested case under the Administrative Procedure Act for at least four years following the date of the final order.

(2) The agency record shall consist only of:

- (a) Notices of all proceedings;
 - (b) Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the agency pertaining to the contested case;
 - (c) The record of the hearing before the agency, including all exhibits and evidence introduced during such hearing, a statement of matters officially noticed by the agency during the proceeding, and all proffers of proof and objections and rulings thereon; and
 - (d) The final order.
- (3) Except as otherwise provided by law, the physical custody of the agency record shall be maintained by the agency. The agency shall permit the parties to inspect the agency record and obtain copies of the agency record.
- (4) Except as otherwise provided by law, the agency record shall constitute the exclusive basis for agency action in contested cases under the act and for judicial review thereof.

Source: Laws 1994, LB 446, § 36; Laws 2006, LB 1115, § 41.

84-916 Act; intent.

The Administrative Procedure Act is intended to constitute an independent act establishing minimum administrative procedure for all agencies.

Source: Laws 1959, c. 456, § 10, p. 1514; Laws 1987, LB 253, § 18.

The purpose of this act is to establish a minimum administrative procedure. County of Lancaster v. State Board of Equalization & Assessment, 180 Neb. 497, 143 N.W.2d 885 (1966); County of Brown v. State Board of Equalization & Assessment, 180 Neb. 487, 143 N.W.2d 896 (1966); County of Blaine v. State Board of Equalization & Assessment, 180 Neb. 471, 143 N.W.2d 880 (1966).

84-917 Contested case; appeal; right to cross-appeal; procedure.

- (1) Any person aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, shall be entitled to judicial review under the Administrative Procedure Act. Nothing in this section shall be deemed to prevent resort to other means of review, redress, or relief provided by law.
- (2)(a)(i) Proceedings for review shall be instituted by filing a petition in the district court of the county where the action is taken within thirty days after the service of the final decision by the agency. All parties of record shall be made parties to the proceedings for review. A party of record for district court proceedings for review shall include any person who appeared either personally or through an attorney, who was a participant in the agency's contested hearing, and who was treated as a party by the agency's hearing officer. If an agency's only role in a contested case is to act as a neutral factfinding body, the agency shall not be a party of record. In all other cases, the agency shall be a party of record. Summons shall be served on the agency within thirty days of the filing of the petition in the manner provided for service of a summons in section 25-510.02. Summons on any nongovernmental parties shall be served within thirty days of the filing of the petition in the manner provided for service of summons in a civil action. If the agency whose decision is appealed from is not a party of record, the petitioner shall serve a copy of the petition and a request for preparation of the official record upon the agency within thirty days of the filing of the petition. The court, in its discretion, may permit other interested persons to intervene.

(ii) The filing of a petition for review shall vest in a responding party of record the right to a cross-appeal against any other party of record. A respondent shall serve its cross-appeal within thirty days after being served with the summons and petition for review.

(b) A petition for review shall set forth: (i) The name and mailing address of the petitioner; (ii) the name and mailing address of the agency whose action is at issue; (iii) identification of the final decision at issue together with a duplicate copy of the final decision; (iv) identification of the parties in the contested case that led to the final decision; (v) 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 such agency shall not stay enforcement of a decision. The agency may order a stay. The court may order a stay after notice of the application therefor to such agency and to all parties of record. If the agency has found that its action on an application for stay or other temporary remedies is justified to protect against a substantial threat to the public health, safety, or welfare, the court may not grant relief unless the court finds that: (a) The applicant is likely to prevail when the court finally disposes of the matter; (b) without relief, the applicant will suffer irreparable injuries; (c) the grant of relief to the applicant will not substantially harm other parties to the proceedings; and (d) the threat to the public health, safety, or welfare relied on by the agency is not sufficiently serious to justify the agency's action in the circumstances. The court may require the party requesting such stay to give bond in such amount and conditioned as the court may direct.

(4) Within thirty days after service of the petition or within such further time as the court for good cause shown may allow, the agency shall prepare and transmit to the clerk of the district court in which the petition is filed a certified copy of the official record of the proceedings had before the agency. Such 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 agency pertaining to the contested case; (c) the transcribed record of the hearing before the agency, including all exhibits and evidence introduced during such hearing, a statement of matters officially noticed by the agency during the proceeding, and all proffers of proof and objections and rulings thereon; and (d) the final order appealed from. The agency 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. The agency may require payment or bond prior to the transmittal of the record. The official record shall be considered by the court without being offered and received in evidence.

(5)(a) The review shall be conducted by the court without a jury de novo on the record of the agency. The court may affirm, reverse, or modify the decision of the agency or remand the case for further proceedings.

(b)(i) If the court determines that the interest of justice would be served by the resolution of any other issue not raised before the agency, the court may remand the case to the agency for further proceedings.

(ii) The agency shall affirm, modify, or reverse its findings and decision in the case by reason of the additional proceedings and shall file the decision following remand with the reviewing court. The agency shall serve a copy of the decision following remand upon all parties to the district court proceedings. The agency decision following remand shall become final unless a petition for further review is filed with the reviewing court within thirty days after the decision following remand being filed with the district court. The party filing the petition for further review shall serve a copy of the petition for further review upon all parties to the district court proceeding in accordance with the rules of pleading in civil actions promulgated by the Supreme Court pursuant to section 25-801.01 within thirty days after the petition for further review is filed. Within thirty days after service of the petition for further review or within such further time as the court for good cause shown may allow, the agency shall prepare and transmit to the court a certified copy of the official record of the additional proceedings had before the agency following remand.

(6) The review provided by this section shall not be available in any case where other provisions of law prescribe the method of appeal.

Source: Laws 1963, c. 531, § 1, p. 1664; Laws 1969, c. 838, § 2, p. 3162; Laws 1983, LB 447, § 102; Laws 1987, LB 253, § 19; Laws 1988, LB 352, § 186; Laws 1989, LB 213, § 1; Laws 1997, LB 165, § 5; Laws 2006, LB 1115, § 42; Laws 2008, LB1014, § 69; Laws 2009, LB35, § 32; Laws 2020, LB889, § 1.

- 1. Applicability of section
- 2. Review by court
- 3. Jurisdictional prerequisites
- 4. Miscellaneous

1. Applicability of section

An inmate’s petition for the reclassification of custody level from medium custody to minimum custody did not involve a “contested case” and was thus not subject to judicial review under the Administrative Procedure Act. *Purdie v. Nebraska Dept. of Corr. Servs.*, 292 Neb. 524, 872 N.W.2d 895 (2016).

Sections 84-917 to 84-919 govern appeals from rulings of the State Racing Commission. *B.T. Energy Corp. v. Marcus*, 222 Neb. 207, 382 N.W.2d 616 (1986).

This section covers appeal to district court by the children of a crime victim from a denial of their application to the Nebraska Crime Victim’s Reparations Board. *Lambert v. Nebraska Cr. Vict. Rep. Bd.*, 214 Neb. 817, 336 N.W.2d 320 (1983).

Review of orders of the Department of Public Welfare is governed by the criteria of this section. *Gosney v. Department of Public Welfare*, 206 Neb. 137, 291 N.W.2d 708 (1980).

The State Board of Education hearing appeals under section 79-1103.05 acts in a quasi-judicial capacity and, therefore either party may appeal its decision under this section or under section 25-1901. *Richardson v. Board of Education*, 206 Neb. 18, 290 N.W.2d 803 (1980).

Section 71-1,132.34 provides a specific method of appeal to the district court for the Board of Nursing and whether this section affords an alternative method is not decided. *Scott v. State ex rel. Board of Nursing*, 196 Neb. 681, 244 N.W.2d 683 (1976).

This section governs appeal by licensee from order of suspension by the Nebraska Liquor Control Commission. *Happy Hour, Inc. v. Nebraska Liquor Control Commission*, 186 Neb. 533, 184 N.W.2d 630 (1971).

This section governs proper venue of an appeal from a license suspension ordered by the Nebraska Liquor Control Commission. *The Flamingo, Inc. v. Nebraska Liquor Control Commission*, 185 Neb. 22, 173 N.W.2d 369 (1969).

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

2. Review by court

When reviewing an order of the district court under the Administrative Procedure Act for errors appearing on the record, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. Even under the ordinary standard of review for judicial review actions under the Administrative Procedure Act, an appellate court will not substitute its factual findings for those of the district court where competent evidence supports the district court’s findings. An appellate court will not impose a less deferential standard for a district court’s factual findings on plain error review than under ordinary standard of review for judicial review actions under the Administrative Procedure Act. *Swicord v. Police Stds. Adv. Council*, 309 Neb. 43, 958 N.W.2d 388 (2021).

A proceeding in district court, pursuant to the Administrative Procedure Act, for review of a decision by an administrative agency is not an “appeal” in the strict sense of the term, meaning the power and authority conferred upon a superior court to reexamine and redetermine causes tried in inferior courts, but, rather, is the institution of a suit to obtain judicial branch review of a nonjudicial branch decision. *Kozal v. Nebraska Liquor Control Comm.*, 297 Neb. 938, 902 N.W.2d 147 (2017).

In a review de novo on the record, a district court is not limited to a review subject to the narrow criteria found in subdivision (6)(a) of this section, but is required to make independent factual determinations based upon the record and reach its own independent conclusions with respect to the

matters at issue. *Medicine Creek v. Middle Republican NRD*, 296 Neb. 1, 892 N.W.2d 74 (2017).

Upon an appeal from an order of a natural resources district, a district court reviews the natural resources district's decision de novo on the record of the natural resources district. *Medicine Creek v. Middle Republican NRD*, 296 Neb. 1, 892 N.W.2d 74 (2017).

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

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

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

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

It constitutes plain error for a district court to conduct a review under subsection (6)(a) of this section where the proceedings for review of an administrative hearing are initiated after July 1, 1989. *Zwygart v. State*, 270 Neb. 41, 699 N.W.2d 362 (2005).

An application to the Nebraska Quality Jobs Board is not a "contested case" requiring review pursuant to this section. *Wasikowski v. Nebraska Quality Jobs Bd.*, 264 Neb. 403, 648 N.W.2d 756 (2002).

Pursuant to subsection (5)(a) of this section, the standard of review that courts without a jury must apply to clearly contested cases that are quasi-judicial in nature filed on or after July 1, 1989, is de novo on the record of the agency. *Langvardt v. Horton*, 254 Neb. 878, 581 N.W.2d 60 (1998).

Pursuant to subsection (5) of this section, the district court's review of a decision of the Department of Insurance is de novo on the record. *Norwest Corp. v. State, Dept. of Insurance*, 253 Neb. 574, 571 N.W.2d 628 (1997).

Pursuant to subsection (5)(a) of this section, in reviewing a final decision of an administrative agency in a contested case under the Administrative Procedure Act, a court may not take judicial notice of an adjudicative fact which was not presented to the agency because the taking of such evidence would impermissibly expand the court's statutory scope of review "de novo on the record of the agency". *Wolgammott v. Abramson*, 253 Neb. 350, 570 N.W.2d 818 (1997).

Pursuant to this section, a district court is required to conduct a true de novo review of agency determinations on the record of the agency. *Slack Nsg. Home v. Department of Soc. Servs.*, 247 Neb. 452, 528 N.W.2d 285 (1995).

Where the proceedings for review of an administrative hearing are initiated in the district court after July 1, 1989, the review will be conducted by the district court "without a jury de novo on the record of the agency" as required by this section. *Styskal v. Wright*, 246 Neb. 513, 519 N.W.2d 543 (1994).

Under subsection (5)(a) of this section, an appeal to the district court of a decision by the State Personnel Board is reviewed on the record of the agency if the petition was filed in district court before July 1, 1989. *Nebraska Dept. of Correctional Servs. v. Hansen*, 238 Neb. 233, 470 N.W.2d 170 (1991).

In an appeal from an administrative agency taken under this section of the Administrative Procedure Act, the district court's review is limited to determining whether the agency's action is (1) in violation of constitutional provisions, (2) in excess of the statutory authority or jurisdiction of the agency, (3) made upon

unlawful procedure, (4) affected by other errors of law, (5) unsupported by competent, material, and substantial evidence in view of the entire record as made on review, or (6) arbitrary or capricious; however, the Nebraska Supreme Court reviews the district court's decision de novo on the record made before the agency. *Meier v. State*, 227 Neb. 376, 417 N.W.2d 771 (1988).

Although the Supreme Court reviews an agency's decision under the Administrative Procedure Act de novo on the record, a district court's standard of review is prescribed by subsection (6) of this section. *Haeffner v. State*, 220 Neb. 560, 371 N.W.2d 658 (1985).

Under this section, where a judicial review is made of the decision of an administrative agency, the reviewing court is authorized to consider the validity of the agency's criterion in order to assess whether the decision was within the statutory authority or jurisdiction of the agency. *Beatrice Manor v. Department of Health*, 219 Neb. 141, 362 N.W.2d 45 (1985).

Review under sections 84-917 to 84-919 by the Supreme Court is limited to a review of the record created before the administrative agency in question. *Adams Central School Dist. v. Deist*, 214 Neb. 307, 334 N.W.2d 775 (1983).

The district court review of order of State Personnel Board is limited to record of agency. Therefore, objections to appellant's requests in district court for discovery were properly sustained. *Devine v. Dept. of Public Institutions*, 211 Neb. 113, 317 N.W.2d 783 (1982).

In appeal from the Liquor Control Commission, the Supreme Court determines only whether findings of the commission are supported by substantial evidence and whether district court applied the proper statutory criteria. *The 20's, Inc. v. Nebraska Liquor Control Commission*, 190 Neb. 761, 212 N.W.2d 344 (1973).

The power of courts to review the action of a professional board of examiners in its refusal to recommend reinstatement of a revoked license is not decided, but if such power exists, it is limited to a determination based on whether or not the board's action was arbitrary or capricious. *Coil v. Department of Health*, 189 Neb. 606, 204 N.W.2d 167 (1973).

Review under the Administrative Procedure Act is on the record of the agency only. *Harnett v. City of Omaha*, 188 Neb. 449, 197 N.W.2d 375 (1972).

Under subdivision (5)(b) of this section, the district court has the discretion to remand a cause to the agency for resolution of issues that were not raised before the agency if the court determines that the interest of justice would be served by resolution of such issues. *Barrios v. Commissioner of Labor*, 25 Neb. App. 835, 914 N.W.2d 468 (2018).

An assignment of error concerning a witness's testimony and evidence was not considered on appeal, because the complaining party did not raise or discuss the issue in its petition for review filed with the district court. *Nebraska Pub. Advocate v. Nebraska Pub. Serv. Comm.*, 19 Neb. App. 596, 815 N.W.2d 192 (2012).

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

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

A district court conducting a review under subsection (5)(a) of this section cannot base a reversal of the agency decision under review on grounds not raised in the petition for review. *Moore v. Nebraska Dept. of Corr. Servs. Appeals Bd.*, 8 Neb. App. 69, 589 N.W.2d 861 (1999).

3. Jurisdictional prerequisites

Pursuant to subdivision (2)(a) of this section, service is required within 30 days of necessary parties to an agency action—including nongovernmental parties of record and, if the agency is a party of record, the agency through the Attorney General—in order to initiate a judicial review, and such service is an issue of subject matter jurisdiction. *Omaha Expo. & Racing v. Nebraska State Racing Comm.*, 307 Neb. 172, 949 N.W.2d 183 (2020).

The requirement under this section that a petitioner make all “parties of record” in the agency proceeding parties to the proceeding for review is necessary to confer subject matter jurisdiction on the district court. *Kozal v. Nebraska Liquor Control Comm.*, 297 Neb. 938, 902 N.W.2d 147 (2017).

For a district court to have jurisdiction over an administrative agency’s decision, that decision must be final. *Big John’s Billiards, Inc. v. Balka*, 254 Neb. 528, 577 N.W.2d 294 (1998).

On an appeal from an adverse decision of an administrative agency, subsection (2)(a) of this section requires that a summons be served within 30 days of the filing of a petition for review as a prerequisite to the exercise by the district court of its subject matter jurisdiction. *Concordia Teachers College v. Neb. Dept. of Labor*, 252 Neb. 504, 563 N.W.2d 345 (1997).

Under subsection (2)(a) of this section, if the agency whose decision is appealed from is not a party of record, it is a jurisdictional prerequisite that the petitioner serve a copy of the petition and a request for preparation of the official record upon the agency within 30 days of the filing of the petition. *Payne v. Nebraska Dept. of Corr. Servs.*, 249 Neb. 150, 542 N.W.2d 694 (1996).

The filing of the petition and the service of summons are the two actions that are necessary to establish jurisdiction pursuant to the Administrative Procedure Act. The filing of the transcript is not jurisdictional. *James v. Harvey*, 246 Neb. 329, 518 N.W.2d 150 (1994).

For district court to obtain jurisdiction under this section, petition must be filed and summonses must be issued during the appeal period. *Norris P.P. Dist. v. State ex rel. Jones*, 183 Neb. 489, 161 N.W.2d 869 (1968).

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

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

The filing of the petition and the service of summons pursuant to this section are the two actions necessary to establish the jurisdiction of the district court to review the final decision of an administrative agency. *McLaughlin v. Jefferson Cty. Bd. of Equal.*, 5 Neb. App. 781, 567 N.W.2d 794 (1997).

Pursuant to subsection (2)(a) of this section, timely service of a request for the preparation of the official record upon the agency is mandatory to confer jurisdiction on the district court. *Payne v. Nebraska Dept. of Corr. Servs.*, 3 Neb. App. 969, 536 N.W.2d 656 (1995).

4. Miscellaneous

When evaluating whether an agency is a neutral fact finder, appellate courts look to the agency’s actions as to the dispute at issue, the statutory basis upon which the agency was acting, and the participation of the agency in the matters surrounding the dispute. *Omaha Expo. & Racing v. Nebraska State Racing Comm.*, 307 Neb. 172, 949 N.W.2d 183 (2020).

Service on nongovernmental entities under subdivision (2)(a)(i) of this section is required within 30 days of the filing of the petition. *Candyland, LLC v. Nebraska Liquor Control Comm.*, 306 Neb. 169, 944 N.W.2d 740 (2020).

The Administrative Procedure Act does not limit a district court’s general original jurisdiction. *Webb v. Nebraska Dept. of Health & Human Servs.*, 301 Neb. 810, 920 N.W.2d 268 (2018).

Because the Administrative Procedure Act is a procedural statute that applies to a variety of agencies and types of agency proceedings, determining which parties qualify, for purposes of this section, as “parties of record” requires looking at the nature of the administrative proceeding under review. *Kozal v. Nebraska Liquor Control Comm.*, 297 Neb. 938, 902 N.W.2d 147 (2017).

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

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

Where the Public Service Commission has the authority to set conditions on certifications, resolve disputes, investigate complaints, issue orders, and enforce orders, it is not a neutral factfinding body. In *re Application of Metropolitan Util. Dist.*, 270 Neb. 494, 704 N.W.2d 237 (2005).

Neither section 60-6,208 (transferred to section 60-498.04) nor subsection (2)(a) of this section provides that its jurisdictional provisions are exclusive. *Reiter v. Wimes*, 263 Neb. 277, 640 N.W.2d 19 (2002).

Subsection (5)(a) of this section does not violate the separation of powers doctrine, and *Scott v. State ex rel. Board of Nursing*, 196 Neb. 681, 244 N.W.2d 683 (1976), is overruled insofar as it implies that this statute violates the separation of powers doctrine. *Langvardt v. Horton*, 254 Neb. 878, 581 N.W.2d 60 (1998).

Subsection (3) of this section provides that upon the filing of a petition for review, an agency may order a stay or the court may order a stay. Such stay may only be granted, however, when the court finds that (1) the applicant is likely to prevail when the court finally disposes of the matter, (2) without relief, the appellant will suffer irreparable injuries, (3) the grant of relief to the applicant will not substantially harm other parties to the proceedings, and (4) the threat to the public health, safety, or welfare relied upon by the agency is not sufficiently serious to justify the agency’s action in the circumstances. Under subsection (5)(a) of this section, when a petition instituting proceedings for review under the Administrative Procedure Act is filed in the district court on or after July 1, 1989, the review shall be conducted by the court without a jury *de novo* on the record of the agency. *Miller v. Horton*, 253 Neb. 1009, 574 N.W.2d 112 (1998).

Subsection (5)(b) of this section does not empower a district court to retain jurisdiction over an action remanded by the court to an administrative agency for a new hearing. *Concordia Teachers College v. Neb. Dept. of Labor*, 252 Neb. 504, 563 N.W.2d 345 (1997).

The phrase “county where the action is taken” in subsection (2)(a) of this section refers to the site of the first adjudicated hearing of a disputed claim. *Essman v. Nebraska Law Enforcement Training Ctr.*, 252 Neb. 347, 562 N.W.2d 355 (1997).

The phrase “action taken,” as used in subsection (2) of this section, is defined by the site of the first adjudicated hearing of a disputed claim. *Metro Renovation v. State*, 249 Neb. 337, 543 N.W.2d 715 (1996).

This section makes no provision for reconsideration of the State Racing Commission’s final decision so as to toll the thirty-day appeal time within which appellants had the opportunity to avail themselves of a judicial challenge of the commission’s decision. *B.T. Energy Corp. v. Marcus*, 222 Neb. 207, 382 N.W.2d 616 (1986).

The Tax Commissioner is not a person aggrieved and therefore does not have the right to appeal a decision of the State Board of Equalization and Assessment. *Karnes v. Wilkinson Mfg.*, 220 Neb. 150, 368 N.W.2d 788 (1985).

Filing of a transcript, which is the duty of the state agency, is not jurisdictional for appeal under this section, and the appellant is not entitled to reversal of the agency decision merely because of the agency's failure to timely file a proper transcript, and the district court may order a supplemental transcript. Where appeals are taken under this section, the certified transcript as prepared by the administrative agency and transmitted to the court is considered to be before the court and need not be formally offered into evidence by either party. *Maurer v. Weaver*, 213 Neb. 157, 328 N.W.2d 747 (1982).

An appeal from an order of the director of the Department of Motor Vehicles is commenced or perfected by filing a petition within thirty days of the service of the final decision of the director and causing a summons to issue on the petition and be served within six months of such filing. Making an administrative agency a party defendant in an appeal under the provisions of § 60-420 or subsection (2) of this section is not an action against the state within the meaning of § 24-319 et seq. so as to require service of summons on the Governor and Attorney General. *Leach v. Dept. of Motor Vehicles*, 213 Neb. 103, 327 N.W.2d 615 (1982).

On appeal from State Board of Education order that county board make tuition payments for Nebraska school children attending school in South Dakota, the district court having proper jurisdiction is the one in which the state board took the action in question; that court being Lancaster County District Court. *Bd. of Ed. of Keya Paha County v. State Board of Education*, 212 Neb. 448, 323 N.W.2d 89 (1982).

If, after a district court review, an administrative agency's decision which had fallen into legal error is remanded to the agency, new evidence can be received by the agency if it is necessary, in the agency's judgment, to discharge its duty. *Phelps County Savings Co. v. Dept. of Banking & Finance*, 211 Neb. 683, 320 N.W.2d 99 (1982).

This section, in 1978, did not provide a right of appeal from a declaratory ruling of an administrative agency issued pursuant to section 84-912, R.R.S.1943. But see 1979 amendment to section 84-912, which provides such appeal. *Gretna Public School v. State Board of Education*, 201 Neb. 769, 272 N.W.2d 268 (1978).

Orders of the Department of Public Welfare made pursuant to section 68-1016, may be reviewed by petition in error as well as by appeal. *Downer v. Ihms*, 192 Neb. 594, 223 N.W.2d 148 (1974).

Prior to hearing before Director of Banking, protestants requested that rules of evidence applicable to the district court be made binding and district court on appeal made findings in accordance with applicable statute and affirmed order of the director. *Gateway Bank v. Department of Banking*, 192 Neb. 109, 219 N.W.2d 211 (1974).

Where errors assigned require review of evidence they cannot be considered on either appeal or error proceedings in absence of a bill of exceptions. *Lanc v. Douglas County Welfare Administration*, 189 Neb. 651, 204 N.W.2d 387 (1973).

Under subdivision (5)(b) of this section, where the district court, sitting as an intermediate appellate court for an agency decision, reverses a judgment in favor of a party and remands the matter for further proceedings, that party's substantial right has been affected, so as to make that order final for purposes of appeal. *Barrios v. Commissioner of Labor*, 25 Neb. App. 835, 914 N.W.2d 468 (2018).

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

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

The rebuttable presumption of validity regarding actions of administrative agencies which results in the burden of proof resting on the party challenging the agency's actions does not apply in cases involving the termination of the employment of a public employee. *Trackwell v. Nebraska Dept. of Admin. Servs.*, 8 Neb. App. 233, 591 N.W.2d 95 (1999).

In order to perfect an appeal under the Administrative Procedure Act, the party instituting the proceedings for review must file a petition in the district court for the county where the action is taken within 30 days after the service of the final decision by the agency, and cause summons to be served within 30 days of the filing of the petition. *Northern States Beef v. Stennis*, 2 Neb. App. 340, 509 N.W.2d 656 (1993).

84-918 District court decision; appeal.

(1) An aggrieved party may secure a review of any judgment rendered or final order made by the district court under the Administrative Procedure Act by appeal to the Court of Appeals.

(2) When the petition instituting proceedings for review was filed in the district court before July 1, 1989, the appeal shall be taken in the manner provided by law for appeals in civil cases and shall be heard de novo on the record.

(3) When the petition instituting proceedings for review is filed in the district court on or after July 1, 1989, the appeal shall be taken in the manner provided by law for appeals in civil cases. The judgment rendered or final order made by the district court may be reversed, vacated, or modified for errors appearing on the record.

Source: Laws 1963, c. 531, § 2, p. 1665; Laws 1987, LB 253, § 20; Laws 1989, LB 213, § 2; Laws 1991, LB 732, § 158.

1. Appeal from district court
2. Appeal from administrative agency
3. Miscellaneous

1. Appeal from district court

An appellate court lacks jurisdiction to review a judgment rendered or a final order made by the district court under this section if the district court lacked jurisdiction under section 84-917 to review the underlying petition. *Swicord v. Police Stds. Adv. Council*, 314 Neb. 816, 993 N.W.2d 327 (2023).

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

On an appeal under the Administrative Procedure Act, an appellate court reviews the judgment of the district court for errors appearing on the record and will not substitute its factual findings for those of the district court where competent evidence supports those findings. When reviewing an order of a district court under the Administrative Procedure Act for errors appearing on the record, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. *Inner Harbour Hospitals v. State*, 251 Neb. 793, 559 N.W.2d 487 (1997).

Appeals from a district court decision involving petitions filed on or after July 1, 1989, are reviewed for errors appearing on the record. *Slack Nsg. Home v. Department of Soc. Servs.*, 247 Neb. 452, 528 N.W.2d 285 (1995).

Under subsection (2) of this section, the standard of review on appeal from a declaratory judgment action filed under the Administrative Procedure Act in the district court prior to July 1, 1989, is de novo on the record. *Loewenstein v. State*, 244 Neb. 82, 504 N.W.2d 800 (1993).

An appellate court, in reviewing a judgment of the district court for errors appearing on the record, will not substitute its factual findings for those of the district court where competent evidence supports those findings. *Davis v. Wright*, 243 Neb. 931, 503 N.W.2d 814 (1993).

Appeals from the district court under the Administrative Procedure Act to the Supreme Court are reviewed de novo on the record if the district court proceeding was commenced prior to July 1, 1989. *Caudill v. Surgical Concepts, Inc.*, 236 Neb. 266, 460 N.W.2d 662 (1990).

Supreme Court reviews de novo on the record an appeal from the district court's review of a decision of the Nebraska Equal Opportunity Commission. *Father Flanagan's Boys' Home v. Goerke*, 224 Neb. 731, 401 N.W.2d 461 (1987).

On appeal of review by the district court of an order of the Nebraska Equal Opportunity Commission, the Supreme Court will not disturb the district court's findings if they are supported

by substantial evidence. *Zalkins Peerless Co. v. Nebraska Equal Opp. Comm.*, 217 Neb. 289, 348 N.W.2d 846 (1984).

Where district court had only cold record before it, the rule pertaining to Supreme Court's consideration of the opportunity of the trial court in equity to observe the witnesses is inapplicable. *C & L Co. v. Nebraska Liquor Control Commission*, 190 Neb. 91, 206 N.W.2d 49 (1973).

A final order rendered by a district court in a judicial review pursuant to the Administrative Procedure Act may be reversed, vacated, or modified by an appellate court for errors appearing on the record. *Boruch v. Nebraska Dept. of Health and Human Servs.*, 11 Neb. App. 713, 659 N.W.2d 848 (2003).

2. Appeal from administrative agency

The appropriate standard of review for the Supreme Court in an appeal from an administrative agency's decision is found in this section, which prescribes a review of an agency's decision de novo on the record without the limitation imposed on the district court under former section 84-917(6)(e) and (6)(f). *Golden Five v. Department of Soc. Serv.*, 229 Neb. 148, 425 N.W.2d 865 (1988).

The Supreme Court's review of an administrative agency's decision is de novo on the record; as such, the court makes independent findings of fact without reference to those made by the agency whose action is being reviewed. *Dieter v. State*, 228 Neb. 368, 422 N.W.2d 560 (1988); *Department of Health v. Grand Island Health Care*, 223 Neb. 587, 391 N.W.2d 582 (1986).

The Supreme Court reviews an administrative agency's decision de novo on the record. *Department of Health v. Lutheran Hosp. & Homes Soc.*, 227 Neb. 116, 416 N.W.2d 222 (1987); *Zybach v. State*, 226 Neb. 396, 411 N.W.2d 627 (1987); *City of Omaha v. Omaha Police Union Local 101*, 222 Neb. 197, 382 N.W.2d 613 (1986).

The Supreme Court's review of an agency's decision under the Administrative Procedure Act is de novo on the record. *Haefner v. State*, 220 Neb. 560, 371 N.W.2d 658 (1985).

In appeal from the Liquor Control Commission, the Supreme Court determines only whether findings of the commission are supported by substantial evidence and whether district court applied the proper statutory criteria. *The 20's, Inc. v. Nebraska Liquor Control Commission*, 190 Neb. 761, 212 N.W.2d 344 (1973).

3. Miscellaneous

In conducting its de novo review under the provisions of this section, the Nebraska Supreme Court is required to make independent findings of fact without reference to those made by the tribunal from which the appeal was taken. *Meier v. State*, 227 Neb. 376, 417 N.W.2d 771 (1988).

84-919 Act; exclusive means of judicial review.

Except as otherwise provided by law, the Administrative Procedure Act establishes the exclusive means of judicial review of a final decision of any agency in a contested case.

Source: Laws 1963, c. 531, § 3, p. 1666; Laws 1987, LB 253, § 21; Laws 1988, LB 352, § 187.

84-919.01 Negotiated Rulemaking Act; use by agency.

Prior to the formal rulemaking procedure of section 84-907, agencies may use the procedures of the Negotiated Rulemaking Act to permit the direct participation of affected persons in the development of proposed rules and regulations. Negotiated rulemaking may be used to resolve controversial issues prior to the formal rulemaking of the Administrative Procedure Act. To be effective, such proposed rules and regulations shall be adopted pursuant to the

Administrative Procedure Act in the form proposed by the negotiated rulemaking committee or as amended by the agency.

Source: Laws 1994, LB 446, § 37.

Cross References

Negotiated Rulemaking Act, see section 84-921.

84-919.02 Contested case; appeal; court review; de novo; deferral.

Any court reviewing an appeal from a contested case shall interpret the statute or rule or regulation de novo on the record and shall not defer to the agency's interpretation of such statute or rule or regulation.

Source: Laws 2024, LB43, § 13.

Operative date July 19, 2024.

84-919.03 Court on hearing officers; state agency actions.

In actions brought by or against state agencies, after applying all customary tools of interpretation of a statute or rule or regulation, the court or hearing officer shall resolve any remaining doubt in favor of a reasonable interpretation which is consistent with an individual's fundamental constitutional rights.

Source: Laws 2024, LB43, § 14.

Operative date July 19, 2024.

84-920 Act, how cited.

Sections 84-901 to 84-920, the Occupational Board Reform Act, and the Personal Privacy Protection Act shall be known and may be cited as the Administrative Procedure Act.

Source: Laws 1987, LB 253, § 22; Laws 1994, LB 446, § 38; Laws 1995, LB 490, § 191; Laws 2005, LB 373, § 8; Laws 2011, LB617, § 5; Laws 2016, LB867, § 16; Laws 2018, LB299, § 20; Laws 2024, LB43, § 16.

Operative date July 19, 2024.

Cross References

Occupational Board Reform Act, see section 84-933.

Personal Privacy Protection Act, see section 20-801.

(b) NEGOTIATED RULEMAKING ACT

84-921 Act, how cited.

Sections 84-921 to 84-932 shall be known and may be cited as the Negotiated Rulemaking Act.

Source: Laws 1994, LB 446, § 1.

84-922 Purpose of act.

The purpose of the Negotiated Rulemaking Act is to establish a framework for the conduct of negotiated rulemaking consistent with the Administrative Procedure Act. It is the intent of the Legislature that state agencies, whenever appropriate, use the negotiated rulemaking process to resolve controversial issues prior to the commencement of the formal rulemaking process of the Administrative Procedure Act. Negotiated rulemaking is not a substitute for the

requirements of the Administrative Procedure Act but may be used as a supplemental procedure to permit the direct participation of affected interests in the development of new rules or the amendment or repeal of existing rules. A consensus agreement on a proposed rule reached by a negotiated rulemaking committee may be modified by an agency as a result of the subsequent formal rulemaking process. This section shall not be construed as an attempt to limit innovation and experimentation with the negotiated rulemaking process.

Source: Laws 1994, LB 446, § 2.

Cross References

Administrative Procedure Act, see section 84-920.

84-923 Terms, defined.

For purposes of the Negotiated Rulemaking Act:

- (1) Agency shall have the same meaning as in section 84-901;
- (2) Consensus shall mean unanimous concurrence among the interests represented on a negotiated rulemaking committee unless the committee agrees upon another specified definition;
- (3) Convenor shall mean a person who impartially assists an agency in determining whether establishment of a negotiated rulemaking committee is feasible and appropriate for a particular rulemaking procedure;
- (4) Facilitator shall mean a person who impartially aids in the discussions and negotiations among the members of a negotiated rulemaking committee to develop a proposed rule. A facilitator shall not have decisionmaking authority;
- (5) Interest shall mean, with respect to an issue or matter, multiple parties that have a similar point of view or that are likely to be affected in a similar manner;
- (6) Negotiated rulemaking shall mean rulemaking through the use of a negotiated rulemaking committee;
- (7) Negotiated rulemaking committee or committee shall mean an advisory committee established to consider and discuss issues for the purpose of reaching a consensus in the development of a proposed rule;
- (8) Person shall mean an individual, partnership, limited liability company, corporation, association, governmental subdivision, agency, or public or private organization of any character; and
- (9) Rule shall mean rule or regulation as defined in section 84-901.

Source: Laws 1994, LB 446, § 3.

84-924 Negotiated rulemaking committee; establishment; agency director; use of negotiated rulemaking procedure; determination; considerations; convenor; duties.

- (1) An agency may establish a negotiated rulemaking committee to negotiate and develop a proposed rule if the agency director determines that the use of the negotiated rulemaking procedure is in the public interest. In making that determination, the agency director shall consider whether:
 - (a) There is a need for a rule;
 - (b) There are a limited number of identifiable interests that will be significantly affected by the rule;

(c) There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who:

- (i) Can adequately represent the interests identified; and
- (ii) Are willing to negotiate in good faith to reach a consensus on the proposed rule;

(d) There is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time;

(e) The negotiated rulemaking procedure will not unreasonably delay the notice of proposed formal rulemaking and the issuance of the final rule pursuant to the Administrative Procedure Act;

(f) The agency has adequate resources and is willing to commit those resources, including technical assistance, to the committee; and

(g) The agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee as the basis for the rule proposed by the agency in the formal rulemaking process of the Administrative Procedure Act.

(2) An agency may use the services of a convenor to assist in making the determination of need pursuant to subsection (1) of this section and to assist the agency in:

(a) Identifying persons who will be significantly affected by a proposed rule; and

(b) Conducting discussions with affected persons on the issues of concern and ascertaining whether the establishment of a negotiated rulemaking committee is feasible and appropriate for the particular rulemaking.

(3) The convenor shall report findings and make recommendations to the agency. Upon request of the agency, the convenor shall ascertain the names of persons who are willing and qualified to represent the interests that will be significantly affected by the proposed rule. The report and any recommendations of the convenor shall be made available to the public upon request.

Source: Laws 1994, LB 446, § 4.

Cross References

Administrative Procedure Act, see section 84-920.

84-925 Petition to use negotiated rulemaking committee; procedure; exception.

(1) Except as provided in subsection (2) of this section, any person may petition an agency to request the use of a negotiated rulemaking committee in the development or revision of a rule. Each agency shall prescribe the form of the petition and the procedure for its submission, consideration, and disposition. Within sixty days after submission of a petition, the agency shall (a) deny the petition in writing stating its reasons therefor or (b) initiate the negotiated rulemaking procedure.

(2) A person committed to or otherwise incarcerated in a Department of Correctional Services facility may not petition the Department of Correctional Services to request the use of a negotiated rulemaking committee.

Source: Laws 1994, LB 446, § 5.

84-926 Negotiated rulemaking committee established; agency; duties; Secretary of State; duties.

(1) If an agency decides to establish a negotiated rulemaking committee, the agency shall:

(a) Give notice to the Secretary of State; and

(b) Publish the notice in a newspaper having general circulation in the state and, as appropriate, in other newspapers and publications.

(2) The notice shall include:

(a) An announcement that the agency intends to establish a negotiated rulemaking committee to negotiate and develop a proposed rule;

(b) A description of the subject and scope of the rule to be developed and the issues to be considered;

(c) A list of interests likely to be significantly affected by the proposed rule;

(d) A list of the persons proposed to represent the affected interests and the agency;

(e) A proposed schedule for completing the work of the committee; and

(f) An explanation of how a person may apply for or nominate another person for membership on the committee.

(3) The Secretary of State shall establish and maintain a list of subscribers who wish to receive notice of an agency's intent to establish a negotiated rulemaking committee and shall provide such notice to such subscribers at a cost to be assessed against each subscriber. The Secretary of State shall collect payments and make disbursements of such funds as may be necessary to carry out the notification required by this subsection.

(4) The agency shall provide a period of at least thirty days for the submission of comments upon and applications for membership on a negotiated rulemaking committee.

Source: Laws 1994, LB 446, § 6.

84-927 Negotiated rulemaking committee; establishment; notice of decision; agency support; termination.

(1) If, after considering comments and applications for membership on the negotiated rulemaking committee submitted pursuant to section 84-926, the agency determines that a negotiated rulemaking committee can adequately represent the interests of the persons that will be significantly affected by a proposed rule and that it is feasible and appropriate in the particular rulemaking, the agency may establish a negotiated rulemaking committee.

(2) If, after considering comments and applications submitted pursuant to section 84-926, the agency decides not to establish a negotiated rulemaking committee, the agency shall notify the persons who commented on or applied for membership on the negotiated rulemaking committee of the reasons for the decision. The agency shall also publish a notice of the decision not to establish a negotiated rulemaking committee in a newspaper having general circulation in the state and, as appropriate, in other newspapers and publications.

(3) The agency shall provide appropriate administrative support to the negotiated rulemaking committee, including technical assistance and support.

(4) A negotiated rulemaking committee shall terminate upon the adoption of the final rule under consideration by the agency pursuant to the Administrative Procedure Act unless the agency, after consulting the committee, or the committee itself specifies an earlier termination date.

Source: Laws 1994, LB 446, § 7.

Cross References

Administrative Procedure Act, see section 84-920.

84-928 Negotiated rulemaking committee; membership; procedure.

(1) A negotiated rulemaking committee may by consensus expand its membership, either by contacting and recruiting persons whose participation the committee believes is essential to the success of the negotiated rulemaking process or upon reviewing a petition submitted pursuant to subsection (2) of this section.

(2) Persons who will be significantly affected by a proposed rule and who believe that their interests will not be adequately represented by any person on a negotiated rulemaking committee may petition for or nominate another person for membership on the negotiated rulemaking committee. Each petition or nomination shall be submitted to the negotiated rulemaking committee and shall include:

(a) The name of the petitioner or nominee and a description of the interests the person represents;

(b) Evidence that the petitioner or nominee is authorized to represent parties related to the interests the person proposes to represent;

(c) A written commitment that the petitioner or nominee will actively participate in good faith in the development of the rule under consideration; and

(d) An explanation of reasons that the persons already on the negotiated rulemaking committee do not adequately represent the interests of the person submitting the petition or nomination.

(3) Upon receiving a petition, a negotiated rulemaking committee shall decide by consensus at its next meeting whether or not to expand its membership.

Source: Laws 1994, LB 446, § 8.

84-929 Negotiated rulemaking committee; powers and duties; consensus; procedure; report; contents.

(1) A negotiated rulemaking committee shall consider the matter proposed by the agency for consideration and shall attempt to reach consensus concerning a proposed rule and any other matter the committee determines is relevant to the proposed rule.

(2) The person representing the agency on a negotiated rulemaking committee shall participate in the deliberations of the committee with the same rights and responsibilities of other members of the committee and shall be authorized to fully represent the agency in the discussions and negotiations of the committee.

(3) A negotiated rulemaking committee may adopt procedures or ground rules for the operation of the committee.

(4) If a negotiated rulemaking committee achieves consensus on a proposed rule at the conclusion of the negotiations, the committee shall transmit to the agency that established the committee a report containing the proposed rule.

(5) If a negotiated rulemaking committee does not reach a consensus on the proposed rule, the committee shall transmit to the agency a report specifying areas in which the committee reached consensus and the issues that remain unresolved. The committee may include in the report any other information, recommendations, or materials that the committee considers appropriate. Any member of the committee may include as an addendum to the report additional information, recommendations, or materials.

Source: Laws 1994, LB 446, § 9.

84-930 Facilitator; selection; duties.

(1) An agency may nominate a person to serve as a facilitator for the negotiations of the negotiated rulemaking committee, subject to the approval of the committee by consensus. If the committee does not approve the agency's nomination for facilitator, the agency shall submit a substitute nomination. If the committee does not approve the substitute nomination of the agency for facilitator, the committee shall select by consensus a person to serve as facilitator. A person designated to represent the agency in substantive issues may not serve as facilitator or presiding officer for the committee.

(2) A facilitator approved or selected by a negotiated rulemaking committee shall:

- (a) Preside at the meetings of the committee in an impartial manner;
- (b) Impartially assist the members of the committee in conducting discussions and negotiations and achieving consensus; and
- (c) Manage the keeping of minutes and records.

Source: Laws 1994, LB 446, § 10.

84-931 Convenor or facilitator; contract authorized; state employee; disqualification; members of negotiated rulemaking committee; expenses; per diem; grants or gifts.

(1) An agency may employ or enter into a contract for the services of an organization or individual to serve as a convenor or facilitator for a negotiated rulemaking committee or may use the services of a state employee to act as a convenor or facilitator for a committee.

(2) An agency shall determine whether a person under consideration as a convenor or facilitator of a negotiated rulemaking committee has any financial or other interest that would preclude the person from serving in an impartial and independent manner. A person disqualified under this criterion shall be dropped from further consideration.

(3) Members of a negotiated rulemaking committee shall be responsible for their own expenses of participation. However, an agency may reimburse a committee member for expenses incurred in serving on the committee as provided in sections 81-1174 to 81-1177 and a reasonable per diem rate of compensation if:

- (a) The committee member certifies a lack of adequate financial resources to participate in the committee; and

(b) The agency determines that the committee member's participation in the committee is necessary to ensure an adequate representation of the interests of the members.

(4) An agency may accept grants or gifts from any source to fund the negotiated rulemaking process if:

(a) Information on the name of the person giving the grant or gift and the amount of the grant or gift is available to the public;

(b) The grant or gift is given to and accepted by the agency without placing any condition on the membership of a negotiated rulemaking committee or the outcome of the negotiated rulemaking process; and

(c) There is consensus among the members of the negotiated rulemaking committee that the acceptance of the grant or gift will not diminish the integrity of the negotiated rulemaking process.

Source: Laws 1994, LB 446, § 11; Laws 2020, LB381, § 133.

84-932 Agency action; judicial review; limitation; negotiated rule; judicial review; treatment.

Any agency action relating to establishing, assisting, or terminating a negotiated rulemaking committee under the Negotiated Rulemaking Act shall not be subject to judicial review. Nothing in this section shall bar judicial review if such judicial review is otherwise provided by law. A rule which is the product of negotiated rulemaking prior to formal adoption pursuant to the Administrative Procedure Act and is later subject to judicial review shall not be accorded greater deference by a court than a rule which is the product of the rulemaking procedure of the Administrative Procedure Act alone.

Source: Laws 1994, LB 446, § 12.

Cross References

Administrative Procedure Act, see section 84-920.

(c) OCCUPATIONAL BOARD REFORM ACT

84-933 Act, how cited.

Sections 84-933 to 84-950 shall be known and may be cited as the Occupational Board Reform Act.

Source: Laws 2018, LB299, § 1; Laws 2024, LB16, § 4.
Effective date July 19, 2024.

84-934 Definitions, where found.

For purposes of the Occupational Board Reform Act, the definitions in sections 84-935 to 84-944.01 apply.

Source: Laws 2018, LB299, § 2; Laws 2024, LB16, § 5.
Effective date July 19, 2024.

84-935 Government certification, defined.

Government certification means a nontransferable recognition granted to an individual by an occupational board through a voluntary program in which the individual meets personal qualifications established by the Legislature. Government certification allows the certified individual to use a designated title. For

purposes of the Occupational Board Reform Act, in analyzing health professions which are subject to the Nebraska Regulation of Health Professions Act, the definition of certification in section 71-6206 applies.

Source: Laws 2018, LB299, § 3.

Cross References

Nebraska Regulation of Health Professions Act, see section 71-6201.

84-936 Lawful occupation, defined.

Lawful occupation means a course of conduct, a pursuit, or a profession that includes the sale of goods or services that are not themselves illegal to sell irrespective of whether the individual selling them is subject to an occupational regulation.

Source: Laws 2018, LB299, § 4.

84-937 Least restrictive regulation, defined.

Least restrictive regulation means one of the following types of regulation, listed from least restrictive to most restrictive, consistent with the health, safety, and welfare of the public:

- (1) Market competition;
- (2) Third-party or consumer-created ratings and reviews;
- (3) Private certification;
- (4) Specific private civil cause of action to remedy consumer harm;
- (5) Deceptive trade practices under the Uniform Deceptive Trade Practices Act;
- (6) Mandatory disclosure of attributes of the specific goods or services;
- (7) Regulation of the process of providing the specific goods or services to consumers;
- (8) Inspection;
- (9) Bonding or insurance;
- (10) Registration;
- (11) Government certification; and
- (12) Occupational license.

Source: Laws 2018, LB299, § 5.

Cross References

Uniform Deceptive Trade Practices Act, see section 87-306.

84-938 Occupational board, defined.

Occupational board means a board, commission, department, or other entity created by state law which regulates providers through occupational regulations.

Source: Laws 2018, LB299, § 6.

84-939 Occupational license, defined.

Occupational license means a nontransferable authorization in law (1) for an individual to perform exclusively a lawful occupation for compensation based

on meeting personal qualifications established by the Legislature and (2) which is required in order to legally perform the lawful occupation for compensation.

Source: Laws 2018, LB299, § 7.

84-940 Occupational regulation, defined.

(1) Occupational regulation means a statute, rule, regulation, practice, policy, or other state law requiring an individual to possess certain personal qualifications or to comply with registration requirements to use an occupational title or work in a lawful occupation.

(2) Occupational regulation includes any government certification, registration, and occupational license except as otherwise specifically provided in the Occupational Board Reform Act.

(3) Occupational regulation does not include (a) business licensure, facility licensure, building permit requirements, or zoning and land-use regulation except to the extent that the same state laws that require a business license, a facility license, a building permit, or zoning and land-use regulation also regulate an individual's personal qualifications to perform a lawful occupation, (b) an occupational license administered by the Supreme Court, or (c) an occupational credential regulated by the Nebraska Commission on Law Enforcement and Criminal Justice.

Source: Laws 2018, LB299, § 8; Laws 2024, LB16, § 12.
Effective date July 19, 2024.

84-941 Personal qualifications, defined.

Personal qualifications means criteria related to an individual's personal background and characteristics, including completion of an approved educational program, satisfactory performance on an examination, work experience, other evidence of attainment of requisite skills or knowledge, moral standing, criminal history, and completion of continuing education.

Source: Laws 2018, LB299, § 9.

84-941.01 Potentially disqualifying conviction, defined.

Potentially disqualifying conviction includes a conviction for:

(1) Criminal attempt as provided in section 28-201, conspiracy as provided in section 28-202, or aiding and abetting as provided in section 28-206, to commit an offense listed in this section;

(2) Murder as provided in sections 28-303 or 28-304;

(3) Manslaughter as provided in section 28-305;

(4) Motor vehicle homicide as provided in section 28-306;

(5) Assault in the first or second degree as provided in sections 28-308 and 28-309;

(6) Terroristic threats as provided in section 28-311.01;

(7) Stalking as provided in section 28-311.03;

(8) Kidnapping as provided in section 28-313;

(9) False imprisonment as provided in sections 28-314 and 28-315;

(10) A sexual act subject to criminal penalties as provided in sections 28-317 to 28-322.05;

- (11) Domestic assault as provided in section 28-323;
- (12) Robbery as provided in section 28-324;
- (13) Arson as provided in sections 28-502, 28-503, and 28-504;
- (14) Fraud subject to criminal penalties as provided in sections 28-505, 28-631, 28-638, 28-639, 28-640, and 28-935;
- (15) Theft as provided in sections 28-511, 28-512, 28-513, and 28-515;
- (16) Forgery as provided in sections 28-602 and 28-603;
- (17) Incest as provided in section 28-703;
- (18) Child abuse as provided in section 28-707;
- (19) Human trafficking, labor trafficking, sex trafficking, labor trafficking of a minor, or sex trafficking of a minor as provided in section 28-831;
- (20) False reporting as provided in section 28-907;
- (21) Perjury as provided in section 28-915;
- (22) Assault on an officer, an emergency responder, certain employees, or a health care professional in the first degree as provided in section 28-929;
- (23) Assault on an officer, an emergency responder, certain employees, or a health care professional in the second degree as provided in section 28-930;
- (24) Assault on an officer, an emergency responder, certain employees, or a health care professional in the third degree as provided in section 28-931;
- (25) Assault on an officer, an emergency responder, certain employees, or a health care professional using a motor vehicle as provided in section 28-931.01;
- (26) An offense that has as an element the threat to inflict serious bodily injury as defined in section 28-109 or death on another person, the intentional infliction of serious bodily injury as defined in section 28-109 on another person, or intentionally causing the death of another person;
- (27) An offense for which registration is required under the Sex Offender Registration Act; or
- (28) Any offense under the laws of another jurisdiction that is substantially equivalent to any of the offenses listed in this section.

Source: Laws 2024, LB16, § 6.
Effective date July 19, 2024.

Cross References

Sex Offender Registration Act, see section 29-4001.

84-942 Private certification, defined.

Private certification means a nontransferable recognition granted to an individual by a private organization through a voluntary program in which the individual meets personal qualifications established by the private organization.

Source: Laws 2018, LB299, § 10.

84-943 Provider, defined.

Provider means an individual provider of goods or services engaged in a lawful occupation.

Source: Laws 2018, LB299, § 11.

84-944 Registration, defined.

(1) Registration means a nontransferable registration granted to an individual under which (a) the individual is required to give notice to the government that may include the individual's name and address, the individual's agent for service of process, the location of the activity to be performed, and a description of the service the individual provides, (b) upon receipt of the notice by the government, the individual may use the term registered as a designated title to engage in a lawful occupation, and (c) such notice is required to engage in the lawful occupation for compensation and is required in order to use the term registered as a designated title to engage in the lawful occupation.

(2) Registration may require a bond or insurance.

(3) For purposes of the Occupational Board Reform Act, in analyzing health professions which are subject to the Nebraska Regulation of Health Professions Act, the definition of registration in section 71-6217 applies.

Source: Laws 2018, LB299, § 12.

Cross References

Nebraska Regulation of Health Professions Act, see section 71-6201.

84-944.01 United States Military, defined.

United States Military means any active duty or reserve duty component of the armed forces of the United States, any state of the United States, or any territory of the United States.

Source: Laws 2024, LB16, § 7.
Effective date July 19, 2024.

84-945 Use of terms certification, certified, registration, and registered; how construed.

For purposes of the Occupational Board Reform Act:

(1) Government certification and registration are not synonymous with occupational license;

(2) Except as provided in section 84-935, when the terms certification and certified are used outside of the Occupational Board Reform Act to mean a requirement that an individual meet certain personal qualifications to work legally, those terms in that context shall be interpreted for purposes of the Occupational Board Reform Act as requiring an individual to meet the requirements for an occupational license; and

(3) Except as provided in section 84-944, when the terms registration and registered are used outside of the Occupational Board Reform Act to mean a requirement that an individual meet certain personal qualifications to work legally, those terms in that context shall be interpreted for purposes of the Occupational Board Reform Act as requiring an individual to meet the requirements for an occupational license.

Source: Laws 2018, LB299, § 13.

84-945.01 Precedence of federal law.

To the extent that an occupational board or lawful occupation is also governed by federal law, federal law shall take precedence over the Occupa-

tional Board Reform Act. The act shall not be construed to preempt federal law governing lawful occupations in this state.

Source: Laws 2024, LB16, § 8.

Effective date July 19, 2024.

84-946 Statement of policy.

It is the policy of the State of Nebraska:

(1) To protect the fundamental right of an individual to pursue a lawful occupation;

(2) To use the least restrictive regulation which is necessary to protect consumers from undue risk of present, significant, and substantiated harms that clearly threaten or endanger the health, safety, or welfare of the public when competition alone is not sufficient and which is consistent with the public interest;

(3) To enforce an occupational regulation against an individual only to the extent that the individual sells goods or services that are included explicitly in the statutes that govern the occupation;

(4) To construe and apply occupational regulations to increase opportunities, promote competition, and encourage innovation;

(5) To use the least restrictive method of regulation as set out in section 71-6222 for lawful occupations subject to the Nebraska Regulation of Health Professions Act; and

(6) To provide ongoing legislative review of occupational regulations.

Source: Laws 2018, LB299, § 14.

Cross References

Nebraska Regulation of Health Professions Act, see section 71-6201.

84-946.01 Applicability of sections.

Sections 84-947, 84-949, and 84-950 do not apply to:

(1) An occupation regulated by:

(a) The Supreme Court;

(b) The Department of Banking and Finance;

(c) The Board of Engineers and Architects;

(d) The Board of Geologists;

(e) The Real Property Appraiser Board;

(f) The State Electrical Board;

(g) The Nebraska Commission on Law Enforcement and Criminal Justice; or

(h) The State Real Estate Commission; or

(2) A credential issued for:

(a) A certified public accountant pursuant to the Public Accountancy Act;

(b) An insurance consultant pursuant to sections 44-2606 to 44-2635;

(c) An insurance producer pursuant to the Insurance Producers Licensing Act;

(d) A professional landscape architect pursuant to the Professional Landscape Architects Act;

- (e) A managing general agent pursuant to the Managing General Agents Act;
- (f) A public adjuster pursuant to the Public Adjusters Licensing Act;
- (g) A reinsurance intermediary-broker or reinsurance intermediary-manager pursuant to the Reinsurance Intermediary Act;
- (h) A surplus lines producer pursuant to the Surplus Lines Insurance Act;
- (i) A utilization review agent pursuant to the Utilization Review Act;
- (j) A viatical settlement broker pursuant to the Viatical Settlements Act; or
- (k) A physician or osteopathic physician pursuant to the Medicine and Surgery Practice Act.

Source: Laws 2024, LB16, § 9.

Effective date July 19, 2024.

Cross References

Insurance Producers Licensing Act, see section 44-4047.
Managing General Agents Act, see section 44-4901.
Medicine and Surgery Practice Act, see section 38-2001.
Professional Landscape Architects Act, see section 81-8,183.01.
Public Accountancy Act, see section 1-105.
Public Adjusters Licensing Act, see section 44-9201.
Reinsurance Intermediary Act, see section 44-5601.
Surplus Lines Insurance Act, see section 44-5501.
Utilization Review Act, see section 44-5416.
Viatical Settlements Act, see section 44-1101.

84-947 Individual with criminal conviction; submit preliminary application; occupational board; duties; determination; appeal; fee.

(1) The fundamental right of an individual to pursue an occupation includes the right of an individual with a criminal history to obtain an occupational license, government certification, or state recognition of the individual's personal qualifications.

(2)(a) An individual who has a criminal conviction under the laws of Nebraska or any other jurisdiction may submit to the appropriate occupational board a preliminary application for an occupational license, government certification, or state recognition of the individual's personal qualifications for a determination as to whether the individual's criminal conviction would disqualify the individual from obtaining the occupational license, government certification, or state recognition of the individual's personal qualifications from that occupational board. The preliminary application may be submitted at any time, including prior to obtaining required education or paying any fee, other than the fee for the preliminary application under subsection (9) of this section.

(b) The individual may include with the preliminary application additional information about the individual's circumstances at the time of the application, mitigating factors, and other evidence of rehabilitation, including:

- (i) The age of the individual when the individual committed the offense;
- (ii) The time elapsed since the offense;
- (iii) The circumstances and nature of the offense;
- (iv) The completion of the criminal sentence;
- (v) The completion of, or active participation in, rehabilitative drug or alcohol treatment or individual counseling;
- (vi) Testimonials and recommendations, which may include a progress report from the individual's probation or parole officer;

- (vii) Other evidence of rehabilitation;
- (viii) Education and training;
- (ix) Employment history;
- (x) Employment aspirations;
- (xi) Family responsibilities at the time of the application;
- (xii) Whether the individual is required to be bonded in the occupation; and
- (xiii) Any other information the individual deems appropriate.

(3) Upon receipt of a preliminary application under subsection (2) of this section and a fee if required under subsection (9) of this section, the appropriate occupational board shall make a determination of whether the individual's criminal conviction would disqualify the individual from obtaining an occupational license, government certification, or state recognition of the individual's personal qualifications from that occupational board in accordance with subsection (4) of this section. In making such determination, an individual's criminal history disqualifies the individual from obtaining an occupational license, government certification, or state recognition of the individual's personal qualifications only if:

(a) The individual's conviction directly and specifically relates to the duties and responsibilities of the occupation;

(b) The individual obtaining such license, certification, or state recognition would pose a direct and substantial risk to public safety because the individual has not been rehabilitated, as evidenced by information described in subdivision (2)(b) of this section, to safely perform the duties and responsibilities of the occupation; and

(c) Beginning January 1, 2025, the individual has a potentially disqualifying conviction.

(4) In determining whether an individual's criminal history is disqualifying under subsection (3) of this section, the occupational board shall only make an adverse determination after:

(a) The executive director or employee designee of the occupational board issues a preliminary adverse determination after completing the following actions:

(i) Providing an opportunity for an informal meeting with the individual, which shall be held in-person, by remote video, or by teleconference within sixty days after receiving an application for consideration. The individual shall be allowed to include character witnesses at such informal meeting. The executive director or employee designee shall not make an adverse determination based on an individual's decision not to attend an informal meeting or not to include character witnesses; and

(ii) Issuing and submitting a written preliminary determination to the appropriate occupational board for consideration and ratification within sixty days after receiving the preliminary application for consideration or after the informal meeting, whichever is later. A preliminary adverse decision shall not become final without consideration and ratification by the appropriate occupational board; and

(b) The occupational board ratifies the preliminary adverse determination and issues a final adverse determination in writing within ninety days after the issuance of the preliminary adverse determination.

(5) The determination of the occupational board shall include findings of fact and conclusions of law, including clear and convincing evidence for any adverse determination made by the occupational board. If the occupational board determines that the individual's criminal conviction would disqualify the individual, the occupational board may advise the individual of any action the individual may take to remedy the disqualification. If the occupational board finds that the individual has been convicted of a subsequent criminal conviction, the occupational board may rescind a determination upon finding that the subsequent criminal conviction would be disqualifying under subsection (3) of this section.

(6) An individual shall not be required to disclose nor shall consideration be given in a determination under this section to the following:

(a) A deferred adjudication, participation in a diversion program, or an arrest not followed by a conviction;

(b) A conviction of an offense for which no sentence of incarceration is statutorily authorized;

(c) A conviction that has been sealed, annulled, dismissed, expunged, set aside, or pardoned;

(d) A juvenile adjudication;

(e) A nonviolent misdemeanor unless it is for an offense expressly listed in section 84-941.01;

(f) A conviction older than three years for which the individual was not sentenced to a term of incarceration; or

(g) A conviction for which the individual's incarceration ended more than three years before the date of the application, other than a potentially disqualifying conviction.

(7) The individual may appeal the determination of the occupational board. The appeal shall be in accordance with the Administrative Procedure Act.

(8) An individual shall not file another preliminary application under this section with the same occupational board within two years after the final decision on the previous preliminary application, except that if the individual has taken action to remedy the disqualification as advised by the occupational board, the individual may file another preliminary application under this section with the same occupational board at any time after six months following the final decision on the previous preliminary application.

(9) An occupational board may charge a fee not to exceed one hundred dollars for each preliminary application filed pursuant to this section. The fee is intended to offset the administrative costs incurred under this section. If an individual's income at the time of the preliminary application is at or below three hundred percent of the federal poverty level, such individual may submit with the preliminary application a request for a waiver of the fee along with supporting documentation to show such individual's income. If the occupational board determines that the individual's income is at or below three hundred percent of the federal poverty level, the occupational board shall waive the fee.

Source: Laws 2018, LB299, § 15; Laws 2024, LB16, § 13.

Effective date July 19, 2024.

Cross References

Administrative Procedure Act, see section 84-920.

84-948 Standing committee of Legislature; duties; report; contents.

(1) Beginning in 2019, each standing committee of the Legislature shall annually review and analyze approximately twenty percent of the occupational regulations within the jurisdiction of the committee and prepare and submit an annual report electronically to the Clerk of the Legislature by December 15 of each year as provided in this section. Each committee shall complete this process for all occupational regulations within its jurisdiction within five years and every five years thereafter. Each report shall include the committee's recommendations regarding whether the occupational regulations should be terminated, continued, or modified.

(2) Each committee may require the submission of information by the affected occupational board and other affected or interested parties.

(3) A committee's report shall include, but not be limited to, the following:

(a) The title of the regulated occupation and the name of the occupational board responsible for enforcement of the occupational regulations;

(b) The statutory citation or other authorization for the creation of the occupational regulations and occupational board;

(c) The number of members of the occupational board and how the members are appointed;

(d) The qualifications for membership on the occupational board;

(e) The number of times the occupational board is required to meet during the year and the number of times it actually met;

(f) Annual budget information for the occupational board for the five most recently completed fiscal years;

(g) For the immediately preceding five calendar years, or for the period of time less than five years for which the information is practically available, the number of government certifications, occupational licenses, and registrations the occupational board has issued, revoked, denied, or assessed penalties against, listed anonymously and separately per type of credential, and the reasons for such revocations, denials, and other penalties;

(h) A review of the basic assumptions underlying the creation of the occupational regulations;

(i) A statement from the occupational board on the effectiveness of the occupational regulations; and

(j) A comparison of whether and how other states regulate the occupation.

(4) Subject to subsection (5) of this section, each committee shall also analyze, and include in its report, whether the occupational regulations meet the policies stated in section 84-946 considering the following recommended courses of action for meeting such policies:

(a) If the need is to protect consumers against fraud, the likely recommendation will be to strengthen powers under the Uniform Deceptive Trade Practices Act or require disclosures that will reduce misleading attributes of the specific goods or services;

(b) If the need is to protect consumers against unclean facilities or to promote general health and safety, the likely recommendation will be to require periodic inspections of such facilities;

(c) If the need is to protect consumers against potential damages from failure by providers to complete a contract fully or up to standards, the likely recommendation will be to require that providers be bonded;

(d) If the need is to protect a person who is not party to a contract between the provider and consumer, the likely recommendation will be to require that the provider have insurance;

(e) If the need is to protect consumers against potential damages by transient providers, the likely recommendation will be to require that providers register their businesses with the Secretary of State;

(f) If the need is to protect consumers against a shortfall or imbalance of knowledge about the goods or services relative to the providers' knowledge, the likely recommendation will be to enact government certification; and

(g) If the need is to address a systematic information shortfall such that a reasonable consumer is unable to distinguish between the quality of providers, there is an absence of institutions that provide adequate guidance to the consumer, and the consumer's inability to distinguish between providers and the lack of adequate guidance allows for undue risk of present, significant, and substantiated harms, the likely recommendation will be to enact an occupational license.

(5) If a lawful occupation is subject to the Nebraska Regulation of Health Professions Act, the analysis under subsection (4) of this section shall be made using the least restrictive method of regulation as set out in section 71-6222.

(6) In developing recommendations under this section, the committee shall review any report issued to the Legislature pursuant to the Nebraska Regulation of Health Professions Act, if applicable, and consider any findings or recommendations of such report related to the occupational regulations under review.

(7) If the committee finds that it is necessary to change occupational regulations, the committee shall recommend the least restrictive regulation consistent with the public interest and the policies in this section and section 84-946.

Source: Laws 2018, LB299, § 16.

Cross References

Nebraska Regulation of Health Professions Act, see section 71-6201.

Uniform Deceptive Trade Practices Act, see section 87-306.

84-949 Individual with criminal conviction; submit application; additional information regarding circumstances, mitigating factors, and rehabilitation; occupational boards; determination regarding disqualification; appeal.

(1) An individual who has a criminal conviction under the laws of Nebraska or any other jurisdiction may submit an application to the appropriate occupational board for an occupational license, government certification, or state recognition of the individual's personal qualifications and may include with the application additional information about the individual's circumstances at the time of application, mitigating factors, and other evidence of rehabilitation, including:

(a) The age of the individual when the individual committed the offense;

(b) The time elapsed since the offense;

- (c) The circumstances and nature of the offense;
- (d) The completion of the criminal sentence;
- (e) The completion of, or active participation in, rehabilitative drug or alcohol treatment or individual counseling;
- (f) Testimonials and recommendations, which may include a progress report from the individual's probation or parole officer;
- (g) Other evidence of rehabilitation;
- (h) Education and training;
- (i) Employment history;
- (j) Employment aspirations;
- (k) Family responsibilities at the time of application;
- (l) Whether the individual is required to be bonded in the occupation; and
- (m) Any other information the individual deems appropriate.

(2) Upon receipt of an application pursuant to subsection (1) of this section and any applicable fees, the appropriate occupational board shall make a determination of whether the individual's criminal history disqualifies the individual from obtaining such occupational license, government certification, or state recognition of the individual's personal qualifications from that occupational board. In making such determination, an individual's criminal history disqualifies the individual from obtaining an occupational license, government certification, or state recognition of the individual's personal qualifications only if:

- (a) The individual's conviction directly and specifically relates to the duties and responsibilities of the occupation;
- (b) The individual obtaining such license, certification, or state recognition would pose a direct and substantial risk to public safety because the individual has not been rehabilitated, as evidenced by information described in subsection (1) of this section, to safely perform the duties and responsibilities of the occupation; and
- (c) Beginning January 1, 2025, the individual has a potentially disqualifying conviction.

(3) An individual shall not be required to disclose nor shall consideration be given in a determination under this section to the following:

- (a) A deferred adjudication, participation in a diversion program, or an arrest not followed by a conviction;
- (b) A conviction of an offense for which no sentence of incarceration is statutorily authorized;
- (c) A conviction that has been sealed, annulled, dismissed, expunged, set aside, or pardoned;
- (d) A juvenile adjudication;
- (e) A nonviolent misdemeanor unless it is for an offense expressly listed in section 84-941.01;
- (f) A conviction older than three years for which the individual was not sentenced to a term of incarceration; or

(g) A conviction for which the individual's incarceration ended more than three years before the date of the application, other than a potentially disqualifying conviction.

(4) The individual may appeal the determination of the occupational board. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 2024, LB16, § 10.

Effective date July 19, 2024.

Cross References

Administrative Procedure Act, see section 84-920.

84-950 Occupational license or government certification; issuance required; conditions; procedure; appeal; validity.

(1) Subject to subsection (2) of this section and except as otherwise provided in section 84-946.01 or an occupational licensing compact:

(a) An occupational board shall issue an occupational license or government certification to an individual upon application if:

(i) The applicant holds a credential in another state or a military occupational specialty in the United States Military for an occupation with a similar scope of practice, as determined by the occupational board;

(ii) The applicant has held the credential or military occupational specialty for at least one year;

(iii) To obtain such credential or specialty, the applicant was required to pass an examination or meet education, training, or experience standards;

(iv) The applicant does not have a disqualifying criminal record as determined by the occupational board and verified by a criminal background check. For an applicant applying for a credential regulated by the Uniform Credentialing Act, the criminal background check shall be conducted according to section 38-131;

(v) The applicant's credential or military occupational specialty has not been revoked because of negligence or intentional misconduct related to the applicant's work in the occupation;

(vi) The applicant has not surrendered a credential or military occupational specialty because of negligence or intentional misconduct related to the applicant's work in the occupation in any state or in the United States Military;

(vii) The applicant does not have a complaint, allegation, or investigation pending before a board in any state or in the United States Military that relates to unprofessional conduct or an alleged crime. If such a complaint, allegation, or investigation is pending, the occupational board shall not issue or deny an occupational license or government certification until the complaint, allegation, or investigation is resolved or the applicant otherwise meets the criteria for an occupational license or government certification to the satisfaction of the occupational board; and

(viii) The applicant has paid all applicable fees required for issuance of the occupational license or government certification in this state;

(b) If an applicant has work experience for an occupation in a state or in the United States Military that does not use a credential similar to an occupational license, a government certification, or a military occupational specialty to regulate an occupation with a similar scope of practice to an occupation for

which this state requires an occupational license or government certification, as determined by the occupational board, the occupational board shall issue an occupational license or government certification to an individual upon application based on work experience in another state or in the United States Military if:

(i) The applicant is not applying for a credential for an occupation that requires a credential issued under the Uniform Credentialing Act;

(ii) The applicant worked for at least three years in the occupation;

(iii) The applicant has not had a credential or military occupational specialty revoked because of negligence or intentional misconduct related to the applicant's work in the occupation;

(iv) The applicant has not surrendered a credential or military occupational specialty because of negligence or intentional misconduct related to the applicant's work in the occupation in any state or in the United States Military;

(v) The applicant does not have a complaint, allegation, or investigation pending before a board in any state or in the United States Military that relates to unprofessional conduct or an alleged crime. If such a complaint, allegation, or investigation is pending, the occupational board shall not issue or deny an occupational license or government certification until the complaint, allegation, or investigation is resolved or the applicant otherwise meets the criteria for an occupational license or government certification to the satisfaction of the occupational board; and

(vi) The applicant has paid all applicable fees required for issuance of the occupational license or government certification in this state; and

(c) If an applicant holds a private certification and has work experience for an occupation in a state or in the United States Military that does not use an occupational license, a government certification, or a military occupational specialty to regulate an occupation with a similar scope of practice to an occupation for which this state requires an occupational license or government certification, as determined by the occupational board, the occupational board shall issue an occupational license or government certification to an individual upon application based on such certification and work experience in another state or in the United States Military if:

(i) The applicant is not applying for a credential for an occupation that requires a credential issued under the Uniform Credentialing Act;

(ii) The applicant worked for at least two years in the occupation;

(iii) The applicant holds a private certification in the occupation;

(iv) The provider of such certification holds the applicant in good standing;

(v) The applicant has not had a credential, military occupational specialty, or private certification revoked because of negligence or intentional misconduct related to the applicant's work in the occupation;

(vi) The applicant has not surrendered a credential, military occupational specialty, or private certification because of negligence or intentional misconduct related to the applicant's work in the occupation in any state or in the United States Military;

(vii) The applicant does not have a complaint, allegation, or investigation pending before a board in any state or in the United States Military or another entity that relates to unprofessional conduct or an alleged crime. If such a

complaint, allegation, or investigation is pending, the occupational board shall not issue or deny an occupational license or government certification until the complaint, allegation, or investigation is resolved or the applicant otherwise meets the criteria for an occupational license or government certification to the satisfaction of the occupational board; and

(viii) The applicant has paid all applicable fees required for issuance of the occupational license or government certification in this state.

(2) Prior to issuance of an occupational license or government certification under subsection (1) of this section, an occupational board may require an applicant to pass a jurisprudential examination specific to relevant state statutes and administrative rules and regulations that regulate the occupation if issuance of such occupational license or government certification in this state requires a person to pass such an examination.

(3)(a) Except as otherwise provided in subdivision (b) or (c) of this subsection, an occupational board shall approve or deny an occupational license or government certification in writing within sixty days after receiving a complete application under subsection (1) of this section or within five business days after the next meeting of the occupational board that is held after receiving a complete application under subsection (1) of this section, whichever is sooner.

(b) An occupational board may delay the approval or denial of an occupational license or government certification past the deadline prescribed in subdivision (a) of this subsection if the approval or denial is delayed because of the requirement to complete a criminal background check or a disciplinary history review, but such board shall approve or deny an occupational license or government certification in writing within five business days after receiving the results of the background check and the disciplinary history review or within five business days after the next meeting of the occupational board after receiving such results, whichever is sooner. Each occupational board shall document in writing each case in which approval or denial of an application is not provided within sixty days after receipt of the complete application.

(c) Notwithstanding subdivisions (a) and (b) of this subsection, a board that generally only holds a meeting quarterly shall only be required to approve or deny a license in writing within five business days after the next meeting of the board after receiving a complete application or, if a criminal background check or disciplinary history review is required, within five business days after the next meeting of the board after receiving such results.

(4) An applicant may appeal the denial of an occupational license or government certification under this section. The appeal shall be in accordance with the Administrative Procedure Act.

(5)(a) An occupational license or government certification issued pursuant to this section is valid only in this state and does not make the individual eligible to work in another state, in the United States Military, or under an interstate compact, or reciprocity agreement unless otherwise provided by law.

(b) Nothing in this section shall be construed to prevent this state from entering into a licensing compact or reciprocity agreement with another state, foreign province, or foreign country.

(c) Nothing in this section shall be construed to prevent this state from recognizing an occupational credential issued by a private certification organi-

zation, foreign province, foreign country, international organization, or other entity.

(d) Nothing in this section shall be construed to require a private certification organization to grant or deny private certification to any individual.

(e) This section provides a method of obtaining an initial occupational license or initial government certification in addition to and not in conflict with other methods under other provisions of law.

(f) Nothing in this section shall be construed to require an occupational board to issue an occupational credential in a manner that violates federal law.

Source: Laws 2024, LB16, § 11.

Effective date July 19, 2024.

Cross References

Administrative Procedure Act, see section 84-920.
 Uniform Credentialing Act, see section 38-101.

ARTICLE 10

BASIC WORKWEEK

Section

- 84-1001. Basic workweek; state officers; departments; hours required; exceptions; holidays; payment; rules and regulations.
- 84-1002. Basic workweek; state institutions; hours required.
- 84-1003. Basic workweek; staggering of hours.
- 84-1004. Basic workweek; authority of Governor; time when effective.
- 84-1005. Basic workweek; persons excepted.

84-1001 Basic workweek; state officers; departments; hours required; exceptions; holidays; payment; rules and regulations.

(1) All state officers and heads of departments and their deputies, assistants, and employees, except permanent part-time employees, temporary employees, and members of any board or commission not required to render full-time service, shall render not less than forty hours of labor each week except any week in which a paid holiday may occur.

(2) Regular work by such employees shall not be performed on paid holidays, Saturdays, or Sundays except in case of an emergency or when otherwise ordered or deemed essential by the Governor.

(3) For purposes of this section, paid holidays shall include all of the days enumerated in section 25-2221 and all days declared by law or proclamation of the President or Governor to be holidays.

(4) All such holidays shall be paid holidays except as provided in subsection (5) of this section. For purposes of this section, employees shall include permanent and temporary employees. A permanent employee shall mean an employee in a regular full-time or part-time position who works a full-time or part-time schedule on an ongoing basis, and a temporary employee shall mean an employee appointed to a full-time or part-time position for a limited period of time to accomplish a specific task. If any such holiday falls on Sunday, the following Monday shall be a holiday. If any such holiday falls on Saturday, the preceding Friday shall be a holiday.

(5) Employees who are required to work on any holiday shall be granted either a workday of compensatory time off or be paid for the time worked in

accordance with existing state and federal statutes, except that temporary employees shall not be eligible for paid holidays and if required to work on a holiday shall be paid for the time worked at their normal rate of pay. Permanent part-time employees shall be eligible for paid holidays on a pro rata basis. In order to receive pay for such holiday an employee, whether part time or full time, must not have been absent without pay on the workday immediately preceding or immediately following the holiday unless excused by his or her supervisor. The Director of Personnel shall adopt and promulgate such rules and regulations as are necessary to administer this section.

Source: Laws 1957, c. 398, § 1, p. 1364; Laws 1969, c. 839, § 1, p. 3164; Laws 1974, LB 1001, § 1; Laws 1992, Third Spec. Sess., LB 14, § 30.

84-1002 Basic workweek; state institutions; hours required.

All heads of institutions and their deputies, assistants, and employees, except part-time employees, shall render not less than forty hours of labor each week.

Source: Laws 1957, c. 398, § 2, p. 1364.

84-1003 Basic workweek; staggering of hours.

To effectuate the purposes of sections 84-1001 and 84-1002, any state officer or the head of a department or institution may stagger the hours and days of work of the employees supervised by him except where the salary is set as provided by law.

Source: Laws 1957, c. 398, § 3, p. 1364.

84-1004 Basic workweek; authority of Governor; time when effective.

The Governor shall have authority, after conferring with the employing officers concerned and with the employees, to make sections 84-1001 to 84-1005 effective to employments in any board, commission, department, or institution at any time on or after January 1, 1958.

Source: Laws 1957, c. 398, § 4, p. 1364.

Sections 84-1001 to 84-1005, R.R.S.1943, have not been made applicable to members of the State Patrol. Roth v. Lieske, 189 Neb. 216, 201 N.W.2d 846 (1972).

84-1005 Basic workweek; persons excepted.

Subsection (2) of section 84-1001 shall not apply to (1) employees of the University of Nebraska, the state colleges, the Nebraska Brand Committee, or the Nebraska Oil and Gas Conservation Commission, (2) the Superintendent of Law Enforcement and Public Safety, his or her deputies and assistants, members of the Nebraska State Patrol, or carrier enforcement officers designated under section 60-1303, or (3) the employees of the Division of Motor Fuels of the office of the Tax Commissioner who render service on such days and maintain such hours as the Governor may designate, except that when employees are required to work on any day designated as a paid holiday, subsections (4) and (5) of section 84-1001 shall apply.

Source: Laws 1957, c. 398, § 5, p. 1365; Laws 1965, c. 572, § 1, p. 1860; Laws 1967, c. 617, § 2, p. 2070; Laws 1969, c. 840, § 1, p. 3166; Laws 1969, c. 839, § 2, p. 3165; Laws 1985, LB 395, § 14; Laws 1989, LB 247, § 17.

ARTICLE 11
GENERAL EMERGENCY SUCCESSION ACT

Cross References

Constitutional provisions:

Governmental continuity in emergencies, see Article III, section 29, Constitution of Nebraska.

Section

- 84-1101. Act, how cited.
- 84-1102. Declaration of policy.
- 84-1103. Terms, defined.
- 84-1104. Sections; applicability.
- 84-1105. Sections; provisions, when invoked.
- 84-1106. Officers; alternates; appointment; qualifications.
- 84-1107. Officers; alternate; notice of appointment.
- 84-1108. Officers; alternate; oath.
- 84-1109. Officers; alternate; appointment to only one office.
- 84-1110. Officers; alternate; changing appointment; duty to be informed.
- 84-1111. Officers; alternate; assumption of duties; length of service.
- 84-1112. Officers; alternates; termination.
- 84-1113. Officers; alternates; no compensation; acting officer; compensation.
- 84-1114. Officers; alternate; acting officer; title.
- 84-1115. Officers; alternates; assumption of power; disputes; how settled.
- 84-1116. Officers; alternates; acting officer; acts; validity.
- 84-1117. Repealed. Laws 1963, c. 340, § 1.

84-1101 Act, how cited.

Sections 84-1101 to 84-1116 shall be known and may be cited as the Nebraska General Emergency Succession Act.

Source: Laws 1959, c. 457, § 1, p. 1515.

84-1102 Declaration of policy.

Because of the existing possibility of an attack of unprecedented size and destructiveness upon the United States; and in order, in the event of such an attack, to assure continuity of government through legally constituted leadership, authority, and responsibility in offices of government of the state and in the governments of all political subdivisions in the state; to provide for the effective operation of governments during an emergency; and to facilitate the early resumption of functions temporarily suspended; the Legislature finds and declares it to be necessary to provide for emergency interim succession to governmental offices of all types of this state and of its various political subdivisions in the event the incumbents thereof are or become unavailable to perform the functions and duties of such offices; and to enable the governing bodies or the electors of political subdivisions in the state to invoke the provisions of sections 84-1101 to 84-1116 therein.

Source: Laws 1959, c. 457, § 2, p. 1515.

84-1103 Terms, defined.

As used in sections 84-1101 to 84-1116, and unless otherwise clearly required by the context, the following terms, and the customary derivatives thereof, have the respective meanings and connotations shown:

(1) An attack means any action or series of actions by an enemy of the United States, causing, or which may cause, substantial injury or damage to civilian persons and property in the United States in any manner, whether by sabotage,

or by the use of bombs, missiles or shellfire, or by atomic, radiological, chemical, bacteriological or biological means, or by other weapons or processes;

(2) The terms office and officer include all public offices and officers in the state government and in the governments of all local political subdivisions in the state, whose powers and duties are defined by the Constitution of Nebraska or statutes of the state, or by the charters, orders, resolutions, or other legal enactments of the political subdivisions concerned; and without regard to whether the functions and duties of any such office or officer are primarily of an executive, legislative, or judicial nature, or a combination thereof. If otherwise within the scope of the foregoing definition, an office may belong to a governmental body or group, such as a board, a commission, a council, a court or quasi-judicial tribunal, etc., in which event each member thereof is an officer;

(3) The terms state office and state officer include all offices and officers of the central state government, and district and sectional offices and officers not within the immediate jurisdiction or control of any political subdivision of the state; except as pertains to the Governor and to members of the Legislature;

(4) A deputy means any deputy, assistant, or subordinate to an officer, normally serving with and under him;

(5) A successor means a person who, in event of a legal vacancy in any office, and in pursuance to law, has been regularly elected or appointed to fill such vacancy, and has duly qualified therefor;

(6) An alternate or alternate officer means a person who is or has been duly appointed, as provided in sections 84-1101 to 84-1116, as a possible emergency interim successor to the powers and duties, but not to the office, of an officer;

(7) An acting officer means a person who actually is serving as an emergency interim successor to the powers and duties, but not to the office, or an officer, as provided by sections 84-1101 to 84-1116. In other words, an alternate officer becomes and is an acting officer when he assumes, and while he is exercising and performing, the powers and duties of an officer, as provided by sections 84-1101 to 84-1116;

(8) The term available, when applied to an officer, a successor, a deputy, or an alternate or acting officer, means that the individual referred to is legally, physically, and mentally qualified and able to exercise the powers and perform the duties of such office. Conversely, the term unavailable means that he is unable to exercise the powers and discharge the duties of the office concerned, either by virtue of circumstances which by general law would create a legal vacancy in the office, or by virtue of transitory causes, whether or not such circumstances would create a legal vacancy in the office concerned under any other provision of law;

(9) The term political subdivisions includes counties, townships, cities, villages, districts, authorities, and other public corporations and entities, whether organized and existing under direct provisions of the Constitution of Nebraska or laws of the State of Nebraska, or by virtue of charters, corporate articles, or other legal instruments executed under authority of such constitution or laws;

(10) The term obligated subdivision means a political subdivision wherein the provisions of sections 84-1101 to 84-1116 shall be invoked as provided in

section 84-1105. The term obligated officers includes all state officers and all officers of obligated subdivisions; and

(11) A resolve means an ordinance, resolution, resolve, or other proper proceedings, duly enacted by the governing body of a political subdivision in accordance with the Constitution of Nebraska or general laws of this state, the charter or corporate articles of such political subdivision, the usual and customary practices of such governing body, or any combination thereof.

Source: Laws 1959, c. 457, § 3, p. 1515.

84-1104 Sections; applicability.

From and after the passage, approval, and taking effect of sections 84-1101 to 84-1116, their provisions shall apply to and shall be binding upon all state offices and officers.

Source: Laws 1959, c. 457, § 4, p. 1518.

84-1105 Sections; provisions, when invoked.

In any political subdivision in which it shall be deemed necessary and advisable that the provisions of sections 84-1101 to 84-1116 apply to the offices and officers therein, the governing body thereof is hereby authorized and empowered to declare, by resolve, that it is necessary to invoke the provisions of sections 84-1101 to 84-1116 within such subdivision. In such event, the provisions of sections 84-1101 to 84-1116 shall become effective in such subdivision, and shall apply to and be binding upon all offices and officers therein, from and after the thirtieth day following the passage and approval of such resolve. Any initiative or referendum process which, by virtue of the Constitution of Nebraska or laws of this state or the charter or other corporate articles of such subdivision, is applicable in such subdivision, likewise shall be applicable to the action above prescribed in this section; *Provided*, notwithstanding any provision of general law or charter to the contrary, when a resolve has been duly enacted by the governing body, as prescribed in this section, its subsequent reference to the electors of the subdivision shall not operate to suspend the effectiveness of such resolve, and it shall remain in force and effect unless and until it is duly disapproved by the electors.

Source: Laws 1959, c. 457, § 5, p. 1518.

84-1106 Officers; alternates; appointment; qualifications.

As soon as possible after sections 84-1101 to 84-1116 shall go into effect or shall become applicable in his case, and in no event later than thirty days thereafter, each obligated officer shall appoint, by title or name, no fewer than three nor more than seven alternates to the powers and duties of his office, and shall specify the order of their succession; *Provided*, that if any such officer has more than seven deputies, such maximum limitation shall not apply in his case. The alternates, or some of them, may be selected from among the officer's deputies, but this need not be done unless, in a particular case, the deputy is entitled by law or charter to succeed to such powers and duties in event of the officer's absence or disability. In no instance shall any person be appointed or serve as alternate who would be ineligible legally to be elected or appointed to, or serve in, the office concerned; *Provided*, that no constitutional, statutory, or other legal provision prohibiting any official from holding another office during the term for which he has been elected or appointed shall apply to an alternate

or acting officer. After making such appointments the officer shall review them periodically and shall make such revisions and additional appointments from time to time as may be necessary to insure that there are at all times at least three alternates who have qualified as provided in section 84-1108 and are able to act.

Source: Laws 1959, c. 457, § 6, p. 1518.

84-1107 Officers; alternate; notice of appointment.

On making every such appointment, the officer promptly shall notify the appointee directly, and shall concurrently give notice to the public official, to be known as the filing authority, whose office is designated by law as the filing place or repository of the officer's official oath or undertaking, or oath and undertaking, which notice in each instance shall include the appointee's name and address, and his rank in order of succession. The officer likewise shall notify both the alternate concerned and the filing authority promptly of his removal of any alternate, or change in his order of succession. All such data in the hands of the filing authority shall at all times be open to public inspection.

Source: Laws 1959, c. 457, § 7, p. 1519.

84-1108 Officers; alternate; oath.

Within thirty days after receiving notice of his appointment, each alternate shall take and subscribe, before any official empowered by law to administer oaths, the same oath or affirmation as is required by law for the officer to whose powers and duties he is designated to succeed, and shall file the same in the office of the filing authority, and his failure so to do within the prescribed period will operate to forfeit his rights under such appointment. No alternate, qualified as above, shall be required to execute any other oath or undertaking or to comply with any other legal formality as a prerequisite to his assumption of the powers and duties to which he is designated to succeed.

Source: Laws 1959, c. 457, § 8, p. 1519.

84-1109 Officers; alternate; appointment to only one office.

No person shall accept appointment as alternate to more than one office. No person who has accepted appointment as a standby legislator shall, without first resigning therefrom, accept appointment as an alternate officer, nor shall any person who has accepted an appointment as an alternate officer, without first resigning therefrom, accept appointment as a standby legislator. No person, while regularly serving as judge of a court of record, shall accept appointment as an alternate to another office.

Source: Laws 1959, c. 457, § 9, p. 1519.

84-1110 Officers; alternate; changing appointment; duty to be informed.

Until such time as an alternate is authorized to exercise the powers and discharge the duties of an officer, as provided in sections 84-1101 to 84-1116, he shall serve as alternate at the pleasure of the officer by whom he was appointed, and may be removed or replaced thereby, or his rank in order of succession changed, at any time, with or without cause. Every alternate shall keep himself generally informed as to the powers, functions, duties, procedures, practices, and current business of the officer to whose powers and duties he is

designated to succeed, and all officers shall assist their alternates in keeping themselves so informed.

Source: Laws 1959, c. 457, § 10, p. 1520.

84-1111 Officers; alternate; assumption of duties; length of service.

In the event that any obligated officer is or becomes unavailable after an attack, the alternate who is highest on the order of succession among those appointed to succeed him, and who is duly qualified therefor and is available, shall forthwith assume the powers and duties of his office. Any such acting officer shall continue to serve as such until the expiration of the then current term of the officer concerned, but not after the officer himself or a qualified successor thereto becomes available and resumes or assumes the office. The subsequent availability of an alternate who was higher than him on the order of succession, but was unavailable when he assumed the powers and duties of the office, shall not terminate or affect his right to continue as acting officer; *Provided*, that if an alternate who was not a deputy in the same office at the time of his appointment becomes acting officer, any higher-ranking alternate who was such a deputy, and who later becomes available, shall become acting officer in his stead.

Source: Laws 1959, c. 457, § 11, p. 1520.

84-1112 Officers; alternates; termination.

The authority of alternates to become or to continue to serve as acting officers, as provided in sections 84-1101 to 84-1116, shall not exist unless and until an attack upon the United States actually has occurred; and, except as otherwise provided in this section, shall terminate upon the expiration of two years after the inception of the attack. The Governor, by proclamation, or the Legislature, by resolution approved by the Governor, may terminate the authority of alternates at some earlier date, and from time to time may extend or restore such authority, upon a finding that events and circumstances at that time render the extension or restoration necessary; *Provided*, that no single extension or restoration shall be for a period of more than one year.

Source: Laws 1959, c. 457, § 12, p. 1520.

84-1113 Officers; alternates; no compensation; acting officer; compensation.

No alternate officer, as such, shall receive any pay or compensation by virtue of his appointment or appointment and qualification, or shall enjoy any of the rights or privileges of the office to whose powers and duties he is designated to succeed. An acting officer, however, shall receive the same compensation and enjoy the same perquisites as would be received and enjoyed by the officer himself if present and available; *Provided*, that if, during the same period or any portion thereof, he is entitled to receive, and does receive, pay or compensation as deputy in the same office or as holder of another state or local office, the amount of the latter shall be deducted from the amount he otherwise would receive as acting officer; *and provided further*, that nothing herein shall be construed as affecting the compensation or perquisites of the officer concerned, if living.

Source: Laws 1959, c. 457, § 13, p. 1521.

84-1114 Officers; alternate; acting officer; title.

The specific title of an alternate or acting officer shall correspond to that of the officer to the powers and duties of whom he is designated to succeed or has succeeded; for example, Alternate, or Acting, Secretary of State; Alternate, or Acting, District Judge, _____ District; Alternate, or Acting, Commissioner, _____ County; Alternate, or Acting, Clerk, City of _____.

Source: Laws 1959, c. 457, § 14, p. 1521.

84-1115 Officers; alternates; assumption of power; disputes; how settled.

(1) Disputes of fact with respect to the right of an alternate to assume the powers and duties of an office, or to the right of an acting officer to continue to serve as such, shall be determined and adjudicated by the following named officials, whose decision in each instance shall be final:

(a) As to all state officers, by the Governor; *Provided*, that the Governor, within his sound discretion, may delegate this responsibility to another state officer or officers, except as to disputes relating to the officer or officers so designated; and

(b) As to all other obligated officers, by the district judge of the district in which the political subdivision concerned, or the major portion thereof, is located; or, if there are two or more district judges in that district, by the senior thereof.

(2) Subsection (1) of this section shall not apply to a dispute of fact relative to the office of Governor, or to the office of any member of the Legislature. Nor shall it be construed as limiting or affecting in any manner the right of a regularly elected or appointed officer or successor to have adjudicated in the courts, as provided by the Constitution of Nebraska and laws of this state, his authority to assume or hold such office.

Source: Laws 1959, c. 457, § 15, p. 1521.

84-1116 Officers; alternates; acting officer; acts; validity.

Nothing in sections 84-1101 to 84-1116 shall be construed as preventing or otherwise affecting the appointment or election, in the manner provided by law, of a successor to any office wherein a legal vacancy exists. But, after an attack, and so long thereafter as the authority of alternates to become or to continue to serve as acting officers continues to exist as provided in section 84-1112, whenever a qualified alternate has succeeded to the powers and duties of any office, and so long as he is serving as acting officer therein, no action of mandamus or quo warranto, or any legal proceedings of like nature, shall be brought or shall be entertained in the courts of this state, during the term for which the officer concerned was elected or appointed, against the official or government body responsible under general law for filling vacancies in said office, to compel the appointment of a successor.

Source: Laws 1959, c. 457, § 16, p. 1522.

84-1117 Repealed. Laws 1963, c. 340, § 1.

PUBLIC RECORDS

ARTICLE 12

PUBLIC RECORDS

(a) RECORDS MANAGEMENT ACT

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(c) SCHOOL DISTRICT OR EDUCATIONAL SERVICE UNIT

84-1229. Electronic records; authorized.

(a) RECORDS MANAGEMENT ACT

84-1201 Legislative intent.

The Legislature declares that:

(1) Programs for the systematic and centrally correlated management of state and local records will promote efficiency and economy in the day-to-day record-keeping activities of state and local agencies and will facilitate and expedite governmental operations;

(2) Records containing information essential to the operations of government, and to the protection of the rights and interests of persons, must be safeguarded against the destructive effects of all forms of disaster and must be available as needed. It is necessary to adopt special provisions for the selection and preservation of essential state and local records, thereby insuring the protection and availability of such information;

(3) The increasing availability and use of computers is creating a growing demand for electronic access to public records, and state and local agencies should use new technology to enhance public access to public records and to reduce costs in maintaining, preserving, or retaining public records;

(4) There must be public accountability in the process of collecting, sharing, disseminating, and accessing public records;

(5) The Legislature has oversight responsibility for the process of collecting, sharing, disseminating, and providing access, including electronic access, to public records and establishing fees for disseminating and providing access;

(6) Several state agencies, individually and collectively, are providing electronic access to public records through various means, including the portal;

(7) New technology has allowed state agencies to offer electronic information and services through various means, including the portal;

(8) As technology becomes available, state and local agencies should continue to explore providing electronic information and services to individuals, businesses, and other entities; and

(9) There is a need for a uniform policy regarding the management, operation, and oversight of systems providing electronic access to public records or electronic information and services.

Source: Laws 1961, c. 455, § 1, p. 1385; Laws 1997, LB 590, § 3; Laws 2012, LB719, § 7; Laws 2012, LB880, § 1.

84-1202 Terms, defined.

For purposes of the Records Management Act, unless the context otherwise requires:

(1) State agency means any department, division, office, commission, court, board, or elected, appointed, or constitutional officer, except individual members of the Legislature, or any other unit or body, however designated, of the executive, judicial, and legislative branches of state government;

(2) Agency head means the chief or principal official or representative in any state or local agency or the presiding judge of any court, by whatever title known. When an agency consists of a single official, the agency and the agency head are one and the same;

(3) Local agency means an agency of any county, city, village, township, district, authority, or other public corporation or political entity, whether existing under charter or general law, including any entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. Local political subdivision does not include a city of the metropolitan class or a district or other unit which by law is considered an integral part of state government;

(4) Record means any book, document, paper, photograph, microfilm, sound recording, magnetic storage medium, optical storage medium, or other material regardless of physical form or characteristics created or received pursuant to law, charter, or ordinance or in connection with any other activity relating to or having an effect upon the transaction of public business;

(5) State record means a record which normally is maintained within the custody or control of a state agency or any other record which is designated or treated as a state record according to general law;

(6) Local record means a record of a local political subdivision or of any agency thereof unless designated or treated as a state record under general law;

(7) Essential record means a state or local record which is within one or the other of the following categories and which shall be preserved pursuant to the Records Management Act:

(a) Category A. Records containing information necessary to the operations of government under all conditions, including a period of emergency created by a disaster; or

(b) Category B. Records not within Category A but which contain information necessary to protect the rights and interests of persons or to establish or affirm the powers and duties of state or local governments in the resumption of operations after a disaster;

(8) Preservation duplicate means a copy of an essential record which is used for the purpose of preserving the record pursuant to the act;

(9) Disaster means any occurrence of fire, flood, storm, earthquake, explosion, epidemic, riot, sabotage, or other conditions of extreme peril resulting in substantial injury or damage to persons or property within this state, whether such occurrence is caused by an act of nature or of humans, including an enemy of the United States;

(10) Administrator means the State Records Administrator;

(11) Board means the State Records Board;

(12) Electronic access means electronically collecting, sharing, disseminating, and providing access to (a) public records or (b) electronic information and services;

(13) Electronic information and services means any data, information, or service that is created, generated, collected, maintained, or distributed in electronic form by a state agency or local agency through transactions with individuals, businesses, and other entities by means of electronic access;

(14) Portal means the state's centralized electronic information system by which public records or electronic information and services are provided using electronic access;

(15) Public records includes all records and documents, regardless of physical form, of or belonging to this state or any agency, branch, department, board, bureau, commission, council, subunit, or committee of this state except when any other statute expressly provides that particular information or records shall not be made public. Data which is a public record in its original form shall remain a public record when maintained in computer files; and

(16) Network manager means an individual, a private entity, a state agency, or any other governmental subdivision responsible for providing the infrastructure and services needed to implement and operate the portal and for directing and supervising the day-to-day operations and expansion of the portal.

Source: Laws 1961, c. 455, § 2, p. 1385; Laws 1969, c. 841, § 1, p. 3167; Laws 1979, LB 559, § 1; Laws 1980, LB 747, § 1; Laws 1991, LB 25, § 2; Laws 1991, LB 81, § 12; Laws 1997, LB 590, § 4; Laws 1999, LB 87, § 99; Laws 2012, LB719, § 8.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

84-1203 Secretary of State; State Records Administrator; duties.

The Secretary of State is hereby designated the State Records Administrator. The administrator shall establish and administer, within and for state and local agencies, (1) a records management program which will apply efficient, cost-effective, modern, and economical methods to the creation, utilization, maintenance, retention, preservation, and disposal of state and local records, (2) a program for the selection and preservation of essential state and local records, (3) establish and maintain a depository for the storage and service of state records, and advise, assist, and govern by rules and regulations the establishment of similar programs in local political subdivisions in the state, and (4) establish and maintain a central microfilm agency for state records and advise, assist, and govern by rules and regulations the establishment of similar programs in state agencies and local political subdivisions in the State of Nebraska.

Source: Laws 1961, c. 455, § 3, p. 1387; Laws 1969, c. 841, § 2, p. 3169; Laws 1977, LB 520, § 1; Laws 1979, LB 559, § 2; Laws 2012, LB880, § 2.

84-1204 State Records Board; established; members; duties; meetings; expenses.

(1) The State Records Board is hereby established. The board shall:

(a) Advise and assist the administrator in the performance of his or her duties under the Records Management Act;

(b) Provide electronic access to public records or electronic information and services through the portal;

(c) Develop and maintain the portal for providing electronic access to public records or electronic information and services;

(d) Provide appropriate oversight of a network manager;

(e) Approve reasonable fees for electronic access to public records or electronic information and services pursuant to sections 84-1205.02 and 84-1205.03;

(f) Have the authority to enter into or renegotiate agreements regarding the management of the portal in order to provide individuals, businesses, and other entities with electronic access to public records or electronic information and services;

(g) Explore ways and means of reducing the costs of agencies to manage record retention, expanding the amount and type of public records or electronic information and services provided through the portal, and, when appropriate, implement changes necessary to effect such purposes;

(h) Explore new technologies as a means of improving access to public records or electronic information and services by individuals, businesses, and other entities and, if appropriate, implement the new technologies;

(i) Explore options of expanding the portal and its services to individuals, businesses, and other entities;

(j) Have the authority to grant funds to a state or local agency for the development of programs and technology to improve electronic access to public records or electronic information and services consistent with the act; and

(k) Perform such other functions and duties as the act requires.

(2) In addition to the administrator, the board shall consist of:

(a) The Governor or his or her designee;

(b) The Attorney General or his or her designee;

(c) The Auditor of Public Accounts or his or her designee;

(d) The State Treasurer or his or her designee;

(e) The Director of Administrative Services or his or her designee;

(f) Three representatives appointed by the Governor to be broadly representative of banking, insurance, and law groups; and

(g) Three representatives appointed by the Governor to be broadly representative of libraries, the general public, and professional members of the Nebraska news media.

(3) The administrator shall be chairperson of the board. Upon call by the administrator, the board shall convene periodically in accordance with its rules and regulations or upon call by the administrator.

(4) Six members of the board shall constitute a quorum, and the affirmative vote of six members shall be necessary for any action to be taken by the board. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board.

(5) The representatives appointed by the Governor shall serve staggered three-year terms as the Governor designates and may be appointed for one additional term. Members of the board shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 1961, c. 455, § 4, p. 1387; Laws 1969, c. 841, § 3, p. 3170; Laws 1979, LB 559, § 3; Laws 1989, LB 18, § 7; Laws 1997, LB 590, § 5; Laws 2003, LB 257, § 1; Laws 2012, LB719, § 9; Laws 2012, LB880, § 3; Laws 2020, LB381, § 134.

84-1205 Board; network manager; duties.

(1) The board may employ or contract with a network manager. A network manager may be an individual, a private entity, a state agency, or another governmental subdivision. The board shall prepare criteria and specifications for the network manager in consultation with the Department of Administrative Services. Such criteria shall include procedures for submission of proposals by an individual, a private entity, a state agency, or another governmental subdivision. Selection of the network manager shall comply with all applicable procedures of the department. The board may negotiate and enter into a contract with the selected network manager which provides the duties, responsibilities, and compensation of the network manager.

(2) The network manager shall provide the infrastructure and services needed to implement and operate the portal and shall direct and supervise the day-to-day operations and expansion of the portal. The network manager shall (a) attend meetings of the board, (b) keep a record of all portal operations, which shall be the property of the board, (c) maintain and be the custodian of all financial and operational records, and (d) annually update and revise the business plan for the portal in consultation with and under the direction of the board.

(3) The board shall finance the operation and maintenance of the portal from revenue generated pursuant to sections 60-483 and 84-1205.02.

Source: Laws 1997, LB 590, § 6; Laws 1999, LB 550, § 48; Laws 2012, LB719, § 10; Laws 2020, LB910, § 37.

84-1205.01 Repealed. Laws 2017, LB644, § 21.**84-1205.02 Board; establish fees.**

Except as provided in sections 49-509, 52-1316, and 60-483 and article 9, Uniform Commercial Code, the board may establish reasonable fees for electronic access to (1) public records or (2) electronic information and services, through the portal. Fees for electronic access to public records shall not exceed the statutory fee for copies of public records in other forms. Any fees collected under this section shall be deposited in the Records Management Cash Fund.

Source: Laws 1997, LB 590, § 8; Laws 1998, LB 924, § 53; Laws 1999, LB 550, § 49; Laws 2000, LB 534, § 7; Laws 2012, LB719, § 12.

84-1205.03 State agency; electronic access to public records; approval required; when; one-time fee; report; when required; fees.

(1) Any state agency other than the courts or the Legislature desiring to enter into an agreement with a private vendor or the network manager to provide electronic access to public records or electronic information and services for a fee shall make a written request for approval of such fee to the board. The request shall include (a) a copy of the contract under consideration if the electronic access is to be provided through a contractual arrangement, (b) the public records or electronic information and services which are the subject of the contract or proposed fee, (c) the anticipated or actual timeline for implementation, and (d) any security provisions for the protection of confidential or sensitive records. The board shall take action on such fee request in accordance with section 84-1205.02 and after a public hearing held at its next regularly scheduled meeting that is at least thirty days after receipt of the request. The

board may request a presentation or such other information as it deems necessary from the requesting state agency.

(2) A state agency other than the courts or the Legislature may charge a fee for electronic access to public records without the board's approval for a one-time sale in a unique format. The purchaser may object to the fee in writing to the board, and the one-time fee shall then be subject to approval by the board according to the procedures and guidelines established in sections 84-1205 to 84-1205.03.

(3) Courts or the Legislature providing electronic access to public records or electronic information and services for a fee shall make a written report. The report shall be filed with the State Records Board by the State Court Administrator for the courts and the chairperson of the Executive Board of the Legislative Council for the Legislature. The report shall include (a) a copy of the contract under consideration if the electronic access is to be provided through a contractual arrangement, (b) the public records or electronic information and services which are the subject of the contract or proposed fee, (c) the anticipated or actual timeline for implementation, and (d) any security provisions for the protection of confidential or sensitive records. The State Records Board may request a presentation or such other information as it deems necessary. The courts and the Legislature shall take into consideration any recommendation made by the State Records Board with respect to such fees.

(4) Courts and the Legislature may charge a fee for electronic access to public records for a one-time sale in a unique format without providing a report to the board as required under subsection (3) of this section.

Source: Laws 1997, LB 590, § 9; Laws 1998, LB 924, § 54; Laws 2005, LB 525, § 1; Laws 2012, LB719, § 13; Laws 2012, LB880, § 4.

84-1205.04 Repealed. Laws 2012, LB 719, § 33.

84-1205.05 Board; reports.

The board shall provide annual reports to the Executive Board of the Legislative Council and Nebraska Information Technology Commission on its activities pursuant to sections 84-1205 to 84-1205.03. The report submitted to the executive board shall be submitted electronically.

Source: Laws 1997, LB 590, § 11; Laws 1998, LB 924, § 55; Laws 2012, LB719, § 14; Laws 2012, LB782, § 230; Laws 2012, LB880, § 5.

84-1205.06 Repealed. Laws 2012, LB 719, § 33.

84-1206 Administrator; duties; powers.

(1) With due regard for the functions of the state and local agencies concerned, and with such guidance and assistance from the board as may be required, the administrator shall:

(a) Establish standards, procedures, and techniques for the effective management of public records;

(b) Make continuing surveys of paperwork, microfilm, and electronic storage operations, and recommend improvements in current records management practices, including, but not limited to, the economical use of and cost reductions in space, equipment, and supplies employed in creating, maintaining, storing, preserving, and servicing records;

(c) Establish standards for the preparation of schedules providing for the retention of records of continuing value and for the prompt and orderly disposal of records no longer possessing sufficient administrative, legal, historical, or fiscal value to warrant their further retention; and

(d) Obtain from the state or local agencies concerned such reports and other data as are required for the proper administration of the records management program, including organizational charts of agencies concerned.

(2) The administrator shall establish standards for designating essential records, shall assist state and local agencies in identifying essential records, and shall guide such agencies in the establishment of programs for the preservation of essential records.

(3) The administrator may advise and assist members of the Legislature and other officials in the maintenance and disposition of their personal or political papers of public interest and may provide such other services as are available to state and local agencies, within the limitation of available funds.

Source: Laws 1961, c. 455, § 6, p. 1388; Laws 1969, c. 841, § 4, p. 3171; Laws 1976, LB 641, § 1; Laws 1980, LB 747, § 2; Laws 2012, LB719, § 15; Laws 2012, LB880, § 6.

84-1207 State or local agency head; duties.

In accordance with general law and with the rules and regulations adopted and promulgated by the administrator and the board as provided in section 84-1216, the head of any state or local agency shall:

(1) Establish and maintain an active, continuing program for the efficient, cost-effective, modern, and economical management of the record-keeping activities of the agency;

(2) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency, designed to furnish information to protect the legal and financial rights of the state, and of persons directly affected by the agency's activities;

(3) Make and submit to the administrator schedules proposing the length of time each record series warrants retention for administrative, legal, historical, or fiscal purposes, after it has been made in or received by the agency, and lists of records in the custody or under the control of the agency which are not needed in the transaction of current business and do not possess sufficient administrative, legal, historical, or fiscal value to warrant their further retention;

(4) Inventory the records in the custody or under the control of the agency and submit to the administrator a report thereon, containing such data as the administrator shall prescribe, including his or her recommendations as to which of such records, if any, should be determined to be essential records. He or she shall review the inventory and report periodically and, as necessary, shall revise the report so that it is current, accurate, and complete;

(5) Comply with the rules, regulations, standards, and procedures issued and set up by the administrator and the board and cooperate in the conduct of surveys made by the administrator pursuant to the Records Management Act; and

(6) Strive to reduce the costs to manage record retention.

Source: Laws 1961, c. 455, § 7, p. 1389; Laws 1969, c. 841, § 5, p. 3171; Laws 1979, LB 559, § 4; Laws 2012, LB719, § 16; Laws 2012, LB880, § 7.

84-1207.01 Agency head; designate records officer; duties.

In addition to the duties enumerated in section 84-1207, each state agency head shall designate a records officer from the management or professional level who shall be responsible for the overall coordination of records management activities within the agency.

Source: Laws 1976, LB 641, § 2.

84-1208 Administrator; preservation duplicates of essential records; process used; exception.

(1) The administrator may make or cause to be made preservation duplicates of essential records or may designate as preservation duplicates existing copies thereof. A preservation duplicate shall be durable, accurate, complete, and clear and, if made by means of photography, microphotography, photocopying, film, microfilm, optical imagery, or similar processes, shall be prepared in conformity to standards prescribed and approved by the board.

(2) A preservation duplicate made by a photographic, photostatic, microfilm, microcard, miniature photographic, optical imagery, or similar process which accurately reproduces or forms a durable medium for so reproducing the original shall have the same force and effect for all purposes as the original record, whether the original is in existence or not. A transcript, exemplification, or certified copy of such preservation duplicate shall for all purposes be deemed a transcript, exemplification, or certified copy of the original record.

(3) No copy of an essential record shall be used as a preservation duplicate unless, under the general laws of the state, the copy has the same force and effect for all purposes as the original record.

Source: Laws 1961, c. 455, § 8, p. 1390; Laws 1991, LB 25, § 3.

84-1209 Administrator; storage of records and preservation duplicates; charges.

The administrator may establish storage facilities for essential records, preservation duplicates, and other state records and may provide for a system of charges to allocate the cost of providing such storage among the state agencies utilizing the storage services. The system of charges shall, as nearly as may be practical, cover the actual costs of operating the storage facilities.

Source: Laws 1961, c. 455, § 9, p. 1390; Laws 1969, c. 841, § 6, p. 3172; Laws 1976, LB 641, § 3; Laws 1983, LB 617, § 28; Laws 2012, LB719, § 17.

84-1210 Administrator; records; maintain; temporary removal; inspection; copies certified.

(1) The administrator shall properly maintain essential records and preservation duplicates stored by him.

(2) An essential record or preservation duplicate stored by the administrator may be removed by the regularly designated custodian for temporary use when necessary for the proper conduct of his office, and shall be returned to the administrator immediately after such use.

(3) When an essential record is stored by him, the administrator, upon the request of the regularly designated custodian thereof, shall provide for its inspection or for the making or certification of copies thereof, and such copies, when certified by the administrator, shall have the same force and effect for all purposes as if certified by the regularly designated custodian.

Source: Laws 1961, c. 455, § 10, p. 1391; Laws 1969, c. 841, § 7, p. 3173.

84-1211 Records; confidential; protection.

(1) When an essential record is required by law to be treated in a confidential manner, the administrator, in effectuating the purposes of the Records Management Act, shall protect its confidential nature, as well as that of any preservation duplicate or other copy thereof. Any hospital or medical record submitted to the administrator for microfilming or similar processing shall be made accessible in a manner consistent with the access permitted similar records under sections 71-961 and 83-109.

(2) Nothing in the Records Management Act shall be construed to affect the laws and regulations dealing with the dissemination, security, and privacy of criminal history information under the Security, Privacy, and Dissemination of Criminal History Information Act.

Source: Laws 1961, c. 455, § 11, p. 1391; Laws 1969, c. 841, § 8, p. 3174; Laws 1979, LB 559, § 5; Laws 2004, LB 1083, § 143.

Cross References

Security, Privacy, and Dissemination of Criminal History Information Act, see section 29-3501.

84-1212 Program for selection and preservation of essential records; review, periodically.

The administrator shall review periodically, and at least once each year, the program for the selection and preservation of essential records, including the classification thereof and the provisions for preservation duplicates and for the safeguarding of essential records and preservation duplicates to insure that the purposes of the Records Management Act are accomplished.

Source: Laws 1961, c. 455, § 12, p. 1392; Laws 1969, c. 841, § 9, p. 3174; Laws 1979, LB 559, § 6; Laws 2012, LB719, § 18.

84-1212.01 Records retention and disposition schedule; review by State Archivist; approval; review by administrator.

(1) Each records retention and disposition schedule submitted to the administrator shall be reviewed by the State Archivist for purposes of selection of archival and historical material, and all such material shall be identified as such on the schedule. When the State Archivist has determined that all archival and historical material has been properly identified and that no disposition, except by transfer to the State Archives of the Nebraska State Historical Society, has been recommended for such material, the State Archivist shall approve such records retention and disposition schedule and return it to the administrator.

(2) The administrator shall review each records retention and disposition schedule submitted, and if the recommended retention periods and the recommended dispositions satisfy audit requirements and give proper recognition to administrative, legal, and fiscal value of the records listed therein and if the records retention and disposition schedule has been approved by the State Archivist, such records retention and disposition schedule shall be approved by the administrator.

Source: Laws 1976, LB 641, § 4; Laws 1989, LB 18, § 8.

84-1212.02 Records retention and disposition schedule; disposal of records pursuant to schedule; report.

All state agency heads and all local agency heads are hereby authorized to dispose of the records of their agencies in accordance with records retention and disposition schedules which are applicable to their agencies if such schedules have been approved by the administrator pursuant to section 84-1212.01. Each agency head shall report any such records disposition to the administrator on forms provided by the administrator.

Source: Laws 1976, LB 641, § 5.

84-1213 Records; property of state or local agencies; protected; willfully mutilate, destroy, transfer, remove, damage, or otherwise dispose of; violation; penalty.

(1) All records made or received by or under the authority of or coming into the custody, control, or possession of state or local agencies in the course of their public duties are the property of the state or local agency concerned and shall not be mutilated, destroyed, transferred, removed, damaged, or otherwise disposed of, in whole or in part, except as provided by law.

(2) Any person who willfully mutilates, destroys, transfers, removes, damages, or otherwise disposes of such records or any part of such records, except as provided by law, and any person who retains and continues to hold the possession of any such records, or parts thereof, belonging to the state or local agency and refuses to deliver up such records, or parts thereof, to the proper official under whose authority such records belong upon demand being made by such officer or, in cases of a defunct office, to the succeeding agency or to the State Archives of the Nebraska State Historical Society, shall be guilty of a Class III misdemeanor.

Source: Laws 1961, c. 455, § 13, p. 1392; Laws 1973, LB 224, § 15; Laws 1979, LB 559, § 7; Laws 1980, LB 747, § 3; Laws 2012, LB719, § 19.

84-1213.01 Records; violation; prosecute.

The State Records Administrator, or any official under whose authority such records belong, shall report to the proper county attorney any supposed violation of section 84-1213 that in its judgment warrants prosecution. It shall be the duty of the several county attorneys to investigate supposed violations of such section and to prosecute violations of such section.

Source: Laws 1973, LB 224, § 16.

84-1214 State agency; disposition of records; procedure.

Whenever any state agency desires to dispose of records which are not listed on an approved records retention and disposition schedule applicable to such agency, the state agency head shall prepare and submit to the administrator, on forms provided by the administrator, a list of the records sought to be disposed of and a request for approval of their disposition, which list and request shall be referred to the board for action at its next regular or special session. On consideration thereof, the board may approve such disposition thereof as may be legal and proper or may refuse to approve any disposition, and the records as to which such determination has been made may thereupon be disposed of in accordance with the approval of the board.

Source: Laws 1961, c. 455, § 14, p. 1392; Laws 1969, c. 841, § 10, p. 3174; Laws 1976, LB 641, § 6; Laws 2012, LB719, § 20.

84-1214.01 State Archives; authority; duties.

The State Archives of the Nebraska State Historical Society has the authority to acquire, in total or in part, any document, record, or material which has been submitted to the board for disposition or transfer when such material is determined to be of archival or historical significance by the State Archivist or the board. The head of any state or local agency shall certify in writing to the society the transfer of the custody of such material to the State Archives. No state or local agency shall dispose of, in any other manner except by transfer to the State Archives, that material which has been appraised as archival or historical without the written consent of the State Archivist and the administrator. If such material is determined to be in jeopardy of destruction or deterioration and such material is not necessary to the conduct of daily business in the state or local agency of origin, it shall be the prerogative of the State Archivist to petition the administrator and the state or local agency of origin for the right to transfer such material into the safekeeping of the State Archives. It shall be the responsibility of the administrator to hear arguments for or against such petition and to determine the results of such petition. The State Archivist shall prepare invoices and receipts in triplicate for materials acquired under this section, shall retain one copy, and shall deliver one copy to the administrator and one copy to the state or local agency head from whom the records are obtained.

Source: Laws 1969, c. 841, § 11, p. 3175; Laws 1989, LB 18, § 9; Laws 2012, LB719, § 21.

84-1215 Nonrecord material; destruction; procedure; personal and political papers; preservation.

(1) If not otherwise prohibited by law, nonrecord materials, not included within the definition of records as contained in section 84-1202, may be destroyed at any time by the state or local agency in possession thereof without the prior approval of the administrator or board. The administrator may formulate procedures and interpretations to guide in the disposal of nonrecord materials, but nothing therein shall be contrary to any provision of law relating to the transfer of materials of historical value to the State Archives of the Nebraska State Historical Society.

(2) Members of the Legislature and other officials are encouraged to offer their personal and political papers of public interest to the State Archives for

preservation subject to any reasonable restrictions concerning their use by other persons.

Source: Laws 1961, c. 455, § 15, p. 1393; Laws 1969, c. 841, § 12, p. 3176; Laws 1980, LB 747, § 4; Laws 2012, LB719, § 22.

84-1216 Administrator; rules and regulations; promulgate.

The administrator shall adopt and promulgate rules and regulations as may be necessary or proper to effectuate the purposes of the Records Management Act. Those portions thereof which relate to functions specifically delegated to the board shall be approved and concurred in by the board.

Source: Laws 1961, c. 455, § 16, p. 1393; Laws 1979, LB 559, § 8; Laws 2012, LB719, § 23.

84-1217 State and local agencies; preservation of records; administrator; advise.

The Records Management Act shall apply to all state and local agencies, and the administrator shall advise and assist in the establishment of programs for records management and for the selection and preservation of essential records of the executive, judicial, and legislative branches and, as required by such branches, shall provide program services pursuant to the act.

Source: Laws 1961, c. 455, § 17, p. 1393; Laws 1969, c. 841, § 13, p. 3176; Laws 1979, LB 559, § 9; Laws 2012, LB719, § 24.

84-1218 Local agencies; preservation of records; administrator; advise and assist; rules and regulations.

The governing bodies of all local agencies in this state, with the advice and assistance of the administrator and pursuant to the rules and regulations adopted and promulgated pursuant to the Records Management Act, shall establish and maintain continuing programs to promote the principles of efficient records management for local records and for the selection and preservation of essential local records, which programs, insofar as practicable, shall follow the patterns of the programs established for state records as provided in the act. Each such governing body shall promulgate rules and regulations as are necessary or proper to effectuate and implement the programs so established, but nothing therein shall be in violation of the provisions of general law relating to the destruction of local records.

Source: Laws 1961, c. 455, § 18, p. 1393; Laws 1969, c. 841, § 14, p. 3176; Laws 1979, LB 559, § 10; Laws 2012, LB719, § 25.

84-1219 Administrator; biennial report; copies; furnish.

The administrator shall prepare a biennial report on the status of programs established by the administrator as provided in the Records Management Act and on the progress made during the preceding biennium in implementing and effectuating such programs and in reducing costs. Copies of this report shall be furnished to the Governor, the Clerk of the Legislature, and such other officials and state and local agencies as the Governor or the board shall direct. The

report submitted to the Clerk of the Legislature shall be submitted electronically.

Source: Laws 1961, c. 455, § 19, p. 1394; Laws 1979, LB 559, § 11; Laws 2012, LB719, § 26; Laws 2012, LB782, § 231; Laws 2012, LB880, § 8; Laws 2013, LB222, § 45.

84-1220 Act, how cited.

Sections 84-1201 to 84-1227 shall be known and may be cited as the Records Management Act.

Source: Laws 1961, c. 455, § 20, p. 1394; Laws 1979, LB 559, § 12; Laws 1997, LB 590, § 13.

84-1221 Repealed. Laws 1989, LB 18, § 10.

84-1222 Purchase of microfilm system or equipment; approval; property of administrator.

No state agency shall purchase any microfilm system or equipment prior to the approval of the administrator. The administrator shall not approve internal microfilm activities of any state agency unless such activities may not be feasibly provided by the central microfilming agency and are necessary to a particular operation within the state agency. Any equipment purchased under this section shall become the property of the administrator.

Source: Laws 1977, LB 520, § 2; Laws 1979, LB 559, § 13; Laws 2012, LB719, § 27.

84-1223 Repealed. Laws 2012, LB 719, § 33.

84-1224 Administrator; microfilm; micrographic equipment; powers.

The administrator shall:

- (1) Be empowered to review the microfilm systems within every state agency;
- (2) Be empowered to cause such systems to be merged with a central microfilm agency in the event that a cost analysis shows that economic advantage may be achieved;
- (3) Be empowered to permit the establishment of microfilming services within any state agency if a potential economy or a substantial convenience for the state would result; and
- (4) Be empowered to determine the operating locations of all micrographic equipment in his or her possession.

Source: Laws 1977, LB 520, § 4; Laws 2012, LB719, § 28.

84-1225 Administrator; micropublishing and computer output microfilm services; charges.

The administrator shall provide for a system of charges for micropublishing services and computer output microfilm services rendered by the central microfilming agency to any other state agency when these charges are allocable to a particular project carried on by such microfilming agency. Such charges shall, as nearly as may be practical, reflect the actual cost of services provided by the central microfilming agency. The administrator shall extend this system of charges to include source document microfilming. The administrator shall

extend this system of charges and user fees for all micrographic equipment which is the property of the administrator and which is used by any other state agency.

Source: Laws 1977, LB 520, § 5; Laws 1979, LB 559, § 15; Laws 2012, LB719, § 29.

84-1226 Records Management Micrographics Services Revolving Fund; created; credits; expenditures; rental.

(1) There is hereby created a fund to be known as the Records Management Micrographics Services Revolving Fund. All charges received by the Secretary of State under sections 84-1209 and 84-1225 and legislative appropriations shall be credited to such fund. Whenever any micrographics equipment of any state agency, except the University of Nebraska or the state colleges, shall become surplus property and shall be sold pursuant to section 81-161.04, the proceeds from the sale of such equipment shall be deposited in the state treasury and shall be credited by the State Treasurer to the Records Management Micrographics Services Revolving Fund. Expenditures shall be made from such fund to finance the micropublishing services and the computer output microfilm services by the Secretary of State or his or her authorized agent in accordance with appropriations made by the Legislature, to receive and expend funds pursuant to section 84-1225 for the provision of source document microfilming and for procuring and replacing micrographic equipment provided to state agencies, and to receive and expend funds pursuant to section 84-1209 for the providing of records storage services for state agencies.

(2) By agreement between any state agency and the State Records Administrator, any state agency may be billed one full year's rental for equipment at the beginning of each fiscal year. The State Records Administrator may coordinate with the Director of Administrative Services to set up a separate subaccount within the fund for the purpose of accounting for micrographic equipment procurement and replacement.

Source: Laws 1977, LB 520, § 6; Laws 1979, LB 559, § 16; Laws 1983, LB 617, § 29.

84-1227 Records Management Cash Fund; created; use; investment.

There is hereby established in the state treasury a special fund to be known as the Records Management Cash Fund which, when appropriated by the Legislature, shall be expended by the Secretary of State for the purposes of providing records management services and assistance to state and local agencies, for development and maintenance of the portal for providing electronic access to public records or electronic information and services, and for grants to a state or local agency as provided in subdivision (1)(j) of section 84-1204. All fees and charges for the purpose of records management services and analysis received by the Secretary of State from the local agencies shall be remitted to the State Treasurer for credit to such fund. Transfers may be made from the fund to the General Fund, the Secretary of State Cash Fund, or the Election Administration Fund at the direction of the Legislature. Any money in the Records Management 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. Beginning October 1, 2024, any investment earn-

ings from investment of money in the fund shall be credited to the General Fund.

Source: Laws 1984, LB 527, § 3; Laws 1995, LB 7, § 149; Laws 1997, LB 590, § 14; Laws 2003, LB 257, § 2; Laws 2009, First Spec. Sess., LB3, § 93; Laws 2012, LB719, § 30; Laws 2016, LB957, § 14; Laws 2018, LB945, § 27; Laws 2019, LB298, § 20; Laws 2020, LB910, § 38; Laws 2024, First Spec. Sess., LB3, § 46.
Effective date August 21, 2024.

Cross References

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

(b) ELECTRONIC RECORDS

84-1228 Electronic record constituting permanent record; requirements.

Any electronic record authorized by statute to constitute the permanent record shall be electronically reproduced onto a protected backup file within five working days of the creation of the permanent record. Adequate protective technology shall be used by the keeper of the records to protect the backup file from electrical surges and from unauthorized tampering. The backup file shall be kept in a separate location from the permanent record to minimize the risk of destruction of both copies.

Source: Laws 1999, LB 234, § 14; Laws 2006, LB 921, § 12.

(c) SCHOOL DISTRICT OR EDUCATIONAL SERVICE UNIT

84-1229 Electronic records; authorized.

All books, papers, documents, reports, and records kept by a school district or educational service unit may be retained as electronic records. Minutes of the meetings of the board of a school district or educational service unit may be kept as an electronic record.

Source: Laws 2015, LB365, § 1.

ARTICLE 13

STATE EMPLOYEES RETIREMENT ACT

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STATE EMPLOYEES RETIREMENT ACT

- Section
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84-1329.	Limitation of actions.
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84-1331.	Act, how cited.
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84-1333.	County employee changed by law to judge; vesting of prior service retirement benefits; vested benefits.

84-1301 Terms, defined.

For purposes of the State Employees Retirement Act, unless the context otherwise requires:

(1)(a) Actuarial equivalent means the equality in value of the aggregate amounts expected to be received under different forms of an annuity payment.

(b) For an employee hired prior to January 1, 2018, the mortality assumption used for purposes of converting the member cash balance account shall be the 1994 Group Annuity Mortality Table using a unisex rate that is fifty percent male and fifty percent female. For purposes of converting the member cash balance account attributable to contributions made prior to January 1, 1984, that were transferred pursuant to the act, the 1994 Group Annuity Mortality Table for males shall be used.

(c) For an employee hired on or after January 1, 2018, or rehired on or after January 1, 2018, after termination of employment and being paid a retirement benefit or taking a refund of contributions, the mortality assumption used for purposes of converting the member cash balance account shall be a unisex mortality table that is recommended by the actuary and approved by the board following an actuarial experience study, a benefit adequacy study, or a plan valuation. The mortality table and actuarial factors in effect on the member's retirement date will be used to calculate the actuarial equivalency of any retirement benefit;

(2) Annuity means equal monthly payments provided by the retirement system to a member or beneficiary under forms determined by the board beginning the first day of the month after an annuity election is received in the office of the Nebraska Public Employees Retirement Systems or the first day of the month after the employee's termination of employment, whichever is later. The last payment shall be at the end of the calendar month in which the member dies or in accordance with the payment option chosen by the member;

(3) Annuity start date means the date upon which a member's annuity is first effective and shall be the first day of the month following the member's termination or following the date the application is received by the board, whichever is later;

(4) Cash balance benefit means a member's retirement benefit that is equal to an amount based on annual employee contribution credits plus interest credits and, if vested, employer contribution credits plus interest credits and dividend amounts credited in accordance with subdivision (4)(c) of section 84-1319;

(5)(a) Compensation means gross wages or salaries payable to the member for personal services performed during the plan year. Compensation does not include insurance premiums converted into cash payments, reimbursement for expenses incurred, fringe benefits, per diems, or bonuses for services not actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, except for retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements. Compensation includes overtime pay, member retirement contributions, and amounts contributed by the member to plans under sections 125, 403(b), and 457 of the Internal Revenue Code or any other section of the code which defers or excludes such amounts from income.

(b) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993;

(6) Date of disability means the date on which a member is determined to be disabled by the board;

(7) Defined contribution benefit means a member's retirement benefit from a money purchase plan in which member benefits equal annual contributions and earnings pursuant to section 84-1310 and, if vested, employer contributions and earnings pursuant to section 84-1311;

(8) Disability means an inability to engage in any substantially gainful activity by reason of any medically determinable physical or mental impairment which was initially diagnosed or became disabling while the member was an active participant in the plan and which can be expected to result in death or to be of long-continued and indefinite duration;

(9) Employee means any person or officer employed by the State of Nebraska whose compensation is paid out of state funds or funds controlled or administered by a state department through any of its executive or administrative officers when acting exclusively in their respective official, executive, or administrative capacities and any employee of the State Board of Agriculture who is a member of the state retirement system on July 1, 1982. Employee does not include (a) judges as defined in section 24-701, (b) members of the Nebraska State Patrol, except for those members of the Nebraska State Patrol who elected pursuant to section 60-1304 to remain members of the State Employees Retirement System of the State of Nebraska, (c) employees of the University of Nebraska, (d) employees of the state colleges, (e) employees of community colleges, (f) employees of the Department of Labor employed prior to July 1, 1984, and paid from funds provided pursuant to Title III of the federal Social Security Act or funds from other federal sources, except that if the contributory retirement plan or contract let pursuant to section 48-609, as such section existed prior to January 1, 2018, is terminated, such employees shall become employees for purposes of the State Employees Retirement Act on the first day of the first pay period following the termination of such contributory retirement plan or contract, (g) employees of the State Board of Agriculture who are not members of the state retirement system on July 1, 1982, (h) the Nebraska National Guard air and army technicians, (i) persons who are required to participate in the School Employees Retirement System of the State of

Nebraska pursuant to section 79-920, except that those persons so required and actively contributing to the State Employees Retirement System of the State of Nebraska as of March 4, 2022, shall continue as members of the State Employees Retirement System of the State of Nebraska, or (j) employees of the Coordinating Commission for Postsecondary Education who are eligible for and have elected to become members of a qualified retirement program approved by the commission which is commensurate with retirement programs at the University of Nebraska. Any individual appointed by the Governor may elect not to become a member of the State Employees Retirement System of the State of Nebraska;

(10) Employee contribution credit means an amount equal to the member contribution amount required by section 84-1308;

(11) Employer contribution credit means an amount equal to the employer contribution amount required by section 84-1309;

(12) Final account value means the value of a member's account on the date the account is either distributed to the member or used to purchase an annuity from the plan, which date shall occur as soon as administratively practicable after receipt of a valid application for benefits, but no sooner than forty-five days after the member's termination;

(13) Five-year break in service means five consecutive one-year breaks in service;

(14) Full-time employee means an employee who is employed to work one-half or more of the regularly scheduled hours during each pay period;

(15) Fund means the State Employees Retirement Fund created by section 84-1309;

(16) Guaranteed investment contract means an investment contract or account offering a return of principal invested plus interest at a specified rate. For investments made after July 19, 1996, guaranteed investment contract does not include direct obligations of the United States or its instrumentalities, bonds, participation certificates or other obligations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association, or collateralized mortgage obligations and other derivative securities. This subdivision shall not be construed to require the liquidation of investment contracts or accounts entered into prior to July 19, 1996;

(17) Hire date or date of hire means the first day of compensated service subject to retirement contributions;

(18) Interest credit rate means the greater of (a) five percent or (b) the applicable federal mid-term rate, as published by the Internal Revenue Service as of the first day of the calendar quarter for which interest credits are credited, plus one and one-half percent, such rate to be compounded annually;

(19) Interest credits means the amounts credited to the employee cash balance account and the employer cash balance account at the end of each day. Such interest credit for each account shall be determined by applying the daily portion of the interest credit rate to the account balance at the end of the previous day. Such interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account after a member ceases to be an employee, except that no such credit shall be made with respect to the employee cash balance account and the employer cash balance account

for any day beginning on or after the member's date of final account value. If benefits payable to the member's surviving spouse or beneficiary are delayed after the member's death, interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account until such surviving spouse or beneficiary commences receipt of a distribution from the plan;

(20) Member cash balance account means an account equal to the sum of the employee cash balance account and, if vested, the employer cash balance account and dividend amounts credited in accordance with subdivision (4)(c) of section 84-1319;

(21) One-year break in service means a plan year during which the member has not completed more than five hundred hours of service;

(22) Participation means qualifying for and making the required deposits to the retirement system during the course of a plan year;

(23) Part-time employee means an employee who is employed to work less than one-half of the regularly scheduled hours during each pay period;

(24) Plan year means the twelve-month period beginning on January 1 and ending on December 31;

(25) Prior service means service before January 1, 1964;

(26) Regular interest means the rate of interest earned each calendar year commencing January 1, 1975, as determined by the retirement board in conformity with actual and expected earnings on the investments through December 31, 1984;

(27) Required beginning date means, for purposes of the deferral of distributions and the commencement of mandatory distributions pursuant to section 401(a)(9) of the Internal Revenue Code and the regulations issued thereunder, April 1 of the year following the calendar year in which a member:

(a)(i) Terminated employment with the State of Nebraska; and

(ii)(A) Attained at least seventy and one-half years of age for a member who attained seventy and one-half years of age on or before December 31, 2019;

(B) Attained at least seventy-two years of age for a member who attained seventy and one-half years of age on or after January 1, 2020, and prior to January 1, 2023;

(C) Attained at least seventy-three years of age for a member who attained seventy-two years of age after December 31, 2022, and seventy-three years of age prior to January 1, 2033; or

(D) Attained at least seventy-five years of age for a member who attained seventy-four years of age after December 31, 2032; or

(b)(i) Terminated employment with the State of Nebraska; and

(ii) Otherwise reached the date specified by section 401(a)(9) of the Internal Revenue Code and the regulations issued thereunder;

(28) Required contribution means the deduction to be made from the compensation of employees as provided in section 84-1308;

(29) Retirement means qualifying for and accepting the retirement benefit granted under the State Employees Retirement Act after terminating employment;

(30) Retirement application means the form approved and provided by the retirement system for acceptance of a member's request for either regular or disability retirement;

(31) Retirement board or board means the Public Employees Retirement Board;

(32) Retirement date means (a) the first day of the month following the date upon which a member's request for retirement is received on a retirement application if the member is eligible for retirement and has terminated employment or (b) the first day of the month following termination of employment if the member is eligible for retirement and has filed an application but has not yet terminated employment;

(33) Retirement system means the State Employees Retirement System of the State of Nebraska;

(34) Service means the actual total length of employment as an employee and shall not be deemed to be interrupted by (a) temporary or seasonal suspension of service that does not terminate the employee's employment, (b) leave of absence authorized by the employer for a period not exceeding twelve months, (c) leave of absence because of disability, or (d) military service, when properly authorized by the retirement board. Service does not include any period of disability for which disability retirement benefits are received under section 84-1317;

(35) State department means any department, bureau, commission, or other division of state government not otherwise specifically defined or exempted in the act, the employees and officers of which are not already covered by a retirement plan;

(36) Surviving spouse means (a) the spouse married to the member on the date of the member's death or (b) the spouse or former spouse of the member if survivorship rights are provided under a qualified domestic relations order filed with the board pursuant to the Spousal Pension Rights Act. The spouse or former spouse shall supersede the spouse married to the member on the date of the member's death as provided under a qualified domestic relations order. If the benefits payable to the spouse or former spouse under a qualified domestic relations order are less than the value of benefits entitled to the surviving spouse, the spouse married to the member on the date of the member's death shall be the surviving spouse for the balance of the benefits;

(37) Termination of employment occurs on the date on which the agency which employs the member determines that the member's employer-employee relationship with the State of Nebraska is dissolved. The agency which employs the member shall notify the board of the date on which such a termination has occurred. Termination of employment does not occur if an employee whose employer-employee relationship with the State of Nebraska is dissolved enters into an employer-employee relationship with the same or another agency of the State of Nebraska and there are less than one hundred twenty days between the date when the employee's employer-employee relationship ceased with the state and the date when the employer-employee relationship commenced with the same or another agency. It is the responsibility of the employer that is involved in the termination of employment to notify the board of such change in employment and provide the board with such information as the board deems necessary. If the board determines that termination of employment has not occurred and a retirement benefit has been paid to a member of the retirement

system pursuant to section 84-1321, the board shall require the member who has received such benefit to repay the benefit to the retirement system; and

(38) Vesting credit means credit for years, or a fraction of a year, of participation in another Nebraska governmental plan for purposes of determining vesting of the employer account.

Source: Laws 1963, c. 532, § 1, p. 1667; Laws 1965, c. 574, § 1, p. 1864; Laws 1965, c. 573, § 1, p. 1861; Laws 1969, c. 584, § 116, p. 2420; Laws 1971, LB 987, § 33; Laws 1973, LB 498, § 1; Laws 1974, LB 905, § 8; Laws 1980, LB 818, § 3; Laws 1982, LB 942, § 8; Laws 1983, LB 223, § 4; Laws 1984, LB 747, § 6; Laws 1984, LB 751, § 1; Laws 1986, LB 325, § 15; Laws 1986, LB 529, § 54; Laws 1986, LB 311, § 29; Laws 1989, LB 506, § 19; Laws 1991, LB 549, § 60; Laws 1993, LB 417, § 6; Laws 1994, LB 1068, § 4; Laws 1996, LB 847, § 41; Laws 1996, LB 900, § 1070; Laws 1996, LB 1076, § 37; Laws 1996, LB 1273, § 30; Laws 1997, LB 624, § 35; Laws 1998, LB 1191, § 69; Laws 1999, LB 703, § 20; Laws 2000, LB 1192, § 22; Laws 2002, LB 407, § 54; Laws 2002, LB 470, § 10; Laws 2002, LB 687, § 18; Laws 2003, LB 451, § 23; Laws 2004, LB 1097, § 32; Laws 2006, LB 366, § 7; Laws 2006, LB 1019, § 14; Laws 2011, LB509, § 44; Laws 2012, LB916, § 33; Laws 2013, LB263, § 35; Laws 2017, LB172, § 85; Laws 2017, LB415, § 47; Laws 2018, LB1005, § 41; Laws 2020, LB1054, § 11; Laws 2022, LB700, § 11; Laws 2023, LB103, § 13.

Cross References

For provisions on Public Employees Retirement Board, see sections 84-1501 to 84-1513.

Spousal Pension Rights Act, see section 42-1101.

Although the actual appreciation or increase in value of a state employee's pension occurred during the marriage, such increase was not due to the efforts or contribution of marital funds by the parties during the marriage, but, rather, was guaranteed prior to the marriage by operation of subsection (17)

of this section. Therefore, such increase was not marital property. *Coufal v. Coufal*, 291 Neb. 378, 866 N.W.2d 74 (2015).

State Employees Retirement Act sustained as constitutional. *Gossman v. State Employees Retirement System*, 177 Neb. 326, 129 N.W.2d 97 (1964).

84-1302 State Employees Retirement System; established; operative date; official name; acceptance of contributions.

(1) An employees retirement system is hereby established for the purpose of providing a retirement annuity or other benefits for employees as provided by the State Employees Retirement Act and sections 84-1332 and 84-1333. The retirement system so created shall begin operation January 1, 1964. It shall be known as the State Employees Retirement System of the State of Nebraska and by such name shall transact all business and hold all cash and other property as provided in such sections.

(2) The retirement system shall not accept as contributions any money from members or the state except the following:

(a) Mandatory contributions established by sections 84-1308 and 84-1309;

(b) Money that is a repayment of refunded contributions made pursuant to section 84-1322;

(c) Contributions for military service credit made pursuant to section 84-1325;

(d) Actuarially required contributions pursuant to subdivision (4)(b) of section 84-1319;

(e) Trustee-to-trustee transfers pursuant to section 84-1313.01; or

(f) Corrections ordered by the board pursuant to section 84-1305.02.

Source: Laws 1963, c. 532, § 2, p. 1668; Laws 1991, LB 549, § 61; Laws 2003, LB 451, § 24; Laws 2009, LB188, § 9.

84-1303 Repealed. Laws 1971, LB 987, § 38.

84-1304 Repealed. Laws 1971, LB 987, § 38.

84-1305 Retirement board; powers and duties.

The general administration of the retirement system shall be vested in the retirement board. The board may adopt and promulgate rules and regulations to carry out the State Employees Retirement Act. The board shall maintain records and may employ such assistants and employees as may be necessary to carry out the act.

Source: Laws 1963, c. 532, § 5, p. 1669; Laws 1969, c. 584, § 117, p. 2421; Laws 1973, LB 498, § 2; Laws 1984, LB 751, § 2; Laws 1991, LB 549, § 62; Laws 1995, LB 369, § 8; Laws 1996, LB 847, § 42; Laws 2018, LB1005, § 42.

84-1305.01 Records; employer education program.

(1) The director of the Nebraska Public Employees Retirement Systems shall keep a complete record of all members with respect to name, current address, age, contributions, and any other facts as may be necessary in the administration of the State Employees Retirement Act. The information in the records shall be provided by the employer in an accurate and verifiable form, as specified by the director. The director shall, from time to time, carry out testing procedures pursuant to section 84-1512 to verify the accuracy of such information. For the purpose of obtaining such facts and information, the director shall have access to the records of the various state departments and agencies and the holder of the records shall comply with a request by the director for access by providing such facts and information to the director in a timely manner. A certified copy of a birth certificate or delayed birth certificate shall be prima facie evidence of the age of the person named in the certificate.

(2) The director shall develop and implement an employer education program using principles generally accepted by public employee retirement systems so that all employers have the knowledge and information necessary to prepare and file reports as the board requires.

Source: Laws 1991, LB 549, § 69; Laws 1998, LB 1191, § 70; Laws 2000, LB 1192, § 23; Laws 2005, LB 503, § 14.

84-1305.02 Retirement board; power to adjust contributions and benefits; overpayment of benefits; investigatory powers; subpoenas.

(1)(a) If the board determines that the retirement system has previously received contributions or distributed benefits which for any reason are not in accordance with the statutory provisions of the State Employees Retirement Act, the board shall refund contributions, require additional contributions, adjust benefits, credit dividend amounts, or require repayment of benefits paid.

In the event of an overpayment of a benefit, the board may, in addition to other remedies, offset future benefit payments by the amount of the prior overpayment, together with regular interest or interest credits, whichever is appropriate, thereon. In the event of an underpayment of a benefit, the board shall immediately make payment equal to the deficit amount plus regular interest or interest credits, whichever is appropriate.

(b) The board shall have the power, through the director of the Nebraska Public Employees Retirement Systems or the director's designee, to make a thorough investigation of any overpayment of a benefit, when in the judgment of the retirement system such investigation is necessary, including, but not limited to, circumstances in which benefit payments are made after the death of a member or beneficiary and the retirement system is not made aware of such member's or beneficiary's death. In connection with any such investigation, the board, through the director or the director's designee, shall have the power to compel the attendance of witnesses and the production of books, papers, records, and documents, whether in hardcopy, electronic form, or otherwise, and issue subpoenas for such purposes. Such subpoenas shall be served in the same manner and have the same effect as subpoenas from district courts.

(2) The board may adopt and promulgate rules and regulations implementing this section, which shall include, but not be limited to, the following: (a) The procedures for refunding contributions, adjusting future contributions or benefit payments, and requiring additional contributions or repayment of benefits; (b) the process for a member, member's beneficiary, employee, or employer to dispute an adjustment of contributions or benefits; and (c) notice provided to all affected persons. All notices shall be sent prior to an adjustment and shall describe the process for disputing an adjustment of contributions or benefits.

Source: Laws 1996, LB 1076, § 41; Laws 2002, LB 687, § 19; Laws 2006, LB 1019, § 15; Laws 2015, LB40, § 14; Laws 2018, LB1005, § 43.

84-1306 Repealed. Laws 1996, LB 847, § 62.

84-1307 Retirement system; membership; requirements; composition; exercise of option to join; effect; new employee; participation in another governmental plan; how treated; separate employment; effect.

(1) The membership of the retirement system shall be composed of all persons who are or were employed by the State of Nebraska and who maintain an account balance with the retirement system.

(2) The following employees of the State of Nebraska are authorized to participate in the retirement system: (a) All permanent full-time employees who have attained the age of eighteen years shall begin participation in the retirement system upon employment; and (b) all permanent part-time employees who have attained the age of eighteen years may exercise the option to begin participation in the retirement system within the first thirty days of employment. An employee who exercises the option to begin participation in the retirement system pursuant to this section shall remain in the retirement system until his or her termination of employment or retirement, regardless of any change of status as a permanent or temporary employee.

(3) No employee shall be authorized to participate in the retirement system provided for in the State Employees Retirement Act unless the employee is a

United States citizen or is lawfully present in the United States. The employing state agency and the employee shall maintain at least one of the following documents which shall be unexpired, if applicable to the particular document, to demonstrate United States citizenship or lawful presence in the United States as of the employee's date of hire and produce any such document so maintained upon request of the retirement board or the Nebraska Public Employees Retirement Systems:

- (a) A state-issued driver's license;
- (b) A state-issued identification card;
- (c) A certified copy of a birth certificate or delayed birth certificate issued in any state, territory, or possession of the United States;
- (d) A Consular Report of Birth Abroad issued by the United States Department of State;
- (e) A United States passport;
- (f) A foreign passport with a United States visa;
- (g) A United States Certificate of Naturalization;
- (h) A United States Certificate of Citizenship;
- (i) A tribal certificate of Native American blood or similar document;
- (j) A United States Citizenship and Immigration Services Employment Authorization Document, Form I-766;
- (k) A United States Citizenship and Immigration Services Permanent Resident Card, Form I-551; or
- (l) Any other document issued by the United States Department of Homeland Security or the United States Citizenship and Immigration Services granting employment authorization in the United States and approved by the retirement board.

(4) For purposes of this section, (a) permanent full-time employees includes employees of the Legislature or Legislative Council who work one-half or more of the regularly scheduled hours during each pay period of the legislative session and (b) permanent part-time employees includes employees of the Legislature or Legislative Council who work less than one-half of the regularly scheduled hours during each pay period of the legislative session.

(5)(a) Within the first one hundred eighty days of employment, a full-time employee may apply to the board for vesting credit for years of participation in another Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code. During the years of participation in the other Nebraska governmental plan, the employee must have been a full-time employee, as defined in the Nebraska governmental plan in which the credit was earned. The board may adopt and promulgate rules and regulations governing the assessment and granting of vesting credit.

(b) If the contributory retirement plan or contract let pursuant to section 48-609, as such section existed prior to January 1, 2018, is terminated, employees of the Department of Labor who are active participants in such contributory retirement plan or contract on the date of termination of such plan or contract shall be granted vesting credit for their years of participation in such plan or contract.

(6) Any employee who qualifies for membership in the retirement system pursuant to this section may not be disqualified for membership in the retire-

ment system solely because such employee also maintains separate employment which qualifies the employee for membership in another public retirement system, nor may membership in this retirement system disqualify such an employee from membership in another public retirement system solely by reason of separate employment which qualifies such employee for membership in this retirement system.

(7) State agencies shall ensure that employees authorized to participate in the retirement system pursuant to this section shall enroll and make required contributions to the retirement system immediately upon becoming an employee. Information necessary to determine membership in the retirement system shall be provided by the employer.

Source: Laws 1963, c. 532, § 7, p. 1670; Laws 1969, c. 842, § 1, p. 3177; Laws 1973, LB 492, § 1; Laws 1983, LB 219, § 1; Laws 1986, LB 325, § 16; Laws 1986, LB 311, § 30; Laws 1990, LB 834, § 1; Laws 1995, LB 501, § 11; Laws 1996, LB 1076, § 38; Laws 1997, LB 624, § 36; Laws 1998, LB 1191, § 71; Laws 1999, LB 703, § 21; Laws 2000, LB 1192, § 24; Laws 2002, LB 407, § 55; Laws 2002, LB 687, § 20; Laws 2004, LB 1097, § 33; Laws 2006, LB 366, § 8; Laws 2008, LB1147, § 13; Laws 2009, LB188, § 10; Laws 2010, LB950, § 21; Laws 2011, LB509, § 45; Laws 2013, LB263, § 36; Laws 2017, LB172, § 86; Laws 2019, LB34, § 21; Laws 2024, LB198, § 19.
Effective date March 19, 2024.

84-1308 Retirement system; contribution of employees; method of payment; amount; employer pick up contributions.

(1) Each employee who is a member of the retirement system shall pay or have paid on his or her behalf a sum equal to four and eight-tenths percent of his or her monthly compensation. The contributions, although designated as employee contributions, shall be paid by the employer in lieu of employee contributions. Such amounts shall be deducted monthly pursuant to subsection (2) of this section by the Director of Administrative Services. All money received shall be set aside by the State Treasurer and credited to the State Employees Retirement Fund.

(2) The employer shall pick up the employee contributions required by this section for all compensation paid on or after January 1, 1985, and the contributions so picked up shall be treated as employer contributions pursuant to section 414(h)(2) of the Internal Revenue Code in determining federal tax treatment under the code and shall not be included as gross income of the employee until such time as they are distributed or made available. The employer shall pay these employee contributions from the same source of funds which is used in paying earnings to the employee. The employer shall pick up these contributions by a deduction through a reduction in the cash compensation of the employee. Employee contributions picked up shall be treated for all purposes of the State Employees Retirement Act in the same manner and to the extent as employee contributions made prior to the date picked up.

Source: Laws 1963, c. 532, § 8, p. 1670; Laws 1967, c. 617, § 3, p. 2070; Laws 1969, c. 584, § 118, p. 2421; Laws 1981, LB 459, § 6; Laws 1984, LB 218, § 5; Laws 1984, LB 751, § 3; Laws 1991, LB 549,

§ 63; Laws 1995, LB 574, § 85; Laws 1998, LB 1191, § 72; Laws 2001, LB 408, § 25; Laws 2006, LB 366, § 9; Laws 2013, LB263, § 37.

84-1309 State Employees Retirement Fund; established; amounts credited; disbursements; accounting of funds.

(1) There is hereby established in the state treasury a special fund to be known as the State Employees Retirement Fund to consist of such funds as the Legislature shall from time to time appropriate. The Director of Administrative Services shall credit an amount each month to the State Employees Retirement Fund equal to one hundred fifty-six percent of the amounts deducted, in accordance with section 84-1308, from the compensation of employees who are paid from funds appropriated from the General Fund.

(2) The Director of Administrative Services shall credit an amount each month to the State Employees Retirement Fund from the funds of each department with at least one employee who is a member of the retirement system for a sum equal to one hundred fifty-six percent of the amounts deducted, in accordance with section 84-1308, from the compensation of employees who are paid from any funds other than funds appropriated from the General Fund.

(3) The Director of Administrative Services shall credit an amount each month to the State Employees Retirement Fund for prior service benefits. After receiving the annual report required by section 84-1315, the Legislature may make such adjustments in the funding of prior service benefits as necessary to keep the plan sound. The contribution for prior service purposes shall cease when the prior service obligation is properly funded.

(4) The Department of Administrative Services may, for accounting purposes, create subfunds of the State Employees Retirement Fund to separately account for defined contribution plan assets and cash balance plan assets.

(5) The State Treasurer shall be the custodian of the funds and securities of the retirement system and may deposit the funds and securities in any financial institution approved by the Nebraska Investment Council. The State Treasurer shall transmit monthly to the board a detailed statement showing all credits to and disbursements from the fund. He or she shall disburse money from the fund only on warrants issued by the Director of Administrative Services upon vouchers signed by a person authorized by the retirement board.

Source: Laws 1963, c. 532, § 9, p. 1671; Laws 1967, c. 619, § 1, p. 2074; Laws 1969, c. 584, § 119, p. 2422; Laws 1971, LB 476, § 1; Laws 1971, LB 987, § 34; Laws 1981, LB 459, § 7; Laws 1984, LB 751, § 4; Laws 1991, LB 549, § 64; Laws 1997, LB 623, § 41; Laws 2012, LB916, § 34.

84-1309.01 Board; provide benefit liability information; verify investments.

The board shall provide benefit liability information and other assistance to the Nebraska Investment Council for the establishment of policy portfolio objectives for the investing and reinvesting of the assets of the retirement system. The board shall verify that the investments of the assets of the retirement system by the council and the state investment officer are invested and reinvested for the exclusive purposes of providing benefits to members and members' beneficiaries and that the assets of the retirement system are not

invested with the sole or primary investment objective of economic development or social purposes or objectives. Such verification shall be included in the written plan of action pursuant to subsection (3) of section 84-1503.

Source: Laws 1984, LB 653, § 1; Laws 1996, LB 847, § 43; Laws 2005, LB 503, § 15.

84-1309.02 Cash balance benefit; election; effect; administrative services agreements; authorized.

(1) It is the intent of the Legislature that, in order to improve the competitiveness of the retirement plan for state employees, a cash balance benefit shall be added to the State Employees Retirement Act on and after January 1, 2003. Each member who is employed and participating in the retirement system prior to January 1, 2003, may either elect to continue participation in the defined contribution benefit as provided in the act prior to January 1, 2003, or elect to participate in the cash balance benefit as set forth in this section. An active member shall make a one-time election beginning September 1, 2012, through October 31, 2012, in order to participate in the cash balance benefit. If no such election is made, the member shall be treated as though he or she elected to continue participating in the defined contribution benefit as provided in the act prior to January 1, 2003. Members who elect to participate in the cash balance benefit beginning September 1, 2012, through October 31, 2012, shall commence participation in the cash balance benefit on January 2, 2013. Any member who made the election prior to April 7, 2012, does not have to make another election of the cash balance benefit beginning September 1, 2012, through October 31, 2012.

(2) For a member employed and participating in the retirement system beginning on and after January 1, 2003, or a member employed and participating in the retirement system on January 1, 2003, who, prior to April 7, 2012, or beginning September 1, 2012, through October 31, 2012, elects to convert his or her employee and employer accounts to the cash balance benefit:

(a) The employee cash balance account within the State Employees Retirement Fund shall, at any time, be equal to the following:

(i) The initial employee account balance, if any, transferred from the defined contribution plan account described in section 84-1310; plus

(ii) Employee contribution credits deposited in accordance with section 84-1308; plus

(iii) Interest credits credited in accordance with subdivision (19) of section 84-1301; plus

(iv) Dividend amounts credited in accordance with subdivision (4)(c) of section 84-1319; and

(b) The employer cash balance account shall, at any time, be equal to the following:

(i) The initial employer account balance, if any, transferred from the defined contribution plan account described in section 84-1311; plus

(ii) Employer contribution credits deposited in accordance with section 84-1309; plus

(iii) Interest credits credited in accordance with subdivision (19) of section 84-1301; plus

(iv) Dividend amounts credited in accordance with subdivision (4)(c) of section 84-1319.

(3) In order to carry out the provisions of this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the state and its participating employees. The board may develop a schedule for the allocation of the administrative services agreements costs for accounting or record-keeping services and may assess the costs so that each member pays a reasonable fee as determined by the board.

Source: Laws 2002, LB 687, § 21; Laws 2003, LB 451, § 25; Laws 2005, LB 364, § 17; Laws 2006, LB 366, § 10; Laws 2006, LB 1019, § 16; Laws 2007, LB328, § 7; Laws 2009, LB188, § 11; Laws 2010, LB950, § 22; Laws 2011, LB509, § 46; Laws 2012, LB916, § 35; Laws 2017, LB415, § 48; Laws 2019, LB34, § 22.

84-1310 Defined contribution benefit; employee account.

For a member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, a member's share of the fund arising from the compensation deductions made in accordance with section 84-1308 shall be known as his or her employee account. Each year commencing January 1, 1975, and ending December 31, 1984, regular interest shall be credited to the employee account. As of January 1 of each such year, a member's employee account shall be equal to one hundred percent of his or her employee account as of the next preceding January 1 increased by any regular interest earned and any amounts deducted from the member's compensation since the next preceding January 1 in accordance with the provisions of section 84-1308. On and after January 1, 1985, the employee account shall be equal to the sum of the stable return account, the equities account, and any assets of additional accounts created by the board pursuant to section 84-1310.01.

Source: Laws 1963, c. 532, § 10, p. 1671; Laws 1969, c. 842, § 2, p. 3178; Laws 1974, LB 905, § 9; Laws 1983, LB 313, § 3; Laws 1984, LB 751, § 5; Laws 1991, LB 549, § 65; Laws 1994, LB 833, § 46; Laws 2002, LB 687, § 22.

84-1310.01 Defined contribution benefit; employee account; investment options; procedures; administration.

(1)(a) Each member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, shall be allowed to allocate all contributions to the member's employee account to various investment options. The investment options shall include, but not be limited to, the following:

(i) An investor select account which shall be invested under the direction of the state investment officer with an asset allocation and investment strategy substantially similar to the investment allocations made by the state investment officer for the defined benefit plans under the retirement systems described in subdivision (1)(a) of section 84-1503. Investments shall most likely include domestic and international equities, fixed income investments, and real estate, as well as potentially additional asset classes;

(ii) A stable return account which shall be invested by or under the direction of the state investment officer in a stable value strategy that provides capital preservation and consistent, steady returns;

(iii) An equities account which shall be invested by or under the direction of the state investment officer in equities;

(iv) A fixed income account which shall be invested by or under the direction of the state investment officer in fixed income instruments; and

(v) A life-cycle fund which shall be invested under the direction of the state investment officer with an asset allocation and investment strategy that adjusts from a position of higher risk to one of lower risk as the member ages.

(b) If the member fails to select an option or combination of options pursuant to subdivision (a) of this subsection, all of the member's funds shall be placed in the option described in subdivision (a)(v) of this subsection. Each member shall be given a detailed current description of each investment option prior to making or revising the member's allocation.

(2) Members of the retirement system may allocate their contributions to the investment options in percentage increments as set by the board in any proportion, including full allocation to any one option. A member under subdivision (1)(a) of section 84-1323 or the member's beneficiary may transfer any portion of the member's funds among the options, except for restrictions on transfers to or from the stable return account pursuant to rule or regulation. The board may adopt and promulgate rules and regulations for changes of a member's allocation of contributions to the member's accounts after the member's most recent allocation and for transfers from one investment account to another.

(3) The board shall develop a schedule for the allocation of administrative costs of maintaining the various investment options and shall assess the costs so that each member pays a reasonable fee as determined by the board.

(4) In order to carry out this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the state and its participating employees.

(5) The state, the board, the state investment officer, the members of the Nebraska Investment Council, or the agency shall not be liable for any investment results resulting from the member's exercise of control over the assets in the employee account.

Source: Laws 1984, LB 751, § 11; Laws 1991, LB 549, § 66; Laws 1994, LB 833, § 47; Laws 1996, LB 847, § 44; Laws 1999, LB 703, § 22; Laws 2000, LB 1200, § 5; Laws 2001, LB 408, § 26; Laws 2002, LB 407, § 56; Laws 2002, LB 687, § 23; Laws 2005, LB 503, § 16; Laws 2008, LB1147, § 14; Laws 2010, LB950, § 23; Laws 2012, LB916, § 36; Laws 2014, LB759, § 22; Laws 2018, LB1005, § 44; Laws 2019, LB32, § 3; Laws 2022, LB700, § 12.

84-1311 Defined contribution benefit; employer account; investment.

(1) For a member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, a member's share of the fund arising from the state contributions made

in accordance with section 84-1309 shall be known as his or her employer account. Prior to January 1, 1981, as of any January 1 a member's employer account shall be equal to his or her account as of the next preceding January 1, increased by one hundred four percent of any amounts deducted from the member's compensation since the next preceding January 1 in accordance with section 84-1308. As of January 1, 1982, a member's employer account shall be equal to the account as of January 1, 1981, increased by one hundred four percent of the amounts deducted from the member's compensation for the first nine months of the year and one hundred fifty-six percent of the amount so deducted for the final three months of the year in accordance with section 84-1308. As of January 1, 1983, and each year thereafter, the member's employer account shall be equal to the account as of the next preceding January 1 increased by one hundred fifty-six percent of any amounts deducted from the member's compensation since the next preceding January 1 in accordance with section 84-1308. The member's employer account shall be increased by any interest allocated under the provisions of the guaranteed investment contract and any gains on investments and reduced by any losses on investments, any expense charges under the guaranteed investment contract or other investments, and any expense charges incurred in connection with administering the retirement system in excess of those provided for in section 84-1321.01, except that a member who ceased being an employee since the next preceding January 1 may have his or her employer account reduced in accordance with section 84-1321.01. On and after July 1, 1999, the employer account shall be equal to the sum of the assets of the accounts created by the board pursuant to section 84-1311.03.

(2) On and after January 1, 1997, and until July 1, 1999, the state investment officer shall invest the employer account, and, after July 1, 1999, upon maturity, the state investment officer shall invest the employer account funds which have been invested in guaranteed investment contracts prior to January 1, 1997. On and after July 1, 1999, the employer account shall be invested pursuant to section 84-1311.03. The state investment officer shall invest or reinvest the funds in securities and investments the nature of which individuals of prudence, discretion, and intelligence acquire or retain in dealing with the property of another, and if the state investment officer has special skills or is appointed on the basis of representations of special skills or expertise, he or she is under a duty to use such skills.

Source: Laws 1963, c. 532, § 11, p. 1672; Laws 1971, LB 987, § 35; Laws 1973, LB 498, § 3; Laws 1981, LB 459, § 8; Laws 1983, LB 313, § 4; Laws 1984, LB 751, § 6; Laws 1986, LB 311, § 31; Laws 1991, LB 549, § 67; Laws 1994, LB 833, § 48; Laws 1996, LB 847, § 45; Laws 1999, LB 687, § 5; Laws 1999, LB 703, § 23; Laws 2002, LB 687, § 24.

84-1311.01 Repealed. Laws 1998, LB 1191, § 85.

84-1311.02 Repealed. Laws 1998, LB 1191, § 85.

84-1311.03 Defined contribution benefit; employer account; investment options; procedures; administration.

(1) Each member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance

benefit, shall be allowed to allocate all contributions to the member's employer account to various investment options. Such investment options shall be the same as the investment options of the employee account as provided in subsection (1) of section 84-1310.01. If a member fails to select an option or combination of options, all of the member's funds in the employer account shall be placed in the investment option described in subdivision (1)(a)(v) of section 84-1310.01. Each member shall be given a detailed current description of each investment option prior to making or revising his or her allocation.

(2) Each member of the retirement system may allocate contributions to the member's employer account to the investment options in percentage increments as set by the board in any proportion, including full allocation to any one option. A member under subdivision (1)(a) of section 84-1323 or the member's beneficiary may transfer any portion of the member's funds among the options. The board may adopt and promulgate rules and regulations for changes of a member's allocation of contributions to the member's accounts after the member's most recent allocation and for transfers from one investment account to another.

(3) The board shall develop a schedule for the allocation of administrative costs of maintaining the various investment options and shall assess the costs so that each member pays a reasonable fee as determined by the board.

(4) In order to carry out this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the state and its participating employees.

(5) The state, the board, the state investment officer, the members of the Nebraska Investment Council, or the agency shall not be liable for any investment results resulting from the member's exercise of control over the assets in the employer account.

Source: Laws 1999, LB 687, § 4; Laws 2000, LB 1200, § 6; Laws 2001, LB 408, § 27; Laws 2002, LB 407, § 57; Laws 2002, LB 687, § 25; Laws 2004, LB 1097, § 34; Laws 2005, LB 503, § 17; Laws 2008, LB1147, § 15; Laws 2010, LB950, § 24; Laws 2012, LB916, § 37; Laws 2018, LB1005, § 45; Laws 2019, LB32, § 4; Laws 2022, LB700, § 13.

84-1312 Direct rollover; terms, defined; distributee; powers; board; powers.

(1) For purposes of this section and section 84-1313:

(a) Direct rollover means a payment by the retirement system to the eligible retirement plan or plans specified by the distributee;

(b) Distributee means the member, the member's surviving spouse, or the member's former spouse who is an alternate payee under a qualified domestic relations order as defined in section 414(p) of the Internal Revenue Code;

(c) Eligible retirement plan means (i) an individual retirement account described in section 408(a) of the Internal Revenue Code, (ii) an individual retirement annuity described in section 408(b) of the code, except for an endowment contract, (iii) a qualified plan described in section 401(a) of the code, (iv) an annuity plan described in section 403(a) or 403(b) of the code, (v) except for purposes of section 84-1313, an individual retirement plan described

in section 408A of the code, and (vi) a plan described in section 457(b) of the code and maintained by a governmental employer. For eligible rollover distributions to a surviving spouse, an eligible retirement plan means subdivisions (1)(c)(i) through (vi) of this section; and

(d) Eligible rollover distribution means any distribution to a distributee of all or any portion of the balance to the credit of the distributee in the plan, except such term shall not include any distribution which is one of a series of substantially equal periodic payments, not less frequently than annually, made for the life of the distributee or joint lives of the distributee and the distributee's beneficiary or for the specified period of ten years or more and shall not include any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code.

(2) For distributions made to a distributee on or after January 1, 1993, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee.

(3) A member's surviving spouse or former spouse who is an alternate payee under a qualified domestic relations order and, on or after January 1, 2010, any designated beneficiary of a member who is not a surviving spouse or former spouse who is entitled to receive an eligible rollover distribution from the retirement system may, in accordance with such rules, regulations, and limitations as may be established by the board, elect to have such distribution made in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

(4) An eligible rollover distribution on behalf of a designated beneficiary of a member who is not a surviving spouse or former spouse of the member may be transferred to an individual retirement account or annuity described in section 408(a) or section 408(b) of the Internal Revenue Code that is established for the purpose of receiving the distribution on behalf of the designated beneficiary and that will be treated as an inherited individual retirement account or individual retirement annuity described in section 408(d)(3)(C) of the Internal Revenue Code.

(5) The board may adopt and promulgate rules and regulations for direct rollover procedures which are consistent with section 401(a)(31) of the Internal Revenue Code and which include, but are not limited to, the form and time of direct rollover distributions.

Source: Laws 1996, LB 847, § 48; Laws 2002, LB 407, § 58; Laws 2012, LB916, § 38; Laws 2018, LB1005, § 46.

84-1313 Retirement system; accept payments and rollovers; limitations; board; powers.

(1) The retirement system may accept cash rollover contributions from a member who is making payment pursuant to section 84-1322 or 84-1325 if the contributions do not exceed the amount of payment authorized to be paid by the member pursuant to section 84-1322 or 84-1325 and the contributions represent (a) all or any portion of the balance of the member's interest in a qualified plan under section 401(a) of the Internal Revenue Code or (b) the interest of the member from an individual retirement account or an individual retirement annuity, the entire amount of which is attributable to a qualified total distribution, as defined in the Internal Revenue Code, from a qualified plan under section 401(a) of the code and qualified as a tax-free rollover

amount. The member's interest under subdivision (a) or (b) of this subsection must be transferred to the retirement system within sixty days from the date of the distribution from the qualified plan, individual retirement account, or individual retirement annuity.

(2) Cash transferred to the retirement system as a rollover contribution shall be deposited as other payments made under section 84-1322 or 84-1325.

(3) Under the same conditions as provided in subsection (1) of this section, the retirement system may accept eligible rollover distributions from (a) an annuity contract described in section 403(b) of the Internal Revenue Code, (b) a plan described in section 457(b) of the code which is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, or (c) the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the code that is eligible to be rolled over and would otherwise be includable in gross income. Amounts accepted pursuant to this subsection shall be deposited as all other payments under this section.

(4) The retirement system may accept direct rollover distributions made from a qualified plan pursuant to section 401(a)(31) of the Internal Revenue Code. The direct rollover distribution shall be deposited as all other payments under this section.

(5) The board may adopt and promulgate rules and regulations defining procedures for acceptance of rollovers which are consistent with sections 401(a)(31) and 402 of the Internal Revenue Code.

Source: Laws 1996, LB 847, § 49; Laws 1997, LB 624, § 37; Laws 2002, LB 407, § 59; Laws 2018, LB1005, § 47.

84-1313.01 Retirement system; accept transfers; limitations; how treated.

The retirement system may accept as payment for withdrawn amounts made pursuant to the State Employees Retirement Act a direct trustee-to-trustee transfer from (1) an eligible tax-sheltered annuity plan as described in section 403(b) of the Internal Revenue Code or (2) an eligible deferred compensation plan as described in section 457(b) of the code on behalf of a member who is making payments for such amounts. The amount transferred shall not exceed the amount withdrawn and such transferred amount shall qualify as a purchase of permissive service credit by the member as defined in section 415 of the code.

Source: Laws 2002, LB 407, § 61.

84-1313.02 Retirement system; transfer eligible rollover distribution; conditions.

The retirement system may transfer any distribution of benefits to a member which is an eligible rollover distribution as defined in section 84-1312 in a direct rollover to the deferred compensation plan authorized under section 84-1504 if the following conditions are met:

(1) The member has an amount of compensation deferred immediately after the rollover at least equal to the amount of compensation deferred immediately before the rollover;

(2) The account of the member is valued as of the date of final account value;

(3) The member is not eligible for additional annual deferrals in the receiving plan unless the member is performing services for the state; and

(4) The deferred compensation plan provides for such rollovers.

Source: Laws 2009, LB188, § 12; Laws 2011, LB509, § 47.

84-1314 State Employees Defined Contribution Retirement Expense Fund; State Employees Cash Balance Retirement Expense Fund; created; use; investment.

(1) The State Employees Defined Contribution Retirement Expense Fund is created. The fund shall be credited with money from the retirement system assets and income sufficient to pay the pro rata share of administrative expenses incurred as directed by the board for the proper administration of the State Employees Retirement Act and necessary in connection with the administration and operation of the retirement system, except as provided in sections 84-1309.02, 84-1310.01, and 84-1311.03. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The State Employees Cash Balance Retirement Expense Fund is created. The fund shall be credited with money forfeited pursuant to section 84-1321.01 and with money from the retirement system assets and income sufficient to pay the pro rata share of administrative expenses incurred as directed by the board for the proper administration of the State Employees Retirement Act and necessary in connection with the administration and operation of the retirement system, except as provided in sections 84-1309.02, 84-1310.01, and 84-1311.03. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(3) Forfeiture funds collected from members participating in the defined contribution benefit shall be used to either pay expenses or reduce employer contributions related to the defined contribution benefit. Any unused funds shall be allocated as earnings of and transferred to the accounts of the remaining members within twelve months after receipt of the funds by the board.

Source: Laws 1997, LB 623, § 40; Laws 2000, LB 1200, § 7; Laws 2001, LB 408, § 28; Laws 2003, LB 451, § 26; Laws 2005, LB 364, § 18; Laws 2007, LB328, § 8; Laws 2010, LB950, § 25; Laws 2013, LB263, § 38.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

84-1315 Auditor of Public Accounts; annual audit of retirement system; annual report.

It shall be the duty of the Auditor of Public Accounts to make an annual audit of the retirement system and an annual report to the retirement board and to the Clerk of the Legislature of the condition of the retirement system. The report submitted to the Clerk of the Legislature shall be submitted electronically. Each member of the Legislature shall receive an electronic copy of the

report required by this section by making a request for such report to either the Auditor of Public Accounts or the retirement board.

Source: Laws 1963, c. 532, § 15, p. 1673; Laws 1971, LB 987, § 37; Laws 1972, LB 1072, § 1; Laws 1979, LB 322, § 75; Laws 1988, LB 1169, § 2; Laws 2012, LB782, § 232.

84-1315.01 Transferred to section 84-1507.

84-1316 Retirement system; sue and be sued; actions; representation by Attorney General.

The retirement system may sue or be sued in the name of the system, and in all actions brought by or against it, the system shall be represented by the Attorney General.

Source: Laws 1963, c. 532, § 16, p. 1673; Laws 1996, LB 847, § 46.

84-1317 Employees; retirement date; application for benefits; deferment of benefits; board; duties; certain required minimum distributions; election authorized.

(1) Upon filing an application for benefits with the board, an employee may elect to retire after the attainment of age fifty-five or an employee may retire as a result of disability at any age.

(2) The member shall specify in the application for benefits the manner in which he or she wishes to receive the retirement benefit under the options provided by the State Employees Retirement Act. Payment under the application for benefits shall be made (a) for annuities, no sooner than the annuity start date, and (b) for other distributions, no sooner than the date of final account value.

(3) Payment of any benefit provided under the retirement system shall not be deferred later than the required beginning date.

(4) The board shall make reasonable efforts to locate the member or the member's beneficiary and distribute benefits by the required beginning date. If the board is unable to make such a distribution, the benefit shall be distributed pursuant to the Uniform Disposition of Unclaimed Property Act and no amounts may be applied to increase the benefits any member would otherwise receive under the State Employees Retirement Act.

(5) A participant or beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of section 401(a)(9)(H) of the Internal Revenue Code, and who would have satisfied that requirement by receiving distributions that are either equal to the 2009 required minimum distributions or one or more payments in a series of substantially equal distributions, including the 2009 required minimum distribution, made at least annually and expected to last for the life or life expectancy of the participant, the joint lives or joint life expectancy of the participant and the participant's designated beneficiary, or for a period of at least ten years, shall receive those distributions for 2009 unless the participant or beneficiary chooses not to receive such distributions. Participants and beneficiaries shall be given

the opportunity to elect to stop receiving the distributions described in this subsection.

Source: Laws 1963, c. 532, § 17, p. 1673; Laws 1967, c. 619, § 2, p. 2075; Laws 1971, LB 360, § 1; Laws 1973, LB 498, § 4; Laws 1973, LB 55, § 1; Laws 1974, LB 740, § 2; Laws 1979, LB 391, § 7; Laws 1979, LB 161, § 3; Laws 1981, LB 288, § 1; Laws 1982, LB 287, § 5; Laws 1983, LB 604, § 25; Laws 1983, LB 219, § 2; Laws 1986, LB 325, § 17; Laws 1986, LB 311, § 32; Laws 1987, LB 296, § 4; Laws 1996, LB 1076, § 39; Laws 1997, LB 624, § 38; Laws 2003, LB 451, § 27; Laws 2009, LB188, § 13; Laws 2013, LB263, § 39; Laws 2020, LB1054, § 12.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

84-1317.01 Repealed. Laws 1982, LB 592, § 2.

84-1318 Employees; benefits; retirement value; how computed.

The retirement value for any employee who retires under the provisions of section 84-1317 shall be (1) for participants in the defined contribution benefit, the sum of the employee's employee account and employer account as of the date of final account value and (2) for participants in the cash balance benefit, the benefit provided in section 84-1309.02 as of the date of final account value.

Source: Laws 1963, c. 532, § 18, p. 1674; Laws 2002, LB 687, § 26; Laws 2003, LB 451, § 28.

84-1319 Future service retirement benefits; when payable; how computed; selection of annuity; board; deferment of benefits; certain required minimum distributions; election authorized.

(1) The future service retirement benefit shall be an annuity, payable monthly with the first payment made no earlier than the annuity start date, which shall be the actuarial equivalent of the retirement value as specified in section 84-1318 based on factors determined by the board, except that gender shall not be a factor when determining the amount of such payments except as provided in this section.

Except as provided in section 42-1107, at any time before the annuity start date, the retiring employee may choose to receive his or her annuity either in the form of an annuity as provided under subsection (4) of this section or any optional form that is determined acceptable by the board.

Except as provided in section 42-1107, in lieu of the future service retirement annuity, a retiring employee may receive a benefit not to exceed the amount in his or her employer and employee accounts as of the date of final account value payable in a lump sum and, if the employee chooses not to receive the entire amount in such accounts, an annuity equal to the actuarial equivalent of the remainder of the retirement value, and the employee may choose any form of such annuity as provided for by the board.

In any case, the amount of the monthly payment shall be such that the annuity chosen shall be the actuarial equivalent of the retirement value as specified in section 84-1318 except as provided in this section.

(2) Except as provided in subsection (4) of this section, the monthly annuity income payable to a member retiring on or after January 1, 1984, shall be as follows:

He or she shall receive at retirement the amount which may be purchased by the accumulated contributions based on annuity rates in effect on the annuity start date which do not utilize gender as a factor, except that such amounts shall not be less than the retirement income which can be provided by the sum of the amounts derived pursuant to subdivisions (a) and (b) of this subsection as follows:

(a) The income provided by the accumulated contributions made prior to January 1, 1984, based on male annuity purchase rates in effect on the date of purchase; and

(b) The income provided by the accumulated contributions made on and after January 1, 1984, based on the annuity purchase rates in effect on the date of purchase which do not use gender as a factor.

(3) Any amounts, in excess of contributions, which may be required in order to purchase the retirement income specified in subsection (2) of this section shall be withdrawn from the State Equal Retirement Benefit Fund.

(4)(a) The normal form of payment shall be a single life annuity with five-year certain, which is an annuity payable monthly during the remainder of the member's life with the provision that, in the event of the member's death before sixty monthly payments have been made, the monthly payments will continue until sixty monthly payments have been made in total pursuant to section 84-1323.02.

Such annuity shall be equal to the actuarial equivalent of the member cash balance account or the sum of the employee and employer accounts, whichever is applicable, as of the date of final account value. As a part of the annuity, the normal form of payment may include a two and one-half percent cost-of-living adjustment purchased by the member, if the member elects such a payment option.

Except as provided in section 42-1107, a member may elect a lump-sum distribution of his or her member cash balance account as of the date of final account value upon termination of service or retirement.

For a member employed and participating in the retirement system prior to January 1, 2003, who has elected to participate in the cash balance benefit pursuant to section 84-1309.02, or for a member employed and participating in the retirement system beginning on and after January 1, 2003, the balance of his or her member cash balance account as of the date of final account value shall be converted to an annuity using an interest rate that is recommended by the actuary and approved by the board following an actuarial experience study, a benefit adequacy study, or a plan valuation. The interest rate and actuarial factors in effect on the member's retirement date will be used to calculate actuarial equivalency of any retirement benefit. Such interest rate may be, but is not required to be, equal to the assumed rate of return.

For an employee who is a member prior to January 1, 2003, who has elected not to participate in the cash balance benefit pursuant to section 84-1309.02, and who, at the time of retirement, chooses the annuity option rather than the lump-sum option, his or her employee and employer accounts as of the date of final account value shall be converted to an annuity using an interest rate that

is equal to the lesser of (i) the Pension Benefit Guaranty Corporation initial interest rate for valuing annuities for terminating plans as of the beginning of the year during which payment begins plus three-fourths of one percent or (ii) the interest rate to calculate the retirement benefits for the cash balance plan members.

(b) For the calendar year beginning January 1, 2003, and each calendar year thereafter, the actuary for the board shall perform an actuarial valuation of the system using the entry age actuarial cost method. Under this method, the actuarially required funding rate is equal to the normal cost rate plus the contribution rate necessary to amortize the unfunded actuarial accrued liability on a level-payment basis. The normal cost under this method shall be determined for each individual member on a level percentage of salary basis. The normal cost amount is then summed for all members. The initial unfunded actual accrued liability as of January 1, 2003, if any, shall be amortized over a twenty-five-year period. During each subsequent actuarial valuation, changes in the unfunded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a twenty-five-year period beginning on the valuation date of such change. If the unfunded actuarial accrued liability under the entry age actuarial cost method is zero or less than zero on an actuarial valuation date, then all prior unfunded actuarial accrued liabilities shall be considered fully funded and the unfunded actuarial accrued liability shall be reinitialized and amortized over a twenty-five-year period as of the actuarial valuation date. If the actuarially required contribution rate exceeds the rate of all contributions required pursuant to the State Employees Retirement Act, there shall be a supplemental appropriation sufficient to pay for the difference between the actuarially required contribution rate and the rate of all contributions required pursuant to the act.

(c) If the unfunded accrued actuarial liability under the entry age actuarial cost method is less than zero on an actuarial valuation date, and on the basis of all data in the possession of the retirement board, including such mortality and other tables as are recommended by the actuary engaged by the retirement board and adopted by the retirement board, the retirement board may elect to pay a dividend to all members participating in the cash balance option in an amount that would not increase the actuarial contribution rate above ninety percent of the actual contribution rate. Dividends shall be credited to the employee cash balance account and the employer cash balance account based on the account balances on the actuarial valuation date. In the event a dividend is granted and paid after the actuarial valuation date, interest for the period from the actuarial valuation date until the dividend is actually paid shall be paid on the dividend amount. The interest rate shall be the interest credit rate earned on regular contributions.

(5) At the option of the retiring member, any lump sum or annuity provided under this section or section 84-1320 may be deferred to commence at any time, except that no benefit shall be deferred later than the required beginning date. Such election by the retiring member may be made at any time prior to the commencement of the lump-sum or annuity payments.

(6) A participant or beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of section 401(a)(9)(H) of the Internal Revenue Code, and who would have satisfied that requirement by receiving distributions that are either equal to the 2009 re-

quired minimum distributions or one or more payments in a series of substantially equal distributions, including the 2009 required minimum distribution, made at least annually and expected to last for the life or life expectancy of the participant, the joint lives or joint life expectancy of the participant and the participant's designated beneficiary, or for a period of at least ten years, shall receive those distributions for 2009 unless the participant or beneficiary chooses not to receive such distributions. Participants and beneficiaries shall be given the opportunity to elect to stop receiving the distributions described in this subsection.

Source: Laws 1963, c. 532, § 19, p. 1674; Laws 1973, LB 498, § 5; Laws 1983, LB 210, § 2; Laws 1984, LB 751, § 7; Laws 1986, LB 325, § 18; Laws 1986, LB 311, § 33; Laws 1987, LB 308, § 1; Laws 1987, LB 60, § 4; Laws 1991, LB 549, § 70; Laws 1992, LB 543, § 2; Laws 1994, LB 1306, § 8; Laws 1996, LB 1273, § 31; Laws 2002, LB 687, § 27; Laws 2003, LB 451, § 29; Laws 2006, LB 1019, § 17; Laws 2007, LB328, § 9; Laws 2009, LB188, § 14; Laws 2012, LB916, § 39; Laws 2013, LB263, § 40; Laws 2017, LB415, § 49; Laws 2019, LB34, § 23; Laws 2020, LB1054, § 13.

84-1319.01 State Equal Retirement Benefit Fund; created; use; investment.

The State Equal Retirement Benefit Fund is created. The fund shall be administered by the board. Each state agency participating in the retirement system shall make a contribution at least once a year to the fund, in addition to any other retirement contributions. Such contribution shall be in an amount determined by the board to provide all similarly situated male and female members of the retirement system with equal benefits pursuant to subsection (2) of section 84-1319 and to provide for direct expenses incurred in administering the fund. The amount contributed to the fund by each state agency participating in the retirement system shall be proportionate to the total amount such agency contributes to the system for retirement benefits. 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 1983, LB 210, § 3; Laws 1998, LB 1191, § 73; Laws 2022, LB700, § 14.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

84-1320 Prior service retirement benefits; when payable; how computed; deferment; reduction in amount, when.

The prior service retirement benefit shall be a straight life annuity, payable monthly with the first payment made as of the annuity start date, in an amount determined in accordance with the State Employees Retirement Act, except that the payments may be made less often than monthly if the monthly payment would be less than fifteen dollars. At the option of the member, the first payment may be deferred to commence at any time, except that no benefit shall be deferred later than the required beginning date. Such deferred benefit shall be the actuarial equivalent, based on factors designated by the board, of the prior service benefit. In the event of retirement before age sixty-five under

section 84-1317, the amount of the prior service annuity shall be reduced in accordance with the principles of actuarial equivalence based on factors designated by the board. Any member of the retirement system who ceases to be an employee before becoming eligible for retirement under section 84-1317, who has accrued a prior service retirement benefit as defined in the act, and who has been continuously employed by the state for ten or more years immediately prior to termination shall receive the prior service retirement benefit determined in accordance with the act upon attaining age sixty-five. At the option of the terminating member, such annuity may commence as of the first of the month at any time after such member attains the age of fifty-five or may be deferred, except that no benefit shall be deferred later than the required beginning date. Such election by the terminating member may be made at any time prior to the commencement of the annuity payments. Any terminating employee who forfeits a vested future service retirement benefit by withdrawing his or her employee account shall also forfeit any vested prior service retirement benefit to which he or she would otherwise be entitled.

Source: Laws 1963, c. 532, § 20, p. 1675; Laws 1973, LB 479, § 1; Laws 1976, LB 643, § 1; Laws 1984, LB 751, § 8; Laws 1986, LB 325, § 19; Laws 1986, LB 311, § 34; Laws 1987, LB 308, § 2; Laws 1994, LB 833, § 51; Laws 2003, LB 451, § 30; Laws 2020, LB1054, § 14.

84-1321 Employees; termination of employment; benefits; when; how computed; vesting; deferment of benefits; certain required minimum distributions; election authorized.

(1) Except as provided in section 42-1107, upon termination of employment before becoming eligible for retirement under section 84-1317, a member may, upon application to the board, receive:

(a) If not vested, a termination benefit equal to the amount in his or her employee account or member cash balance account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than the required beginning date; or

(b) If vested, a termination benefit equal to (i) the amount of his or her member cash balance account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than the required beginning date or (ii)(A) the amount in his or her employee account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than the required beginning date plus (B) the amount of his or her employer account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than the required beginning date.

(c) The member cash balance account or employer and employee accounts of a terminating member shall be retained by the board, and the termination benefit shall be deferred until a valid application for benefits has been received.

(2) At the option of the terminating member, any lump sum of the vested portion of the employer account or member cash balance account or any annuity provided under subsection (1) of this section shall commence as of the

first of the month at any time after such member has terminated his or her employment with the state or may be deferred, except that no benefit shall be deferred later than the required beginning date. Such election by the terminating member shall be made at any time prior to the commencement of the lump-sum or annuity payments.

(3) Members of the retirement system shall be vested after a total of three years of participation in the system as a member pursuant to section 84-1307, including vesting credit. If an employee retires pursuant to section 84-1317, such an employee shall be fully vested in the retirement system.

(4) A participant or beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of section 401(a)(9)(H) of the Internal Revenue Code, and who would have satisfied that requirement by receiving distributions that are either equal to the 2009 required minimum distributions or one or more payments in a series of substantially equal distributions, including the 2009 required minimum distribution, made at least annually and expected to last for the life or life expectancy of the participant, the joint lives or joint life expectancy of the participant and the participant's designated beneficiary, or for a period of at least ten years, shall receive those distributions for 2009 unless the participant or beneficiary chooses not to receive such distributions. Participants and beneficiaries shall be given the opportunity to elect to stop receiving the distributions.

Source: Laws 1963, c. 532, § 21, p. 1675; Laws 1973, LB 498, § 6; Laws 1975, LB 56, § 3; Laws 1983, LB 604, § 26; Laws 1983, LB 219, § 3; Laws 1984, LB 751, § 9; Laws 1986, LB 325, § 20; Laws 1986, LB 311, § 35; Laws 1987, LB 308, § 3; Laws 1987, LB 60, § 5; Laws 1991, LB 549, § 71; Laws 1993, LB 417, § 7; Laws 1994, LB 1306, § 9; Laws 1996, LB 1076, § 40; Laws 1996, LB 1273, § 32; Laws 1997, LB 624, § 39; Laws 2002, LB 687, § 28; Laws 2003, LB 451, § 31; Laws 2006, LB 366, § 11; Laws 2009, LB188, § 15; Laws 2013, LB263, § 41; Laws 2020, LB1054, § 15.

84-1321.01 Termination of employment; account forfeited; when; State Employer Retirement Expense Fund; created; use; investment.

(1) For a member who has terminated employment and is not vested, the balance of the member's employer account or employer cash balance account shall be forfeited. The forfeited account shall be credited to the State Employees Retirement Fund and shall first be used to meet the expense charges incurred by the retirement board in connection with administering the retirement system, which charges shall be credited to the State Employees Defined Contribution Retirement Expense Fund, if the member participated in the defined contribution option, or to the State Employees Cash Balance Retirement Expense Fund, if the member participated in the cash balance option, and the remainder, if any, shall then be used to restore employer accounts or employer cash balance accounts. Except as provided in subsection (3) of section 84-1314 and subdivision (4)(c) of section 84-1319, no forfeited amounts shall be applied to increase the benefits any member would otherwise receive under the State Employees Retirement Act.

(2) If a member ceases to be an employee due to the termination of his or her employment by the state and a grievance or other appeal of the termination is filed, transactions involving forfeiture of his or her employer account or

employer cash balance account and transactions for payment of benefits under sections 84-1317 and 84-1321 shall be suspended pending the final outcome of the grievance or other appeal.

(3) The State Employer Retirement Expense Fund is created. The fund shall be administered by the Public Employees Retirement Board. Prior to July 1, 2012, the fund shall be used to meet expenses of the State Employees Retirement System of the State of Nebraska whether such expenses are incurred in administering the member's employer account or in administering the member's employer cash balance account when the funds available in the State Employees Defined Contribution Retirement Expense Fund or State Employees Cash Balance Retirement Expense Fund make such use reasonably necessary. On July 1, 2012, or as soon as practicable thereafter, any money in the State Employer Retirement Expense Fund shall be transferred by the State Treasurer to the State Employees Retirement Fund and credited to the cash balance benefit established in section 84-1309.02.

(4) Prior to July 1, 2012, the director of the Nebraska Public Employees Retirement Systems shall certify to the Accounting Administrator of the Department of Administrative Services when accumulated employer account forfeiture funds are available to reduce the state contribution which would otherwise be required to fund future service retirement benefits or to restore employer accounts or employer cash balance accounts referred to in subsection (1) of this section. Following such certification, the Accounting Administrator shall transfer the amount reduced from the state contribution from the Imprest Payroll Distributive Fund to the State Employer Retirement Expense Fund. Expenses incurred as a result of the state depositing amounts into the State Employer Retirement Expense Fund shall be deducted prior to any additional expenses being allocated. Any remaining amount shall be allocated in accordance with subsection (3) of this section. Any money in the State Employer Retirement Expense Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1997, LB 624, § 40; Laws 2000, LB 1200, § 8; Laws 2002, LB 687, § 29; Laws 2003, LB 451, § 32; Laws 2005, LB 364, § 19; Laws 2007, LB328, § 10; Laws 2010, LB950, § 26; Laws 2011, LB509, § 48; Laws 2012, LB916, § 40; Laws 2013, LB263, § 42; Laws 2019, LB34, § 24.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

84-1322 Employees; reemployment; status; how treated; reinstatement; repay amount received.

(1) Prior to January 1, 2020, except as otherwise provided in this section, a member of the retirement system who has a five-year break in service shall upon reemployment be considered a new employee with respect to the State Employees Retirement Act and shall not receive credit for service prior to his or her reemployment date.

(2)(a) A member who ceases to be an employee before becoming eligible for retirement under section 84-1317 and again becomes a permanent full-time or permanent part-time state employee prior to having a five-year break in service

shall immediately be reenrolled in the retirement system and resume making contributions. For purposes of vesting employer contributions made prior to and after reentry into the retirement system under subsection (3) of section 84-1321, years of participation include years of participation prior to such employee's original termination. For a member who is not vested and has received a termination benefit pursuant to section 84-1321, the years of participation prior to such employee's original termination shall be limited in a ratio equal to the amount that the member repays divided by the termination benefit withdrawn pursuant to section 84-1321. This subsection shall apply whether or not the person was a state employee on April 20, 1986, or July 17, 1986.

(b) The reemployed member may repay the value of, or a portion of the value of, the termination benefit withdrawn pursuant to section 84-1321. A reemployed member who elects to repay all or a portion of the value of the termination benefit withdrawn pursuant to section 84-1321 shall repay the actual earnings on such value. Repayment of the termination benefit shall commence within three years after reemployment and shall be completed within five years after reemployment or prior to termination of employment, whichever occurs first, through (i) direct payments to the retirement system, (ii) installment payments made pursuant to a binding irrevocable payroll deduction authorization made by the member, (iii) an eligible rollover distribution as provided under the Internal Revenue Code, or (iv) a direct rollover distribution made in accordance with section 401(a)(31) of the Internal Revenue Code.

(c) The value of the member's forfeited employer account or employer cash balance account, as of the date of forfeiture, shall be restored in a ratio equal to the amount of the benefit that the member has repaid divided by the termination benefit received. The employer account or employer cash balance account shall be restored first out of the current forfeiture amounts and then by additional employer contributions.

(3) For a member who retired pursuant to section 84-1317 and becomes a permanent full-time employee or permanent part-time employee with the state more than one hundred twenty days after his or her retirement date, the member shall continue receiving retirement benefits. Such a retired member or a retired member who received a lump-sum distribution of his or her benefit shall be considered a new employee as of the date of reemployment and shall not receive credit for any service prior to the member's retirement for purposes of the act.

(4) A member who is reinstated as an employee pursuant to a grievance or appeal of his or her termination by the state shall be a member upon reemployment and shall not be considered to have a break in service for such period of time that the grievance or appeal was pending.

(5) Beginning January 1, 2020, if a contributing member of the retirement system ceases to be an employee and returns to service in any capacity with the state prior to having a one-hundred-twenty-day break in service, the member:

(a) Shall not be deemed to have had a bona fide separation of service;

(b) Shall be immediately reenrolled in:

(i) The defined contribution benefit if the member was contributing to the defined contribution benefit prior to ceasing employment; or

(ii) The cash balance benefit in which the member was participating prior to ceasing employment if the member was contributing to the cash balance benefit prior to ceasing employment;

(c) Shall immediately resume making contributions;

(d) Shall make up any missed contributions based upon services rendered and compensation received;

(e) Shall have all distributions from the retirement system canceled; and

(f) Shall repay the gross distributions from the retirement system.

(6)(a) Beginning January 1, 2020, if a contributing member of the retirement system ceases to be an employee and returns to permanent full-time or permanent part-time service in any capacity with the state after having a one-hundred-twenty-day break in service, the member:

(i) Shall be immediately reenrolled in:

(A) The defined contribution benefit if the member was contributing to the defined contribution benefit prior to ceasing employment; or

(B) The cash balance benefit in which the member was participating prior to ceasing employment if the member was contributing to the cash balance benefit prior to ceasing employment;

(ii) Shall immediately resume making contributions;

(iii) Shall continue receiving any annuity elected after the member ceased employment and before the member was reemployed; and

(iv) Shall be prohibited from taking any distributions from the retirement system until the employee again terminates employment with the state.

(b) For the purposes of vesting employer contributions made prior to and after reentry into the retirement system, the member's years of participation prior to the date the member originally ceased employment and the years of participation after the member is reenrolled in the retirement system shall be included as years of participation, except that if the member is not vested on the date the member originally ceased employment and has taken a distribution, the years of participation prior to the date the member originally ceased employment shall be limited in a ratio equal to the value of the distribution that the member repays divided by the total value of the distribution taken as described in subdivision (6)(c) of this section.

(c) A reemployed member may repay all or a portion of the value of a distribution except for an annuity elected after the member ceased employment and before the member was reemployed. Repayment of such a distribution shall commence within three years after reemployment and shall be completed within five years after reemployment or prior to the member again ceasing employment, whichever occurs first, through (i) direct payments to the retirement system, (ii) installment payments made pursuant to a binding irrevocable payroll deduction authorization made by the member, (iii) an eligible rollover distribution as provided under the Internal Revenue Code, or (iv) a direct rollover distribution made in accordance with section 401(a)(31) of the Internal Revenue Code. If the member fails to repay all of the value of such a distribution prior to the member again ceasing employment, the member shall be forever barred from repaying the value of such a distribution taken between the periods of employment. The value of the member's forfeited employer account or employer cash balance account, as of the date of forfeiture, shall be

restored in a ratio equal to the amount of the distribution repaid by the member divided by the amount of the distribution taken. The employer account or employer cash balance account shall be restored first out of the current forfeiture amounts and then by additional employer contributions.

Source: Laws 1963, c. 532, § 22, p. 1676; Laws 1986, LB 325, § 21; Laws 1986, LB 311, § 36; Laws 1991, LB 549, § 72; Laws 1997, LB 624, § 41; Laws 1999, LB 703, § 24; Laws 2002, LB 407, § 60; Laws 2002, LB 687, § 30; Laws 2003, LB 451, § 33; Laws 2004, LB 1097, § 35; Laws 2007, LB328, § 11; Laws 2008, LB1147, § 16; Laws 2011, LB509, § 49; Laws 2019, LB34, § 25; Laws 2022, LB700, § 15.

84-1323 Members; death before retirement; death benefit; amount; direct transfer to retirement plan; death while performing qualified military service; additional death benefit.

(1)(a) In the event of a member's death before the member's retirement date, the death benefit shall be equal to (i) for participants in the defined contribution benefit, the total of the employee account and the employer account and (ii) for participants in the cash balance benefit, the benefit provided in section 84-1309.02.

(b) Except as provided in section 42-1107, the death benefit shall be paid pursuant to section 84-1323.02.

(c) If the beneficiary is not the member's surviving spouse, the death benefit shall be paid as a lump-sum payment or payments, except that the entire account must be distributed by the fifth anniversary of the member's death. If the sole primary beneficiary is the member's surviving spouse, the surviving spouse may elect to receive an annuity calculated as if the member retired and selected a one-hundred-percent joint and survivor annuity effective on the annuity purchase date. If the surviving spouse does not elect the annuity option within one hundred eighty days after the death of the member, the surviving spouse shall receive a lump-sum payment or payments, except that the entire account must be distributed by the fifth anniversary of the member's death.

(2) A lump-sum death benefit paid to the member's beneficiary, other than the member's estate, that is an eligible distribution may be distributed in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

(3) For any member whose death occurs on or after January 1, 2007, while performing qualified military service as defined in section 414(u) of the Internal Revenue Code, the member's beneficiary shall be entitled to any additional death benefit that would have been provided, other than the accrual of any benefit relating to the period of qualified military service. The additional death benefit shall be determined as if the member had returned to employment with the State of Nebraska and such employment had terminated on the date of the member's death.

Source: Laws 1963, c. 532, § 23, p. 1676; Laws 1973, LB 498, § 7; Laws 1984, LB 751, § 10; Laws 1994, LB 1306, § 10; Laws 1996, LB 1273, § 33; Laws 2002, LB 687, § 31; Laws 2003, LB 451, § 34; Laws 2004, LB 1097, § 36; Laws 2009, LB188, § 16; Laws 2012, LB916, § 41; Laws 2019, LB34, § 26.

84-1323.01 Employee; retirement; disability; medical examination; waiver.

(1) Any member who is an employee, disregarding the length of service, may be retired as a result of disability either upon the member's own application or upon the application of the member's employer or any person acting in the member's behalf. Before any member may be so retired, a medical examination shall be made at the expense of the retirement system, which examination shall be conducted by a disinterested physician legally authorized to practice medicine under the laws of the state in which he or she practices, such physician to be selected by the retirement board, and the physician shall certify to the board that the member suffers from an inability to engage in any substantially gainful activity by reason of any medically determinable physical or mental impairment which was initially diagnosed or became disabling while the member was an active participant in the plan and which can be expected to result in death or to be of long-continued and indefinite duration. The medical examination may be waived if, in the judgment of the retirement board, extraordinary circumstances exist which preclude substantial gainful activity by the member. Such circumstances shall include hospice placement or similar confinement for a terminal illness or injury. The application for disability retirement shall be made within one year of termination of employment.

(2) The retirement board may require any disability beneficiary who has not attained the age of fifty-five years to undergo a medical examination at the expense of the board once each year. If any disability beneficiary refuses to undergo such an examination, the disability retirement benefit may be discontinued by the board.

(3) The retirement board may adopt and promulgate rules and regulations and prescribe the necessary forms to carry out this section.

Source: Laws 1973, LB 498, § 8; Laws 1993, LB 417, § 8; Laws 1997, LB 623, § 44; Laws 1999, LB 703, § 25; Laws 2001, LB 408, § 29; Laws 2010, LB950, § 27; Laws 2017, LB415, § 50.

84-1323.02 Beneficiary designation; order of priority.

(1) Except as provided in section 42-1107, in the event of a member's death, the death benefit shall be paid to the following, in order of priority:

- (a) To the member's surviving designated beneficiary on file with the board;
- (b) To the spouse married to the member on the member's date of death if there is no surviving designated beneficiary on file with the board; or
- (c) To the member's estate if the member is not married on the member's date of death and there is no surviving designated beneficiary on file with the board.

(2) The priority designations described in subsection (1) of this section shall not apply if the member has retired under a joint and survivor benefit option.

Source: Laws 2019, LB34, § 28.

84-1324 Retirement benefits; exemption from legal process; exception.

All annuities or benefits which any person shall be entitled to receive under the State Employees Retirement Act shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable except to the extent that

such annuities or benefits are subject to a qualified domestic relations order under the Spousal Pension Rights Act.

Source: Laws 1963, c. 532, § 24, p. 1676; Laws 1986, LB 311, § 37; Laws 1989, LB 506, § 20; Laws 1996, LB 1273, § 34; Laws 2012, LB916, § 42; Laws 2015, LB40, § 15.

Cross References

Spousal Pension Rights Act, see section 42-1101.

84-1325 Employees; military service; credit; payments; applicability.

(1)(a) For military service beginning on or after December 12, 1994, but before January 1, 2018, any employee who, while an employee, entered into and served in the armed forces of the United States and who within ninety days after honorable discharge or honorable separation from active duty again became an employee shall be credited, for the purposes of the provisions of section 84-1317, with all the time actually served in the armed forces as if such person had been an employee throughout such service in the armed forces pursuant to the terms and conditions of subdivision (b) of this subsection.

(b) Under such rules and regulations as the retirement board may adopt and promulgate, any employee who is reemployed pursuant to 38 U.S.C. 4301 et seq., may pay to the retirement system an amount equal to the sum of all deductions which would have been made from the employee's compensation during such period of military service. Payment shall be made within the period required by law, not to exceed five years. To the extent that payment is made, (i) the employee shall be treated as not having incurred a break in service by reason of the employee's period of military service, (ii) the period of military service shall be credited for the purposes of determining the nonforfeitability of the employee's accrued benefits and the accrual of benefits under the plan, and (iii) the employer shall allocate the amount of employer contributions to the employee's employer account in the same manner and to the same extent the allocation occurs for other employees during the period of service. For purposes of employee and employer contributions under this subsection, the employee's compensation during the period of military service shall be the rate the employee would have received but for the military service or, if not reasonably determinable, the average rate the employee received during the twelve-month period immediately preceding military service.

(c) The employer shall pick up the employee contributions made through irrevocable payroll deduction authorizations pursuant to this subsection, and the contributions so picked up shall be treated as employer contributions in the same manner as contributions picked up under subsection (1) of section 84-1308.

(2)(a) For military service beginning on or after January 1, 2018, any employee who is reemployed pursuant to 38 U.S.C. 4301 et seq., shall be treated as not having incurred a break in service by reason of the employee's period of military service. Such military service shall be credited for purposes of determining the nonforfeitability of the employee's accrued benefits and the accrual of benefits under the plan.

(b) The agency employing the employee shall be liable for funding any obligation of the plan to provide benefits based upon such period of military service. To satisfy the liability, the agency employing the employee shall pay to the retirement system an amount equal to:

(i) The sum of the employee and employer contributions that would have been paid during such period of military service; and

(ii) Any actuarial costs necessary to fund the obligation of the plan to provide benefits based upon such period of military service. For the purposes of determining the amount of such liability and obligation of the plan, earnings and forfeitures, gains and losses, regular interest, interest credits, or dividends that would have accrued on the employee and employer contributions that are paid by the employer pursuant to this section shall not be included.

(c) The amount required pursuant to subdivision (b) of this subsection shall be paid to the retirement system as soon as reasonably practicable following the date of reemployment, but must be paid within eighteen months of the date the board notifies the employer of the amount due. If the employer fails to pay the required amount within such eighteen-month period, then the employer is also responsible for any actuarial costs and interest on actuarial costs that accrue from eighteen months after the date the employer is notified by the board until the date the amount is paid.

(d) The retirement board may adopt and promulgate rules and regulations to carry out this subsection, including, but not limited to, rules and regulations on:

(i) How and when the employee and employer must notify the retirement system of a period of military service;

(ii) The acceptable methods of payment;

(iii) Determining the service and compensation upon which the contributions must be made;

(iv) Accelerating the payment from the employer due to unforeseen circumstances that occur before payment is made pursuant to this section, including, but not limited to, the employee's termination or retirement or the employer's reorganization, consolidation, merger, or closing; and

(v) The documentation required to substantiate that the individual was reemployed pursuant to 38 U.S.C. 4301 et seq.

(3) This section applies to military service that falls within the definition of uniformed services under 38 U.S.C. 4301 et seq., and includes (a) preparation periods prior to military service, (b) periods during military service, (c) periods of rest and recovery authorized by 38 U.S.C. 4301 et seq., after military service, (d) periods of federal military service, and (e) periods during active service of the state provided pursuant to sections 55-101 to 55-181.

Source: Laws 1963, c. 532, § 25, p. 1676; Laws 1994, LB 833, § 52; Laws 1996, LB 847, § 47; Laws 1999, LB 703, § 26; Laws 2004, LB 1097, § 37; Laws 2017, LB415, § 51; Laws 2018, LB1005, § 48; Laws 2023, LB103, § 14.

84-1326 Retirement system; membership status; not lost while employment continues.

Persons who have become members of the retirement system shall not thereafter lose their status as members while they remain employees.

Source: Laws 1963, c. 532, § 26, p. 1676.

84-1326.01 Retirement system; member; employee status changed to behavioral health region or community mental health center; benefits retained; application; immediate participation; when.

(1) Any state employee who is a member of the State Employees Retirement System of the State of Nebraska and whose status is changed by the Legislature to that of an employee of a behavioral health region or an employee of a community mental health center shall, upon application to the Public Employees Retirement Board, obtain full and immediate vesting in any prior service retirement benefits and any future service retirement benefits which have accrued to the date of transfer. Such employee may not withdraw the amount in his employee account prior to his retirement and still receive such vested benefits.

(2) Any employee shall be eligible for immediate participation in the retirement program available to the employee in the political subdivision of the State of Nebraska to which such employee is transferred with no minimum period of service required, if the minimum age requirement and length of service, with either the State of Nebraska or the political subdivision, total the requirements of the retirement system to which the employee is transferred.

Source: Laws 1975, LB 189, § 9; Laws 1976, LB 794, § 1; Laws 2004, LB 1083, § 144.

84-1326.02 Repealed. Laws 2006, LB 366, § 14.

84-1326.03 Transferred to section 81-1328.02.

84-1326.04 Transferred to section 81-1328.03.

84-1327 Retirement system; false or fraudulent actions; prohibited acts; penalty; denial of benefits.

Any person who, knowing it to be false or fraudulent, presents or causes to be presented a false or fraudulent claim or benefit application, any false or fraudulent proof in support of such a claim or benefit, or false or fraudulent information which would affect a future claim or benefit application to be paid under the retirement system for the purpose of defrauding or attempting to defraud the retirement system shall be guilty of a Class II misdemeanor. The retirement board shall deny any benefits that it determines are based on false or fraudulent information and shall have a cause of action against the member to recover any benefits already paid on the basis of such information.

Source: Laws 1963, c. 532, § 27, p. 1676; Laws 1977, LB 39, § 317; Laws 1998, LB 1191, § 76.

84-1328 Retirement benefits; declared additional to benefits under federal Social Security Act.

The retirement allowances and benefits shall be in addition to benefits and allowances payable under the provisions of the federal Social Security Act.

Source: Laws 1963, c. 532, § 28, p. 1677.

Cross References

For other provisions relating to social security, see Chapter 68, article 6.

84-1329 Limitation of actions.

Every claim and demand under the State Employees Retirement Act and against the retirement system or the retirement board shall be forever barred unless the action is brought within two years of the time at which the claim accrued.

Source: Laws 1996, LB 1076, § 42.

84-1329.01 Transferred to section 84-1504.

84-1329.02 Transferred to section 84-1505.

84-1329.03 Transferred to section 84-1506.

84-1329.04 Retirement system contributions, property, and rights; how treated.

All contributions to the retirement system, all property and rights purchased with the contributions, and all investment income attributable to the contributions, property, or rights shall be held in trust by the State of Nebraska for the exclusive benefit of members and their beneficiaries and shall only be used to pay benefits to such persons and to pay administrative expenses according to the provisions of the State Employees Retirement Act.

Source: Laws 1998, LB 1191, § 74.

84-1329.05 Termination of system or contributions; effect.

Upon termination or partial termination of the retirement system or upon complete discontinuance of contributions under the retirement system, the rights of all affected members to the amounts credited to the members' accounts shall be nonforfeitable.

Source: Laws 1998, LB 1191, § 75.

84-1330 Elected officials and employees having regular term; act, when operative.

The provisions of the State Employees Retirement Act pertaining to elected officials or other employees having a regular term of office shall be interpreted as to effectuate its general purpose and to take effect as soon as the same may become operative under the Constitution of the State of Nebraska.

Source: Laws 1963, c. 532, § 30, p. 1677; Laws 2009, LB188, § 17.

84-1330.01 State Employees Retirement Fund; elected officials and employees having a regular term; sections, when operative.

The provisions of sections 84-1309, 84-1317, and 84-1330.01 pertaining to elected officials or other employees having a regular term of office shall be so interpreted as to effectuate their general purpose and to take effect as soon as the same may become operative under the Constitution of the State of Nebraska.

Source: Laws 1967, c. 619, § 3, p. 2075.

84-1331 Act, how cited.

Sections 84-1301 to 84-1331 shall be known and may be cited as the State Employees Retirement Act.

Source: Laws 1963, c. 532, § 31, p. 1677; Laws 1984, LB 751, § 12; Laws 1991, LB 549, § 73; Laws 1994, LB 833, § 53; Laws 1995, LB 501, § 13; Laws 1996, LB 847, § 50; Laws 1996, LB 1076, § 43; Laws 1997, LB 623, § 45; Laws 1997, LB 624, § 42; Laws 1998, LB 1191, § 77; Laws 1999, LB 687, § 6; Laws 2002, LB 407, § 62; Laws 2002, LB 687, § 32; Laws 2009, LB188, § 18; Laws 2019, LB34, § 27.

84-1332 City or county employee changed by Legislature to state employee; vesting of prior service retirement benefits; application; vested benefits.

(1) Any city or county employee who is a member under a city or county employees retirement system, including retirement systems authorized by section 23-1118, and whose status as a city or county employee is changed by the Legislature to that of a state employee shall, upon application to the Public Employees Retirement Board and to the city or county or to the county board of a county having a retirement system authorized by section 23-1118, obtain full and immediate vesting in any prior service retirement benefits and any future service retirement benefits which have been accrued to the date of transfer, except that the employee may withdraw the amount in his or her employee account prior to his or her retirement as provided in section 84-1321. Each employee's service as a city or county employee, after he or she has attained the minimum age required under the State Employees Retirement System of the State of Nebraska and has completed two years of service, shall be credited as though it were participation in the State Employees Retirement System of the State of Nebraska for purposes of calculating the termination benefits established by section 84-1321. Such service shall be counted as state service for purposes of calculating entitlement to retirement benefits under section 84-1319.

(2) Any city or county employee whose status as a city or county employee is or has been changed by the Legislature to that of a state employee shall be eligible for immediate participation in the State Employees Retirement System of the State of Nebraska with no minimum period of service required if the minimum age requirement of the State Employees Retirement System of the State of Nebraska is satisfied, or if the minimum age requirement is not satisfied on the date of transfer, the employee shall be eligible to participate at the date he or she satisfies the minimum age requirement.

Source: Laws 1973, LB 573, § 1; Laws 1983, LB 604, § 27; Laws 1984, LB 13, § 86; Laws 1986, LB 325, § 22; Laws 1986, LB 311, § 38; Laws 1987, LB 549, § 13.

84-1333 County employee changed by law to judge; vesting of prior service retirement benefits; vested benefits.

Any county employee who is a member under a county employees retirement system and whose status as a county employee is changed by the Legislature to that of a judge shall, upon application to the Public Employees Retirement Board and to the county, obtain full and immediate vesting in any prior service retirement benefits and any future service retirement benefits which have been accrued to the date of transfer, except that the employee may not withdraw the

amount in his employee account prior to his retirement and still receive such vested benefits. Any such employee shall be eligible for immediate participation in the Nebraska Retirement Fund for Judges.

Source: Laws 1973, LB 573, § 2.

ARTICLE 14 PUBLIC MEETINGS

Section

- 84-1401. Repealed. Laws 1975, LB 325, § 11.
- 84-1402. Repealed. Laws 1975, LB 325, § 11.
- 84-1403. Repealed. Laws 1975, LB 325, § 11.
- 84-1404. Repealed. Laws 1975, LB 325, § 11.
- 84-1405. Repealed. Laws 1975, LB 325, § 11.
- 84-1406. Repealed. Laws 1975, LB 325, § 11.
- 84-1407. Act, how cited.
- 84-1408. Declaration of intent; meetings open to public.
- 84-1409. Terms, defined.
- 84-1410. Closed session; when; purpose; reasons listed; procedure; right to challenge; prohibited acts; chance meetings, conventions, or workshops.
- 84-1411. Meetings of public body; notice; method; contents; when available; right to modify; duties concerning notice; virtual conferencing authorized; requirements; emergency meeting without notice; appearance before public body; applicability of section.
- 84-1412. Meetings of public body; rights of public; public body; powers and duties.
- 84-1413. Meetings; minutes; roll call vote; secret ballot; when; agenda and minutes; required on website; when.
- 84-1414. Unlawful action by public body; declared void or voidable by district court; when; duty to enforce open meeting laws; citizen's suit; procedure; violations; penalties.
- 84-1415. Open Meetings Act; requirements; waiver; validity of action.

84-1401 Repealed. Laws 1975, LB 325, § 11.

84-1402 Repealed. Laws 1975, LB 325, § 11.

84-1403 Repealed. Laws 1975, LB 325, § 11.

84-1404 Repealed. Laws 1975, LB 325, § 11.

84-1405 Repealed. Laws 1975, LB 325, § 11.

84-1406 Repealed. Laws 1975, LB 325, § 11.

84-1407 Act, how cited.

Sections 84-1407 to 84-1414 shall be known and may be cited as the Open Meetings Act.

Source: Laws 2004, LB 821, § 34.

84-1408 Declaration of intent; meetings open to public.

It is hereby declared to be the policy of this state that the formation of public policy is public business and may not be conducted in secret.

Every meeting of a public body shall be open to the public in order that citizens may exercise their democratic privilege of attending and speaking at

meetings of public bodies, except as otherwise provided by the Constitution of Nebraska, federal statutes, and the Open Meetings Act.

Source: Laws 1975, LB 325, § 1; Laws 1996, LB 900, § 1071; Laws 2004, LB 821, § 35.

Nebraska's public meetings laws do not apply to school board deliberations pertaining solely to disputed adjudicative facts. *McQuinn v. Douglas Cty. Sch. Dist. No. 66*, 259 Neb. 720, 612 N.W.2d 198 (2000).

The primary purpose of the public meetings law is to ensure that public policy is formulated at open meetings. *Marks v. Judicial Nominating Comm.*, 236 Neb. 429, 461 N.W.2d 551 (1990).

The public meetings law is broadly interpreted and liberally construed to obtain the objective of openness in favor of the public, and provisions permitting closed sessions must be nar-

rowly and strictly construed. *Grein v. Board of Education of Fremont*, 216 Neb. 158, 343 N.W.2d 718 (1984).

Although a committee was a subcommittee of a natural resources district board, it was not subject to the Open Meetings Act because there was never a quorum of board members in attendance and the committee did not hold hearings, make policy, or take formal action on behalf of the board. *Koch v. Lower Loup NRD*, 27 Neb. App. 301, 931 N.W.2d 160 (2019).

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

84-1409 Terms, defined.

For purposes of the Open Meetings Act, unless the context otherwise requires:

(1)(a) Public body means (i) governing bodies of all political subdivisions of the State of Nebraska, (ii) governing bodies of all agencies, created by the Constitution of Nebraska, statute, or otherwise pursuant to law, of the executive department of the State of Nebraska, (iii) all independent boards, commissions, bureaus, committees, councils, subunits, or any other bodies created by the Constitution of Nebraska, statute, or otherwise pursuant to law, (iv) all study or advisory committees of the executive department of the State of Nebraska whether having continuing existence or appointed as special committees with limited existence, (v) advisory committees of the bodies referred to in subdivisions (i), (ii), and (iii) of this subdivision, and (vi) instrumentalities exercising essentially public functions; and

(b) Public body does not include (i) subcommittees of such bodies unless a quorum of the public body attends a subcommittee meeting or unless such subcommittees are holding hearings, making policy, or taking formal action on behalf of their parent body, except that all meetings of any subcommittee established under section 81-15,175 are subject to the Open Meetings Act, (ii) entities conducting judicial proceedings unless a court or other judicial body is exercising rulemaking authority, deliberating, or deciding upon the issuance of administrative orders, and (iii) the Judicial Resources Commission or subcommittees or subgroups of the commission;

(2) Meeting means all regular, special, or called meetings, formal or informal, of any public body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the public body; and

(3) Virtual conferencing means conducting or participating in a meeting electronically or telephonically with interaction among the participants subject to subsection (2) of section 84-1412.

Source: Laws 1975, LB 325, § 2; Laws 1983, LB 43, § 1; Laws 1989, LB 429, § 42; Laws 1989, LB 311, § 14; Laws 1992, LB 1019, § 124; Laws 1993, LB 635, § 1; Laws 1996, LB 1044, § 978; Laws 1997, LB 798, § 37; Laws 2004, LB 821, § 36; Laws 2007, LB296, § 810; Laws 2011, LB366, § 2; Laws 2021, LB83, § 11; Laws 2022, LB922, § 12.

A township is a political subdivision, and as such, a township board is subject to the provisions of the public meetings laws. *Steenblock v. Elkhorn Township Bd.*, 245 Neb. 722, 515 N.W.2d 128 (1994).

A county agricultural society is a public body to which the provisions of the Nebraska public meetings law are applicable. *Nixon v. Madison Co. Ag. Soc'y*, 217 Neb. 37, 348 N.W.2d 119 (1984).

Failure by a public governing body, as defined under section 84-1409, R.R.S.1943, to take and record a roll call vote on an action, as required by section 84-1413(2), R.S.Supp.,1980, grants any citizen the right to sue for the purpose of having the action declared void. In this case such failure could not be later corrected by a nunc pro tunc order because there was no showing that a roll call vote on the disputed action was actually taken, and even if it was the record showed it was not recorded until over a year later. Sections 23-1301, R.R.S.1943, and 23-1302, R.R.S.1943, make it the duty of the county clerk to record proceedings of the board of county commissioners. *State ex rel. Schuler v. Dunbar*, 208 Neb. 69, 302 N.W.2d 674 (1981).

Although a committee was a subcommittee of a natural resources district board, it was not subject to the Open Meetings Act because there was never a quorum of board members in attendance and the committee did not hold hearings, make policy, or take formal action on behalf of the board. *Koch v. Lower Loup NRD*, 27 Neb. App. 301, 931 N.W.2d 160 (2019).

Although the Open Meetings Act does not define "subcommittee," a subcommittee is generally defined as a group within a

committee to which the committee may refer business. *Koch v. Lower Loup NRD*, 27 Neb. App. 301, 931 N.W.2d 160 (2019).

The Open Meetings Act does not require policymakers to remain ignorant of the issues they must decide until the moment the public is invited to comment on a proposed policy. By excluding nonquorum subgroups from the definition of a public body, the Legislature has balanced the public's need to be heard on matters of public policy with a practical accommodation for a public body's need for information to conduct business. *Koch v. Lower Loup NRD*, 27 Neb. App. 301, 931 N.W.2d 160 (2019).

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

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

The meeting at issue in this case was a "meeting" within the parameters of subsection (2) of this section because it involved the discussion of public business, the formation of tentative policy, or the taking of any action of the public power district. *Hansmeyer v. Nebraska Pub. Power Dist.*, 6 Neb. App. 889, 578 N.W.2d 476 (1998).

Informational sessions in which the governmental body hears reports are briefings. *Johnson v. Nebraska Environmental Control Council*, 2 Neb. App. 263, 509 N.W.2d 21 (1993).

84-1410 Closed session; when; purpose; reasons listed; procedure; right to challenge; prohibited acts; chance meetings, conventions, or workshops.

(1) Any public body may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close. Closed sessions may be held for, but shall not be limited to, such reasons as:

(a) Strategy sessions with respect to collective bargaining, real estate purchases, pending litigation, or litigation which is imminent as evidenced by communication of a claim or threat of litigation to or by the public body;

(b) Discussion regarding deployment of security personnel or devices;

(c) Investigative proceedings regarding allegations of criminal misconduct;

(d) Evaluation of the job performance of a person when necessary to prevent needless injury to the reputation of a person and if such person has not requested a public meeting;

(e) For the Community Trust created under section 81-1801.02, discussion regarding the amounts to be paid to individuals who have suffered from a tragedy of violence or natural disaster; or

(f) For public hospitals, governing board peer review activities, professional review activities, review and discussion of medical staff investigations or disciplinary actions, and any strategy session concerning transactional negotiations with any referral source that is required by federal law to be conducted at arms length.

Nothing in this section shall permit a closed meeting for discussion of the appointment or election of a new member to any public body.

(2) The vote to hold a closed session shall be taken in open session. The entire motion, the vote of each member on the question of holding a closed session,

and the time when the closed session commenced and concluded shall be recorded in the minutes. If the motion to close passes, then the presiding officer immediately prior to the closed session shall restate on the record the limitation of the subject matter of the closed session. The public body holding such a closed session shall restrict its consideration of matters during the closed portions to only those purposes set forth in the motion to close as the reason for the closed session. The meeting shall be reconvened in open session before any formal action may be taken. For purposes of this section, formal action shall mean a collective decision or a collective commitment or promise to make a decision on any question, motion, proposal, resolution, order, or ordinance or formation of a position or policy but shall not include negotiating guidance given by members of the public body to legal counsel or other negotiators in closed sessions authorized under subdivision (1)(a) of this section.

(3) Any member of any public body shall have the right to challenge the continuation of a closed session if the member determines that the session has exceeded the reason stated in the original motion to hold a closed session or if the member contends that the closed session is neither clearly necessary for (a) the protection of the public interest or (b) the prevention of needless injury to the reputation of an individual. Such challenge shall be overruled only by a majority vote of the members of the public body. Such challenge and its disposition shall be recorded in the minutes.

(4) Nothing in this section shall be construed to require that any meeting be closed to the public. No person or public body shall fail to invite a portion of its members to a meeting, and no public body shall designate itself a subcommittee of the whole body for the purpose of circumventing the Open Meetings Act. No closed session, informal meeting, chance meeting, social gathering, email, fax, or other electronic communication shall be used for the purpose of circumventing the requirements of the act.

(5) The act does not apply to chance meetings or to attendance at or travel to conventions or workshops of members of a public body at which there is no meeting of the body then intentionally convened, if there is no vote or other action taken regarding any matter over which the public body has supervision, control, jurisdiction, or advisory power.

Source: Laws 1975, LB 325, § 3; Laws 1983, LB 43, § 2; Laws 1985, LB 117, § 1; Laws 1992, LB 1019, § 125; Laws 1994, LB 621, § 1; Laws 1996, LB 900, § 1072; Laws 2004, LB 821, § 37; Laws 2004, LB 1179, § 1; Laws 2006, LB 898, § 1; Laws 2011, LB390, § 29; Laws 2012, LB995, § 17.

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

If a person present at a meeting observes a public meetings law violation in the form of an improper closed session and fails to object, that person waives his or her right to object at a later date. *Wasikowski v. Nebraska Quality Jobs Bd.*, 264 Neb. 403, 648 N.W.2d 756 (2002).

The public interest mentioned in this section is that shared by citizens in general and by the community at large concerning pecuniary or legal rights and liabilities. *Grein v. Board of Education*, 216 Neb. 158, 343 N.W.2d 718 (1984).

Hearing in closed executive session was contrary to this section since there was no showing of necessity or reason under

subdivision (1)(a), (b), or (c), but did not result in reversal of board decision. *Simonds v. Board of Examiners*, 213 Neb. 259, 329 N.W.2d 92 (1983).

Negotiations for the purchase of land need not be conducted at an open meeting but the deliberations of a city council as to whether an offer to purchase real estate should be made should take place in an open meeting. *Pokorny v. City of Schuyler*, 202 Neb. 334, 275 N.W.2d 281 (1979).

Public meeting law was not violated where the Board of Regents of the University of Nebraska voted to hold a closed session to consider the university president's resignation, and also discussed the appointment of an interim president during such session. *Meyer v. Board of Regents*, 1 Neb. App. 893, 510 N.W.2d 450 (1993).

84-1411 Meetings of public body; notice; method; contents; when available; right to modify; duties concerning notice; virtual conferencing authorized;

requirements; emergency meeting without notice; appearance before public body; applicability of section.

(1) Until January 1, 2025:

(a) Except as provided in subsection (10) of this section, each public body shall give reasonable advance publicized notice of the time and place of each meeting as provided in this subsection. Such notice shall be transmitted to all members of the public body and to the public.

(b)(i) Except as provided in subdivision (1)(b)(ii) of this section, in the case of a public body described in subdivision (1)(a)(i) of section 84-1409 or such body's advisory committee, such notice shall be published in a newspaper of general circulation within the public body's jurisdiction and, if available, on such newspaper's website.

(ii) In the case of the governing body of a city of the second class or village or such body's advisory committee or the governing body of a rural or suburban fire protection district, such notice shall be published by:

(A) Publication in a newspaper of general circulation within the public body's jurisdiction and, if available, on such newspaper's website; or

(B) Posting written notice in three conspicuous public places in such city, village, or district. Such notice shall be posted in the same three places for each meeting.

(iii) In the case of a public body not described in subdivision (1)(b)(i) or (ii) of this section, such notice shall be given by a method designated by the public body.

(iv) In case of refusal, neglect, or inability of the newspaper to timely publish the notice, the public body shall (A) post such notice on its website, if available, and (B) post such notice in a conspicuous public place in such public body's jurisdiction. The public body shall keep a written record of such posting. The record of such posting shall be evidence that such posting was done as required and shall be sufficient to fulfill the requirement of publication.

(c) In addition to a method of notice required by subdivision (1)(b)(i) or (ii) of this section, such notice may also be provided by any other appropriate method designated by such public body or such advisory committee.

(d) Each public body shall record the methods and dates of such notice in its minutes.

(e) Such notice shall contain an agenda of subjects known at the time of the publicized notice or a statement that the agenda, which shall be kept continually current, shall be readily available for public inspection at the principal office of the public body during normal business hours. Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting. Except for items of an emergency nature, the agenda shall not be altered later than (i) twenty-four hours before the scheduled commencement of the meeting or (ii) forty-eight hours before the scheduled commencement of a meeting of a city council or village board scheduled outside the corporate limits of the municipality. The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting.

(2) Beginning January 1, 2025:

(a) Except as provided in subsection (10) of this section, each public body shall give reasonable advance publicized notice of the time and place of each meeting as provided in this subsection. Such notice shall be transmitted to all members of the public body and to the public.

(b)(i) Except as provided in subdivision (2)(b)(ii) of this section, in the case of a public body described in subdivision (1)(a)(i) of section 84-1409 or such body's advisory committees, such notice shall be given by:

(A)(I) Publication in a newspaper of general circulation within the public body's jurisdiction that is finalized for printing prior to the time and date of the meeting, (II) posting on such newspaper's website, if available, and (III) posting on a statewide website established and maintained as a repository for such notices by a majority of Nebraska newspapers. Such notice shall be placed in the newspaper and on the websites by the newspaper; or

(B)(I) Posting to the newspaper's website, if available, and (II) posting to a statewide website established and maintained as a repository for such notices by a majority of Nebraska newspapers if no edition of a newspaper of general circulation within the public body's jurisdiction is to be finalized for printing prior to the time and date of the meeting. Such notice shall be placed in the newspaper and on the websites by the newspaper.

(ii) In the case of the governing body of a city of the second class or village, any advisory committee of such governing body, or the governing body of a rural or suburban fire protection district, such notice shall be given by:

(A)(I) Publication in a newspaper of general circulation within the public body's jurisdiction that is finalized for printing prior to the time and date of the meeting, (II) posting on such newspaper's website, if available, and (III) posting on a statewide website established and maintained as a repository for such notices by a majority of Nebraska newspapers. Such notice shall be placed in the newspaper and on the websites by the newspaper;

(B)(I) Posting to the newspaper's website, if available, and (II) posting on a statewide website established and maintained as a repository for such notices by a majority of Nebraska newspapers if no edition of a newspaper of general circulation within the public body's jurisdiction is to be finalized for printing prior to the time and date of the meeting. Such notice shall be placed in the newspaper and on the websites by the newspaper; or

(C) Posting written notice in three conspicuous public places in such city, village, or district. Such notice shall be posted by the public body in the same three places for each meeting.

(iii) In the case of a public body not described in subdivision (2)(b)(i) or (ii) of this section, such notice shall be given by a method designated by the public body.

(iv) In case of refusal, neglect, or inability of the newspaper to publish the notice, the public body shall (A) post such notice on its website, if available, (B) submit a post on a statewide website established and maintained as a repository for such notices by a majority of Nebraska newspapers, and (C) post such notice in a conspicuous public place in such public body's jurisdiction. The public body shall keep a written record of such posting. The record of such posting shall be evidence that such posting was done as required and shall be sufficient to fulfill the requirement of publication.

(3)(a) The following entities may hold a meeting by means of virtual conferencing if the requirements of subdivision (3)(b) of this section are met:

(i) A state agency, state board, state commission, state council, or state committee, or an advisory committee of any such state entity;

(ii) An organization, including the governing body, created under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act;

(iii) The governing body of a public power district having a chartered territory of more than one county in this state;

(iv) The governing body of a public power and irrigation district having a chartered territory of more than one county in this state;

(v) An educational service unit;

(vi) The Educational Service Unit Coordinating Council;

(vii) An organization, including the governing body, of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act;

(viii) A community college board of governors;

(ix) The Nebraska Brand Committee;

(x) A local public health department;

(xi) A metropolitan utilities district;

(xii) A regional metropolitan transit authority; and

(xiii) A natural resources district.

(b) The requirements for holding a meeting by means of virtual conferencing are as follows:

(i) Reasonable advance publicized notice is given as provided in subsections (1) and (2) of this section, including providing access to a dial-in number or link to the virtual conference;

(ii) In addition to the public's right to participate by virtual conferencing, reasonable arrangements are made to accommodate the public's right to attend at a physical site and participate as provided in section 84-1412, including reasonable seating, in at least one designated site in a building open to the public and identified in the notice, with: At least one member of the entity holding such meeting, or his or her designee, present at each site; a recording of the hearing by audio or visual recording devices; and a reasonable opportunity for input, such as public comment or questions, is provided to at least the same extent as would be provided if virtual conferencing was not used;

(iii) At least one copy of all documents being considered at the meeting is available at any physical site open to the public where individuals may attend the virtual conference. The public body shall also provide links to an electronic copy of the agenda, all documents being considered at the meeting, and the current version of the Open Meetings Act; and

(iv) Except as otherwise provided in this subdivision, subsection (1) of section 70-1014, subsection (2) of section 70-1014.02, or subsection (4) of section 79-2204, no more than one-half of the meetings of the state entities, advisory committees, boards, councils, organizations, or governing bodies are held by virtual conferencing in a calendar year. In the case of (A) an organization created under the Interlocal Cooperation Act that sells electricity or natural

gas, (B) an organization created under the Municipal Cooperative Financing Act, (C) a governing body of a risk management pool and any advisory committee of such governing body, or (D) any advisory committee of any state entity created in response to the Opioid Prevention and Treatment Act, such organization, governing body, or committee may hold more than one-half of its meetings by virtual conferencing if such organization holds at least one meeting each calendar year that is not by virtual conferencing.

(4) Virtual conferencing, emails, faxes, or other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

(5) The secretary or other designee of each public body shall maintain a list of the news media requesting notification of meetings and shall make reasonable efforts to provide advance notification to them of the time and place of each meeting and the subjects to be discussed at that meeting.

(6) When it is necessary to hold an emergency meeting without reasonable advance public notice, the nature of the emergency shall be stated in the minutes and any formal action taken in such meeting shall pertain only to the emergency. Such emergency meetings may be held by virtual conferencing. The provisions of subsection (5) of this section shall be complied with in conducting emergency meetings. Complete minutes of such emergency meetings specifying the nature of the emergency and any formal action taken at the meeting shall be made available to the public by no later than the end of the next regular business day.

(7) A public body may allow a member of the public or any other witness to appear before the public body by means of virtual conferencing.

(8)(a) Notwithstanding subsections (3) and (6) of this section, if an emergency is declared by the Governor pursuant to the Emergency Management Act as defined in section 81-829.39, a public body the territorial jurisdiction of which is included in the emergency declaration, in whole or in part, may hold a meeting by virtual conferencing during such emergency if the public body gives reasonable advance publicized notice as described in subsections (1) and (2) of this section. The notice shall include information regarding access for the public and news media. In addition to any formal action taken pertaining to the emergency, the public body may hold such meeting for the purpose of briefing, discussion of public business, formation of tentative policy, or the taking of any action by the public body.

(b) The public body shall provide access by providing a dial-in number or a link to the virtual conference. The public body shall also provide links to an electronic copy of the agenda, all documents being considered at the meeting, and the current version of the Open Meetings Act. Reasonable arrangements shall be made to accommodate the public's right to hear and speak at the meeting and record the meeting. Subsection (5) of this section shall be complied with in conducting such meetings.

(c) The nature of the emergency shall be stated in the minutes. Complete minutes of such meeting specifying the nature of the emergency and any formal action taken at the meeting shall be made available for inspection as provided in subsection (5) of section 84-1413.

(9) In addition to any other statutory authorization for virtual conferencing, any public body not listed in subdivision (3)(a) of this section may hold a meeting by virtual conferencing if:

(a) The purpose of the virtual meeting is to discuss items that are scheduled to be discussed or acted upon at a subsequent non-virtual open meeting of the public body;

(b) No action is taken by the public body at the virtual meeting; and

(c) The public body complies with subdivisions (3)(b)(i) and (ii) of this section.

(10) This section does not apply to a meeting of the Nebraska Power Review Board or a public power district, a public power and irrigation district, an electric membership association, an electric cooperative company, a municipality having a generation and distribution system, or a registered group of municipalities if such meeting is subject to section 70-1034.

Source: Laws 1975, LB 325, § 4; Laws 1983, LB 43, § 3; Laws 1987, LB 663, § 25; Laws 1993, LB 635, § 2; Laws 1996, LB 469, § 6; Laws 1996, LB 1161, § 1; Laws 1999, LB 47, § 2; Laws 1999, LB 87, § 100; Laws 1999, LB 461, § 1; Laws 2000, LB 968, § 85; Laws 2004, LB 821, § 38; Laws 2004, LB 1179, § 2; Laws 2006, LB 898, § 2; Laws 2007, LB199, § 9; Laws 2009, LB361, § 2; Laws 2012, LB735, § 1; Laws 2013, LB510, § 1; Laws 2017, LB318, § 1; Laws 2019, LB212, § 5; Laws 2020, LB148, § 3; Laws 2021, LB83, § 12; Laws 2022, LB742, § 1; Laws 2022, LB908, § 1; Laws 2022, LB922, § 13; Laws 2024, LB287, § 74; Laws 2024, LB399, § 4; Laws 2024, LB1370, § 8.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB287, section 74, with LB399, section 4, and LB1370, section 8, to reflect all amendments.

Note: Changes made by LB287 became operative April 17, 2024. Changes made by LB399 became effective July 19, 2024. Changes made by LB1370 became operative July 19, 2024.

Cross References

Emergency Management Act, see section 81-829.36.

Intergovernmental Risk Management Act, see section 44-4301.

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

Municipal Cooperative Financing Act, see section 18-2401.

Opioid Prevention and Treatment Act, see section 71-2485.

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

An emergency is "(a)ny event or occasional combination of circumstances which calls for immediate action or remedy; pressing necessity; exigency; a sudden or unexpected happening; an unforeseen occurrence or condition." *Steenblock v. Elkhorn Township Bd.*, 245 Neb. 722, 515 N.W.2d 128 (1994).

An agenda which gives reasonable notice of the matters to be considered at a meeting of a city council complies with the requirements of this section. *Pokorny v. City of Schuyler*, 202 Neb. 334, 275 N.W.2d 281 (1979).

When notice is required, a notice of a special meeting of a city council posted in three public places at 10:00 p.m. on the day preceding the meeting is not reasonable advance publicized notice of a meeting as is required by this section. *Pokorny v. City of Schuyler*, 202 Neb. 334, 275 N.W.2d 281 (1979).

Teacher waived right to object to lack of public notice in board of education employment hearing by voluntary participation in the hearing without objection. *Alexander v. School Dist. No. 17*, 197 Neb. 251, 248 N.W.2d 335 (1976).

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

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

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

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

An agenda notice which merely stated "work order reports" was an inadequate notice under this section because it did not give interested persons knowledge that plans for a 345 kv transmission line through the district was going to be discussed and voted upon at the meeting. Inadequate agenda notice under this section meant there was a substantial violation of the public meeting laws; however, later actions by the board of directors cured the defects in notice, and such actions were in substantial compliance with the statute. *Hansmeyer v. Nebraska Pub. Power Dist.*, 6 Neb. App. 889, 578 N.W.2d 476 (1998).

84-1412 Meetings of public body; rights of public; public body; powers and duties.

(1) Subject to the Open Meetings Act, the public has the right to attend and the right to speak at meetings of public bodies, and all or any part of a meeting of a public body, except for closed sessions called pursuant to section 84-1410, may be videotaped, televised, photographed, broadcast, or recorded by any person in attendance by means of a tape recorder, a camera, video equipment, or any other means of pictorial or sonic reproduction or in writing. Except for closed sessions called pursuant to section 84-1410, a public body shall allow members of the public an opportunity to speak at each meeting.

(2) It shall not be a violation of subsection (1) of this section for any public body to make and enforce reasonable rules and regulations regarding the conduct of persons attending, speaking at, videotaping, televising, photographing, broadcasting, or recording its meetings, including meetings held by virtual conferencing.

(3) No public body shall require members of the public to identify themselves as a condition for admission to the meeting nor shall such body require that the name of any member of the public be placed on the agenda prior to such meeting in order to speak about items on the agenda. The body shall require any member of the public desiring to address the body to identify himself or herself, including an address and the name of any organization represented by such person unless the address requirement is waived to protect the security of the individual.

(4) No public body shall, for the purpose of circumventing the Open Meetings Act, hold a meeting in a place known by the body to be too small to accommodate the anticipated audience.

(5) No public body shall be deemed in violation of this section if it holds its meeting in its traditional meeting place which is located in this state.

(6) No public body shall be deemed in violation of this section if it holds a meeting outside of this state if, but only if:

(a) A member entity of the public body is located outside of this state and the meeting is in that member's jurisdiction;

(b) All out-of-state locations identified in the notice are located within public buildings used by members of the entity or at a place which will accommodate the anticipated audience;

(c) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including making virtual conferencing available at an in-state location to members, the public, or the press, if requested twenty-four hours in advance;

(d) No more than twenty-five percent of the public body's meetings in a calendar year are held out-of-state;

(e) Out-of-state meetings are not used to circumvent any of the public government purposes established in the Open Meetings Act; and

(f) The public body publishes notice of the out-of-state meeting at least twenty-one days before the date of the meeting in a legal newspaper of statewide circulation.

(7) Each public body shall, upon request, make a reasonable effort to accommodate the public's right to hear the discussion and testimony presented at a meeting.

(8) Public bodies shall make available at the meeting or the instate location for virtual conferencing as required by subdivision (6)(c) of this section, for examination and copying by members of the public, at least one copy of all reproducible written material to be discussed at an open meeting, either in paper or electronic form. Public bodies shall make available at least one current copy of the Open Meetings Act posted in the meeting room at a location accessible to members of the public. At the beginning of the meeting, the public shall be informed about the location of the posted information.

Source: Laws 1975, LB 325, § 5; Laws 1983, LB 43, § 4; Laws 1985, LB 117, § 2; Laws 1987, LB 324, § 5; Laws 1996, LB 900, § 1073; Laws 2001, LB 250, § 2; Laws 2004, LB 821, § 39; Laws 2006, LB 898, § 3; Laws 2008, LB962, § 1; Laws 2021, LB83, § 13; Laws 2024, LB43, § 21.
Operative date July 19, 2024.

To preserve an objection that a public body failed to make documents available at a public meeting as required by subsection (8) of this section, a person who attends a public meeting must not only object to the violation, but must make that

objection to the public body or to a member of the public body. *Stoetzel & Sons v. City of Hastings*, 265 Neb. 637, 658 N.W.2d 636 (2003).

84-1413 Meetings; minutes; roll call vote; secret ballot; when; agenda and minutes; required on website; when.

(1) Each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.

(2) Any action taken on any question or motion duly moved and seconded shall be by roll call vote of the public body in open session, and the record shall state how each member voted or if the member was absent or not voting. The requirements of a roll call or viva voce vote shall be satisfied by a public body which utilizes an electronic voting device which allows the yeas and nays of each member of such public body to be readily seen by the public.

(3) The vote to elect leadership within a public body may be taken by secret ballot, but the total number of votes for each candidate shall be recorded in the minutes.

(4) The minutes of all meetings and evidence and documentation received or disclosed in open session shall be public records and open to public inspection during normal business hours.

(5) Minutes shall be written or kept as an electronic record and shall be available for inspection within ten working days or prior to the next convened meeting, whichever occurs earlier, except that cities of the second class and villages may have an additional ten working days if the employee responsible for writing or keeping the minutes is absent due to a serious illness or emergency.

(6) Beginning July 31, 2022, the governing body of a natural resources district, the city council of a city of the metropolitan class, the city council of a city of the primary class, the city council of a city of the first class, the county board of a county with a population greater than twenty-five thousand inhabitants, and the school board of a school district shall make available on such entity's public website the agenda and minutes of any meeting of the governing body. The agenda shall be placed on the website at least twenty-four hours before the meeting of the governing body. Minutes shall be placed on the website at such time as the minutes are available for inspection as provided in

subsection (5) of this section. This information shall be available on the public website for at least six months.

Source: Laws 1975, LB 325, § 6; Laws 1978, LB 609, § 3; Laws 1979, LB 86, § 9; Laws 1987, LB 663, § 26; Laws 2005, LB 501, § 1; Laws 2009, LB361, § 3; Laws 2015, LB365, § 2; Laws 2016, LB876, § 1; Laws 2021, LB83, § 14; Laws 2022, LB742, § 2.

Under prior law, if a person present at a meeting observes and fails to object to an alleged public meetings laws violation in the form of a failure to conduct rollcall votes before taking actions on questions or motions pending, that person waives his or her right to object at a later date. *Hauser v. Nebraska Police Stds. Adv. Council*, 264 Neb. 944, 653 N.W.2d 240 (2002).

Subsection (2) of this section does not require the record to state that the vote was by roll call, but requires only that the record show if and how each member voted. Neither does the statute set a time limit for recording the results of a vote, after which no corrections of the record can be made. If no intervening rights of third persons have arisen, a board of county commissioners has power to correct the record of the proceedings had at a previous meeting so as to make them speak the truth, particularly where the correction supplies some omitted fact or action and is done not to contradict or change the original record but to have the record show that a certain action was taken or thing done, which the original record fails to

show. *State ex rel. Schuler v. Dunbar*, 214 Neb. 85, 333 N.W.2d 652 (1983).

Failure by a public governing body, as defined under section 84-1409, R.R.S.1943, to take and record a roll call vote on an action, as required by section 84-1413(2), R.S.Supp.,1980, grants any citizen the right to sue for the purpose of having the action declared void. In this case such failure could not be later corrected by a nunc pro tunc order because there was no showing that a roll call vote on the disputed action was actually taken, and even if it was the record showed it was not recorded until over a year later. Sections 23-1301, R.R.S.1943, and 23-1302, R.R.S.1943, make it the duty of the county clerk to record proceedings of the board of county commissioners. *State ex rel. Schuler v. Dunbar*, 208 Neb. 69, 302 N.W.2d 674 (1981).

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

84-1414 Unlawful action by public body; declared void or voidable by district court; when; duty to enforce open meeting laws; citizen's suit; procedure; violations; penalties.

(1) Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in violation of the Open Meetings Act shall be declared void by the district court if the suit is commenced within one hundred twenty days of the meeting of the public body at which the alleged violation occurred. Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in substantial violation of the Open Meetings Act shall be voidable by the district court if the suit is commenced more than one hundred twenty days after but within one year of the meeting of the public body in which the alleged violation occurred. A suit to void any final action shall be commenced within one year of the action.

(2) The Attorney General and the county attorney of the county in which the public body ordinarily meets shall enforce the Open Meetings Act.

(3) Any citizen of this state may commence a suit in the district court of the county in which the public body ordinarily meets or in which the plaintiff resides for the purpose of requiring compliance with or preventing violations of the Open Meetings Act, for the purpose of declaring an action of a public body void, or for the purpose of determining the applicability of the act to discussions or decisions of the public body. It shall not be a defense that the citizen attended the meeting and failed to object at such time. The court may order payment of reasonable attorney's fees and court costs to a successful plaintiff in a suit brought under this section.

(4) Any member of a public body who knowingly violates or conspires to violate or who attends or remains at a meeting knowing that the public body is in violation of any provision of the Open Meetings Act shall be guilty of a Class

IV misdemeanor for a first offense and a Class III misdemeanor for a second or subsequent offense.

Source: Laws 1975, LB 325, § 9; Laws 1977, LB 39, § 318; Laws 1983, LB 43, § 5; Laws 1992, LB 1019, § 126; Laws 1994, LB 621, § 2; Laws 1996, LB 900, § 1074; Laws 2004, LB 821, § 40; Laws 2006, LB 898, § 4.

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

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

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

If a person present at a meeting observes a public meetings law violation in the form of an improper closed session and fails to object, that person waives his or her right to object at a later date. *Wasikowski v. Nebraska Quality Jobs Bd.*, 264 Neb. 403, 648 N.W.2d 756 (2002).

Under the Public Meetings Act, a county lacks capacity to maintain an action to declare its official conduct "void" for noncompliance with the act. *County of York v. Johnson*, 230 Neb. 403, 432 N.W.2d 215 (1988).

When a petitioner under this section is successful in the district court, that court may allow attorney fees. *Tracy Corp. II v. Nebraska Pub. Serv. Comm.*, 218 Neb. 900, 360 N.W.2d 485 (1984).

Informal discussions between the Tax Commissioner and the State Board of Equalization in which instructions were clarified, with such clarification leading to the amendment of hear-

ing notices, did not constitute a public meeting subject to the provisions of this section. *Box Butte County v. State Board of Equalization and Assessment*, 206 Neb. 696, 295 N.W.2d 670 (1980).

The right to collaterally attack an order made in contravention of the Public Meeting Act must occur within a period of one year as is specifically provided by this section. *Witt v. School District No. 70*, 202 Neb. 63, 273 N.W.2d 669 (1979).

Statutory change, requiring "publicized notice" for board of education employment hearings, occurring between dates meeting scheduled and conducted, held not to void proceedings. *Alexander v. School Dist. No. 17*, 197 Neb. 251, 248 N.W.2d 335 (1976).

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

Actions by the board of directors were merely voidable under this section, and not void. Pursuant to subsection (3) of this section, the plaintiffs were awarded partial attorney fees because they were successful in having the court declare that the board of directors was in substantial violation of the statute, even though the plaintiffs did not get the relief requested of having the board's actions declared void. *Hansmeyer v. Nebraska Pub. Power Dist.*, 6 Neb. App. 889, 578 N.W.2d 476 (1998).

84-1415 Open Meetings Act; requirements; waiver; validity of action.

No motion, resolution, rule, regulation, ordinance, or formal action made, adopted, passed, or taken at a meeting as defined in section 84-1409 of a public body as defined in such section shall be invalidated because such motion, resolution, rule, regulation, ordinance, or formal action was made, adopted, passed, or taken at a meeting or meetings on or after March 17, 2020, and on or before April 30, 2021, pursuant to a Governor's Executive Order which waived certain requirements of the Open Meetings Act.

Source: Laws 2021, LB83, § 15.

Cross References

Open Meetings Act, see section 84-1407.

ARTICLE 15

PUBLIC EMPLOYEES RETIREMENT BOARD

- Section 84-1501. Public Employees Retirement Board; created; members; qualifications; appointment; terms; vacancy; removal.
- 84-1502. Board; chairperson; secretary; election; meetings; compensation; expenses.
- 84-1503. Board; duties; director; duties.
- 84-1503.01. Repealed. Laws 1998, LB 1191, § 85.
- 84-1503.02. Board; duties and responsibilities.
- 84-1503.03. Director; employ personnel; employees; duties.

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- 84-1503.04. Internal auditor; duties and responsibilities.
- 84-1504. Deferred compensation; treatment; participation; requirements.
- 84-1505. Deferred compensation; treatment; investment.
- 84-1506. Deferred compensation; availability and distribution of funds; Deferred Compensation Fund; created.
- 84-1506.01. Deferred Compensation Expense Fund; created; use; investment.
- 84-1507. Actuarial reports; statement of actuarial assumptions and methods; actuarial valuations and experience investigations; prepared; actuary; certified by Public Employees Retirement Board.
- 84-1508. Repealed. Laws 1996, LB 847, § 62.
- 84-1509. Administrative services agreement; authorized.
- 84-1510. Administrative services agreement; terms.
- 84-1511. Board; information and advice regarding retirement; provide sessions; for whom; required information; leave authorized; funding; fee.
- 84-1511.01. Repealed. Laws 2022, LB700, § 19.
- 84-1512. Board; access to records; director; duties; employer education program.
- 84-1513. Board; members; personal liability.
- 84-1514. Class V Retirement System Payment Processing Fund; created; use; investment; transfers of funds; liability.

84-1501 Public Employees Retirement Board; created; members; qualifications; appointment; terms; vacancy; removal.

(1) The Public Employees Retirement Board is hereby established.

(2)(a) The board shall consist of nine appointed members as described in this subsection and the state investment officer as a nonvoting, ex officio member. Seven of the appointed members shall be active or retired participants in the retirement systems administered by the board, and two of the appointed members (i) shall not be employees of the State of Nebraska or any of its political subdivisions and (ii) shall have at least ten years of experience in the management of a public or private organization or have at least five years of experience in the field of actuarial analysis or the administration of an employee benefit plan.

(b) The appointed members who are participants in the retirement systems shall be as follows:

(i) Two of the appointed members shall be participants in the School Employees Retirement System of the State of Nebraska and shall include one administrator and one teacher;

(ii) One of the appointed members shall be a participant in the Nebraska Judges Retirement System as provided in the Judges Retirement Act;

(iii) One of the appointed members shall be a participant in the Nebraska State Patrol Retirement System;

(iv) One of the appointed members shall be a participant in the Retirement System for Nebraska Counties;

(v) One of the appointed members shall be a participant in the State Employees Retirement System of the State of Nebraska; and

(vi) Beginning September 1, 2024, one of the appointed members shall be a participant who is a teacher in a retirement system established under the Class V School Employees Retirement Act. Prior to September 1, 2024, such member shall be a nonvoting, ex officio member.

(c) Appointments to the board shall be made by the Governor and shall be subject to the approval of the Legislature. All appointed members shall be citizens of the State of Nebraska.

(3)(a) Except as otherwise provided in this subsection, all members shall serve for terms of five years or until a successor has been appointed and qualified. The terms shall begin on January 1 of the appropriate year.

(b) To ensure an experienced and knowledgeable board, the terms of the appointed members shall be staggered as follows:

(i) One of the two members described in subdivisions (2)(a)(i) and (ii) of this section shall be appointed to serve for a five-year term which begins in 2017;

(ii) One of the two members described in subdivisions (2)(a)(i) and (ii) of this section shall be appointed to serve for a five-year term which begins in 2018;

(iii) The participant in the School Employees Retirement System of the State of Nebraska who is a teacher shall be appointed for a five-year term which begins in 2019;

(iv) The participant in the School Employees Retirement System of the State of Nebraska who is an administrator and the participant in the State Employees Retirement System of the State of Nebraska shall be appointed for a five-year term which begins in 2020;

(v) The participant in the Retirement System for Nebraska Counties and the participant in the Nebraska Judges Retirement System shall be appointed to serve for a five-year term which begins in 2021;

(vi) The participant in the Nebraska State Patrol Retirement System shall be appointed to serve for a three-year term which begins in 2020, and his or her successor shall be appointed to serve for a five-year term which begins in 2023; and

(vii) The participant in a retirement system established under the Class V School Employees Retirement Act shall be appointed to serve for a fifty-two-month term which begins September 1, 2024, and his or her successor shall be appointed to serve for a five-year term which begins in 2029.

(4) In the event of a vacancy in office, the Governor shall appoint a person to serve the unexpired portion of the term subject to the approval of the Legislature.

(5) The appointed members of the board may be removed by the Governor for cause after notice and an opportunity to be heard.

Source: Laws 1971, LB 987, § 1; Laws 1973, LB 250, § 1; Laws 1975, LB 36, § 1; Laws 1981, LB 204, § 216; Laws 1987, LB 59, § 1; Laws 1989, LB 418, § 1; Laws 1996, LB 847, § 51; Laws 1997, LB 623, § 46; Laws 2004, LB 1097, § 38; Laws 2005, LB 364, § 20; Laws 2011, LB509, § 50; Laws 2016, LB447, § 46; Laws 2020, LB381, § 135; Laws 2021, LB147, § 45; Laws 2024, LB198, § 20.
Effective date March 19, 2024.

Cross References

Class V School Employees Retirement Act, see section 79-978.01.
Judges Retirement Act, see section 24-701.01.

84-1502 Board; chairperson; secretary; election; meetings; compensation; expenses.

(1) Within thirty days after its appointment, the Public Employees Retirement Board shall meet and select a chairperson and secretary. Thereafter, the chairperson and the secretary shall be elected in January of each year.

(2) The board shall meet upon call of the chairperson or upon the request of three members of the board filed with the board office. Meetings of the board shall be held in this state and may be held by telecommunication equipment if the requirements of the Open Meetings Act are met.

(3) The members of the board, except the state investment officer, shall be paid seventy-five dollars per diem, and all members shall be reimbursed for expenses incurred in connection with the performance of their duties as board members as provided in sections 81-1174 to 81-1177.

Source: Laws 1971, LB 987, § 2; Laws 1986, LB 311, § 39; Laws 2004, LB 821, § 41; Laws 2005, LB 503, § 18; Laws 2019, LB33, § 7; Laws 2020, LB381, § 136.

Cross References

Open Meetings Act, see section 84-1407.

84-1503 Board; duties; director; duties.

(1) It shall be the duty of the Public Employees Retirement Board:

(a) To administer the retirement systems provided for in the County Employees Retirement Act, the Judges Retirement Act, the Nebraska State Patrol Retirement Act, the School Employees Retirement Act, the State Employees Retirement Act, and, beginning September 1, 2024, the Class V School Employees Retirement Act. The agency for the administration of the retirement systems and under the direction of the board shall be known and may be cited as the Nebraska Public Employees Retirement Systems;

(b) To appoint a director to administer the systems under the direction of the board. The appointment shall be subject to the approval of the Governor and a majority of the Legislature. Director qualifications shall include, but not be limited to, (i) supervisory or management experience and (ii) training in, experience with, or a demonstrated knowledge of qualified public employee retirement plan administration. The director shall not be a member of the board. The salary of the director shall be set by the board. The director shall serve without term and may be removed by the board;

(c) To provide for an equitable allocation of expenses among the retirement systems administered by the board, and all expenses shall be provided from the investment income earned by the various retirement funds unless alternative sources of funds to pay expenses are specified by law;

(d) To administer the deferred compensation program authorized in section 84-1504;

(e) To hire an attorney to advise the board in the administration of the retirement systems listed in subdivision (a) of this subsection. The attorney shall be admitted to practice law in Nebraska, except that the board shall have the discretion to hire an attorney for a probationary period not to exceed six months pending such attorney's admission to practice law in Nebraska;

(f) To hire an internal auditor to perform the duties described in section 84-1503.04 who meets the minimum standards as described in section 84-304.03; and

(g) To adopt and implement procedures for reporting information by employers, as well as testing and monitoring procedures in order to verify the accuracy of such information. The information necessary to determine membership shall be provided by the employer. The board may adopt and promulgate rules and regulations and prescribe such forms necessary to carry out this subdivision. Nothing in this subdivision shall be construed to require the board to conduct onsite audits of political subdivisions for compliance with statutes, rules, and regulations governing the retirement systems listed in subdivision (1)(a) of this section regarding membership and contributions.

(2) In administering the retirement systems listed in subdivision (1)(a) of this section, it shall be the duty of the board:

(a) To determine, based on information provided by the employer, the prior service annuity, if any, for each person who is an employee of the county on the date of adoption of the retirement system;

(b) To determine the eligibility of an individual to be a member of the retirement system and other questions of fact in the event of a dispute between an individual and the individual's employer;

(c) To adopt and promulgate rules and regulations, as the board may deem necessary, for the management of the board;

(d) To keep a complete record of all proceedings taken at any meeting of the board;

(e) To obtain, by a competitive, formal, and sealed bidding process through the materiel division of the Department of Administrative Services, actuarial services on behalf of the State of Nebraska as may be necessary in the administration and development of the retirement systems, including, but not limited to, preparation of an annual actuarial valuation report of each of the defined benefit and cash balance plans administered by the board. Such annual valuation reports shall be presented by the actuary to the Nebraska Retirement Systems Committee of the Legislature at a public hearing or hearings. Any contract for actuarial services shall contain a provision allowing the actuary, without prior approval of the board, to perform actuarial studies of the systems as requested by entities other than the board, if notice, which does not identify the entity or substance of the request, is given to the board, all costs are paid by the requesting entity, results are provided to the board, the Nebraska Retirement Systems Committee of the Legislature, and the Legislative Fiscal Analyst upon being made public, and such actuarial studies do not interfere with the actuary's ongoing responsibility to the board. The term of the contract shall be for up to three years. A competitive, formal, and sealed bidding process shall be completed at least once every three years, unless the board determines that such a process would not be cost effective under the circumstances and that the actuarial services performed have been satisfactory, in which case the contract may also contain an option for renewal without a competitive, formal, and sealed bidding process for up to two additional three-year periods. An actuary under contract for the State of Nebraska shall be a member of the American Academy of Actuaries and meet the academy's qualification standards to render a statement of actuarial opinion;

(f) To direct the State Treasurer to transfer funds, as an expense of the retirement systems, to the Legislative Council Retirement Study Fund. Such transfer shall be in such amounts as the Legislature shall direct;

(g) To adopt and promulgate rules and regulations, as the board may deem necessary, to carry out the provisions of each retirement system described in subdivision (1)(a) of this section, which includes, but is not limited to, the crediting of military service, direct rollover distributions, and the acceptance of rollovers;

(h) To obtain auditing services for a separate compliance audit of the retirement systems to be completed by December 31, 2028, and from time to time at the request of the Nebraska Retirement Systems Committee of the Legislature, to be completed not more than every four years but not less than every ten years. The compliance audit shall be in addition to the annual audit conducted by the Auditor of Public Accounts. The compliance audit shall include, but not be limited to, an examination of records, files, and other documents and an evaluation of all policies and procedures to determine compliance with all state and federal laws. A copy of the compliance audit shall be given to the Governor, the board, and the Nebraska Retirement Systems Committee of the Legislature and shall be presented to the committee at a public hearing;

(i) To adopt and promulgate rules and regulations, as the board may deem necessary, for the adjustment of contributions or benefits, which includes, but is not limited to: (i) The procedures for refunding contributions, adjusting future contributions or benefit payments, and requiring additional contributions or repayment of benefits; (ii) the process for a member, member's beneficiary, employee, or employer to dispute an adjustment to contributions or benefits; (iii) establishing materiality and de minimus amounts for agency transactions, adjustments, and inactive account closures; and (iv) notice provided to all affected persons. Following an adjustment, a timely notice shall be sent that describes the adjustment and the process for disputing an adjustment to contributions or benefits;

(j)(i) To amend the deferred compensation plan to require that in the event of a member's death, except as provided in section 42-1107, the death benefit shall be paid to the following, in order of priority:

(A) To the member's surviving designated beneficiary on file with the board;

(B) To the spouse married to the member on the member's date of death if there is no surviving designated beneficiary on file with the board; or

(C) To the member's estate if the member is not married on the member's date of death and there is no surviving designated beneficiary on file with the board; and

(ii) The priority designations described in subdivision (2)(j)(i) of this section shall not apply if the member has retired under a joint and survivor benefit option;

(k) To make a thorough investigation through the director or the director's designee, of any overpayment of a benefit, when in the judgment of the director such investigation is necessary, including, but not limited to, circumstances in which benefit payments are made after the death of a member or beneficiary and the retirement system is not made aware of such member's or beneficiary's death. In connection with any such investigation, the board, through the director or the director's designee, shall have the power to compel the attendance of witnesses and the production of books, papers, records, and documents, whether in hardcopy, electronic form, or otherwise, and issue subpoenas for

such purposes. Such subpoenas shall be served in the same manner and have the same effect as subpoenas from district courts; and

(l) To administer all retirement system plans in a manner which will maintain each plan's status as a qualified plan pursuant to the Internal Revenue Code, as defined in section 49-801.01, including: Section 401(a)(9) of the Internal Revenue Code relating to the time and manner in which benefits are required to be distributed, including the incidental death benefit distribution requirement of section 401(a)(9)(G) of the Internal Revenue Code; section 401(a)(25) of the Internal Revenue Code relating to the specification of actuarial assumptions; section 401(a)(31) of the Internal Revenue Code relating to direct rollover distributions from eligible retirement plans; section 401(a)(37) of the Internal Revenue Code relating to the death benefit of a member whose death occurs while performing qualified military service; and section 401(a) of the Internal Revenue Code by meeting the requirements of section 414(d) of the Internal Revenue Code relating to the establishment of retirement plans for governmental employees of a state or political subdivision thereof. The board may adopt and promulgate rules and regulations necessary or appropriate to maintain such status including, but not limited to, rules or regulations which restrict discretionary or optional contributions to a plan or which limit distributions from a plan.

(3) By April 10 of each year, the board 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 board's funding policy, the administrative costs and other fees associated with each fund and plan overseen by the board, member education and informational programs, the director's duties and limitations, an organizational structure of the office of the Nebraska Public Employees Retirement Systems, and the internal control structure of such office to ensure compliance with state and federal laws.

(4)(a) Beginning in 2016, and at least every four years thereafter in even-numbered years or at the request of the Nebraska Retirement Systems Committee of the Legislature, the board shall obtain an experience study. Within thirty business days after presentation of the experience study to the board, the actuary shall present the study to the Nebraska Retirement Systems Committee at a public hearing. If the board does not adopt all of the recommendations in the experience study, the board shall provide a written explanation of its decision to the Nebraska Retirement Systems Committee and the Governor. The explanation shall be delivered within ten business days after formal action by the board to not adopt one or more of the recommendations.

(b) The director shall provide an electronic copy of the first draft and a final draft of the experience study and annual valuation reports to the Nebraska Retirement Systems Committee and the Governor when the director receives the drafts from the actuary. The drafts shall be deemed confidential information. The draft copies obtained by the Nebraska Retirement Systems Committee and the Governor pursuant to this section shall not be considered public records subject to sections 84-712 to 84-712.09.

(c) For purposes of this subsection, business days shall be computed by excluding the day the request is received, after which the designated period of time begins to run. A business day shall not include a Saturday or a Sunday or

a day during which the Nebraska Public Employees Retirement Systems office is closed.

(5) It shall be the duty of the board to direct the State Treasurer to transfer funds, as an expense of the retirement system provided for under the Class V School Employees Retirement Act, to and from the Class V Retirement System Payment Processing Fund and the Class V School Employees Retirement Fund for the benefit of a retirement system provided for under the Class V School Employees Retirement Act to implement section 79-986. The agency for the administration of this provision and under the direction of the board shall be known and may be cited as the Nebraska Public Employees Retirement Systems.

(6) Pursuant to section 79-9,121, it shall be the duty of the board to carry out the work plan, file the report, and contract with, bill, and receive payment from an employer of any Class V school employees retirement system established under the Class V School Employees Retirement Act for all services performed in the conduct, completion, and report of such work plan regarding the transfer of management of any such Class V school employees retirement system.

(7) It shall be the duty of the board to complete the additional identification and examination of issues pursuant to section 79-9,124, to enter and carry out the plan for the transfer and transition of the management and administration of any Class V school employees retirement system established under the Class V School Employees Retirement Act pursuant to section 79-979.01, and to bill and receive payment from an employer of any such retirement system for the costs and expenses of the board in carrying out the plan and the transfer of the management and administration of the Class V school employees retirement system to the board.

Source: Laws 1971, LB 987, § 3; Laws 1973, LB 216, § 3; Laws 1973, LB 498, § 10; Laws 1979, LB 416, § 3; Laws 1983, LB 70, § 1; Laws 1984, LB 751, § 13; Laws 1986, LB 311, § 40; Laws 1987, LB 549, § 14; Laws 1988, LB 1170, § 22; Laws 1991, LB 549, § 74; Laws 1992, LB 672, § 33; Laws 1994, LB 833, § 54; Laws 1994, LB 1306, § 11; Laws 1995, LB 502, § 3; Laws 1996, LB 847, § 52; Laws 1996, LB 1076, § 44; Laws 1998, LB 1191, § 78; Laws 1999, LB 849, § 33; Laws 2000, LB 1192, § 25; Laws 2001, LB 808, § 21; Laws 2002, LB 407, § 63; Laws 2003, LB 451, § 35; Laws 2005, LB 503, § 19; Laws 2011, LB474, § 14; Laws 2011, LB509, § 51; Laws 2012, LB916, § 43; Laws 2013, LB263, § 43; Laws 2014, LB1042, § 11; Laws 2015, LB40, § 16; Laws 2016, LB447, § 47; Laws 2017, LB415, § 52; Laws 2018, LB1005, § 49; Laws 2019, LB31, § 6; Laws 2019, LB33, § 8; Laws 2019, LB34, § 29; Laws 2021, LB147, § 46; Laws 2022, LB700, § 16.

Cross References

Class V School Employees Retirement Act, see section 79-978.01.

County Employees Retirement Act, see section 23-2331.

Judges Retirement Act, see section 24-701.01.

Nebraska State Patrol Retirement Act, see section 81-2014.01.

School Employees Retirement Act, see section 79-901.

State Employees Retirement Act, see section 84-1331.

84-1503.01 Repealed. Laws 1998, LB 1191, § 85.

84-1503.02 Board; duties and responsibilities.

(1) The appointed members of the Public Employees Retirement Board shall have the responsibility for the administration of the retirement systems pursuant to subdivision (1)(a) of section 84-1503, shall be deemed fiduciaries with respect to the administration of the retirement systems, and shall be held to the standard of conduct of a fiduciary specified in subsection (2) of this section. The nonvoting, ex officio member of the board shall not be deemed a fiduciary.

(2) As fiduciaries, the appointed members of the board shall discharge their duties with respect to the retirement systems solely in the interests of the members and beneficiaries of the retirement systems for the exclusive purposes of providing benefits to members and members' beneficiaries and defraying reasonable expenses incurred within the limitations and according to the powers, duties, and purposes prescribed by law at the time such duties are discharged. The appointed members of the board shall not have a duty in their official capacity to seek the enhancement of plan benefits through the legislative process if such benefits are not already contained within the plan documents. The appointed members of the board shall act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

Source: Laws 1996, LB 847, § 53; Laws 2006, LB 1019, § 18.

84-1503.03 Director; employ personnel; employees; duties.

(1) The director of the Nebraska Public Employees Retirement Systems shall employ qualified personnel as may be required to carry out the duties and responsibilities required under sections 84-1501 to 84-1513. Except for the personnel described in subsection (2) of this section, such employees shall be deemed state employees and covered by the State Personnel System pursuant to sections 81-1301 to 81-1368 and other personnel rules or regulations. The positions of the internal auditor and the attorney hired by the board pursuant to section 84-1503 shall be classified positions covered by the State Personnel System and shall not be noncovered positions under subsection (2) of section 81-1316.

(2) The director may hire assistant directors and deputies to assist the director in administering the Nebraska Public Employee Retirement Systems. Each assistant director and deputy shall be exempt from the State Personnel System and shall receive a salary as set by the director.

(3) The director shall be exempt from the State Personnel System.

(4) All employees shall comply with state accounting regulations and applicable state and federal laws in the discharge of their duties.

Source: Laws 1996, LB 847, § 54; Laws 1997, LB 623, § 48; Laws 2001, LB 408, § 30; Laws 2005, LB 364, § 21; Laws 2005, LB 503, § 21; Laws 2006, LB 1019, § 19; Laws 2024, LB198, § 21.
Effective date March 19, 2024.

84-1503.04 Internal auditor; duties and responsibilities.

The duties and responsibilities of the internal auditor employed by the Public Employees Retirement Board shall be consistent with the suggested standards for the professional practice of internal auditing as adopted by the Institute of Internal Auditors and include the following:

- (1) Prepare a formal written three-year audit plan and work schedule each year and present them to the board;
- (2) Conduct ongoing reviews of the internal procedures of the Nebraska Public Employees Retirement Systems and recommend improvements to the board;
- (3) Ensure that the Nebraska Public Employees Retirement Systems' internal accounting and operational controls are appropriate and operating correctly and report inconsistencies to the board;
- (4) Examine and evaluate system records and operating procedures; verify compliance with established plans, policies, procedures, and control systems; assure compliance with regulatory and statutory conditions; and assure adherence to generally accepted accounting and auditing principles and report inconsistencies to the board;
- (5) Perform internal auditing functions, including review of contributions received and creditable service granted; review benefit payments for completeness of information, appropriateness, accuracy, and timeliness; verify accuracy of data and financial information reported to the systems' actuary for all applicable plans; and verify accuracy of data and financial information reported to the systems' record keeper for all applicable plans; and
- (6) Develop standards to be used by independent auditors in their review of the practices and procedures used by various employers to provide for employee participation in the respective retirement systems included in subdivision (1)(a) of section 84-1503.

Source: Laws 2005, LB 503, § 20.

84-1504 Deferred compensation; treatment; participation; requirements.

- (1) The Public Employees Retirement Board, on behalf of the state, may contract with any individual to defer a portion of such individual's compensation or with the Legislative Council to defer any other amount that the Legislative Council agrees to credit to an individual's account pursuant to section 457 of the Internal Revenue Code.
- (2) The compensation to be deferred at the election of the individual and any other amount credited on behalf of such individual by the Legislative Council shall not exceed the total compensation to be received by the individual from the employer or exceed the limits established by the Internal Revenue Code for such a plan.
- (3) The deferred compensation program shall serve in addition to but not be a part of any existing retirement or pension system provided for state or county employees or any other benefit program.
- (4) Any compensation deferred at the election of the individual under such a deferred compensation plan shall continue to be included as regular compensation for the purpose of computing the retirement, pension, or social security contributions made or benefits earned by any employee.
- (5) Any sum so deferred shall not be included in the computation of any federal or state taxes withheld on behalf of any such individual.
- (6) The state, the board, the state investment officer, the agency, or the county shall not be responsible for any investment results entered into by the individual in the deferred compensation agreement.

(7) Nothing in this section shall in any way limit, restrict, alter, amend, invalidate, or nullify any deferred compensation plan previously instituted by any instrumentality or agency of the State of Nebraska, and any such plan is hereby authorized and approved.

(8) No employee of the state or any political subdivision of the state shall be authorized to participate in a deferred compensation plan unless the employee is a United States citizen or is lawfully present in the United States. The employing state agency or political subdivision of the State of Nebraska and the employee shall maintain at least one of the following documents which shall be unexpired, if applicable to the particular document, to demonstrate United States citizenship or lawful presence in the United States as of the employee's date of hire and produce any such document so maintained upon request of the Public Employees Retirement Board or the Nebraska Public Employees Retirement Systems:

- (a) A state-issued driver's license;
- (b) A state-issued identification card;
- (c) A certified copy of a birth certificate or delayed birth certificate issued in any state, territory, or possession of the United States;
- (d) A Consular Report of Birth Abroad issued by the United States Department of State;
- (e) A United States passport;
- (f) A foreign passport with a United States visa;
- (g) A United States Certificate of Naturalization;
- (h) A United States Certificate of Citizenship;
- (i) A tribal certificate of Native American blood or similar document;
- (j) A United States Citizenship and Immigration Services Employment Authorization Document, Form I-766;
- (k) A United States Citizenship and Immigration Services Permanent Resident Card, Form I-551; or
- (l) Any other document issued by the United States Department of Homeland Security or the United States Citizenship and Immigration Services granting employment authorization in the United States and approved by the Public Employees Retirement Board.

(9) For purposes of this section, individual means (a) any state employee, whether employed on a permanent or temporary basis, full-time or part-time, (b) a person under contract providing services to the state who is not employed by the University of Nebraska or any of the state colleges or community colleges and who has entered into a contract with the state to have compensation deferred prior to August 28, 1999, and (c) any county employee designated as a permanent part-time or full-time employee or elected official whose employer does not offer a deferred compensation plan and who has entered into an agreement pursuant to section 48-1401.

Source: Laws 1973, LB 428, § 1; R.S.Supp.,1974, § 84-1329.01; Laws 1975, LB 42, § 2; Laws 1987, LB 549, § 15; Laws 1994, LB 460, § 1; Laws 1996, LB 847, § 55; Laws 1997, LB 623, § 49; Laws 1997, LB 624, § 43; Laws 1998, LB 1191, § 79; Laws 1999, LB

703, § 27; Laws 2001, LB 75, § 2; Laws 2010, LB950, § 28;
Laws 2024, LB198, § 22.
Effective date March 19, 2024.

84-1505 Deferred compensation; treatment; investment.

(1) All compensation deferred under the plan, all property and rights purchased with the deferred compensation, and all investment income attributable to the deferred compensation, property, or rights shall be held in trust for the exclusive benefit of participants and their beneficiaries by the State of Nebraska until such time as payments shall be paid under the terms of the deferred compensation plan. All such assets held in trust 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 be the custodian of the funds and securities of the deferred compensation plan and may deposit the funds and securities in any financial institution approved by the Nebraska Investment Council. All disbursements therefrom shall be paid by him or her only upon vouchers duly authorized by the retirement board. The State Treasurer shall furnish annually to the retirement board a sworn statement of the amount of the funds in his or her custody belonging to the deferred compensation plan, which statement shall be as of the calendar year ending December 31 of each year.

(3) All compensation deferred under the plan, all property and rights purchased with the deferred compensation, and all investment income attributable to the deferred compensation, property, or rights shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable.

Source: Laws 1973, LB 428, § 2; R.S.Supp.,1974, § 84-1329.02; Laws 1994, LB 460, § 2; Laws 1996, LB 847, § 56; Laws 1997, LB 623, § 50; Laws 1998, LB 1191, § 80; Laws 2012, LB916, § 44; Laws 2015, LB40, § 17.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

84-1506 Deferred compensation; availability and distribution of funds; Deferred Compensation Fund; created.

(1) Under the deferred compensation plan, any amount shall not be available to the participant or beneficiary prior to (a) the calendar year in which the participant attains age seventy and one-half years, (b) when the participant is separated from service with the state, or (c) when the participant has an unforeseeable emergency as determined by the Public Employees Retirement Board. The deferred compensation plan shall meet the minimum distribution requirements of section 457 of the Internal Revenue Code. Distribution shall be made as provided in subsection (2) of this section or sections 84-1509 and 84-1510.

(2) For amounts under the deferred compensation plan which are not provided for under an administrative services agreement pursuant to section 84-1509, payments and benefits shall be deposited in the Deferred Compensation

tion Fund which is hereby created. The State Treasurer shall make payments to the employees from the Deferred Compensation Fund.

Source: Laws 1973, LB 428, § 3; R.S.Supp.,1974, § 84-1329.03; Laws 1979, LB 411, § 2; Laws 1994, LB 460, § 3; Laws 1996, LB 847, § 57.

84-1506.01 Deferred Compensation Expense Fund; created; use; investment.

All expenses necessary in connection with the administration and operation of the deferred compensation plan authorized in section 84-1504 shall be paid from the Deferred Compensation Expense Fund which is hereby created. The fund shall be credited with the proportionate share of administration expenses from the deferred compensation plan assets and income as directed by the Public Employees Retirement Board for the proper administration of the plan. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1997, LB 623, § 51.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

84-1507 Actuarial reports; statement of actuarial assumptions and methods; actuarial valuations and experience investigations; prepared; actuary; certified by Public Employees Retirement Board.

All actuarial reports, statements of actuarial assumptions and methods, and actuarial valuations and experience investigations required for any retirement system in Nebraska covering employees of any political subdivision in the state and supported, in whole or in part, by Nebraska tax dollars shall be prepared and signed by an actuary certified as qualified by the Public Employees Retirement Board. Such certification may be applied for by written request to the Public Employees Retirement Board.

Source: Laws 1973, LB 297, § 1; R.S.Supp.,1974, § 84-1315.01.

84-1508 Repealed. Laws 1996, LB 847, § 62.

84-1509 Administrative services agreement; authorized.

The Public Employees Retirement Board may enter into an administrative services agreement with an organization authorized to conduct business in Nebraska and to administer public employee deferred compensation retirement plans. No such agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the state and its participating employees.

Source: Laws 1979, LB 411, § 3; Laws 1994, LB 460, § 4; Laws 1996, LB 847, § 58.

84-1510 Administrative services agreement; terms.

The agreement authorized by section 84-1509 shall provide:

(1) That the organization shall make all disbursements under the contract or contracts issued by it, such disbursements to be made in such manner and

amounts as directed by the state whether on account of retirement, termination of services, total disability, or death;

(2) That the organization shall include with each disbursement a statement showing the gross payment, any taxes withheld, and the net amount paid and an annual statement of account;

(3) That the organization shall furnish to the board a monthly statement of all disbursements and withholdings as stipulated in the agreement;

(4) Hold-harmless clauses protecting each party thereto from the negligent acts of the other or for any loss or claim against one party resulting from release of incorrect or misleading information furnished by the other party;

(5) For the right of the state, either directly or through independent auditors, to examine and audit the organization's records and accounts relating to disbursements made under the agreement;

(6) Protection to the state against assignment of the agreement or the subletting of work done or services furnished under the agreement;

(7) For termination of the agreement; and

(8) Such other terms as may be agreed upon and which the board determines to be in the best interest of the state and its participating employees.

Source: Laws 1979, LB 411, § 4; Laws 1987, LB 549, § 16; Laws 1994, LB 460, § 5.

84-1511 Board; information and advice regarding retirement; provide sessions; for whom; required information; leave authorized; funding; fee.

(1) For purposes of this section:

(a) Leave with pay means time off paid by the employer and does not mean vacation, sick, personal, or compensatory time; and

(b) Session means an in-person training or live-broadcast webinar but does not include information that can be accessed at any time via electronic means.

(2)(a) The Public Employees Retirement Board shall provide sessions for state patrol officers, state employees, judges, county employees, and school employees who are members of the retirement systems established pursuant to the County Employees Retirement Act, the Judges Retirement Act, the School Employees Retirement Act, the Nebraska State Patrol Retirement Act, and the State Employees Retirement Act. The sessions shall provide information and advice regarding the many changes members face upon retirement, including, but not limited to, changes in physical and mental health, housing, family life, leisure activity, and retirement income.

(b) The sessions shall be available to any member who has satisfied the vesting requirements under the retirement system in which the member participates.

(c) The sessions shall include information on the federal and state income tax consequences of the various annuity or retirement benefit options available to retirement system members, information on social security benefits, information on various local, state, and federal government programs and programs in the private sector designed to assist elderly persons, and information and advice the board deems valuable in assisting retirement system members in the transition from public employment to retirement.

(d) Beginning September 1, 2024, as provided pursuant to section 79-9,117, the board shall also provide the sessions described in this subsection to school employees who are members of any retirement system established pursuant to the Class V School Employees Retirement Act.

(3) The board shall work with the Department of Health and Human Services, the personnel division of the Department of Administrative Services, employee groups, and any other governmental agency, including political subdivisions or bodies whose services or expertise may enhance the development or implementation of the sessions.

(4)(a)(i) Each employer participating in the Retirement System for Nebraska Counties or the State Employees Retirement System of the State of Nebraska shall provide each member leave with pay to attend up to three days of sessions.

(ii) Each employer participating in the Nebraska Judges Retirement System, the School Employees Retirement System of the State of Nebraska, or the Nebraska State Patrol Retirement System shall provide each member leave with pay to attend up to two days of sessions.

(b) Leave authorized pursuant to subdivision (4)(a) of this section may only be used to attend sessions that occur during the employee's normal work day.

(c) A member may choose to attend more sessions than the leave authorized pursuant to subdivision (4)(a) of this section, but leave to attend such additional sessions shall be at the expense of the member and shall be at the discretion of the employer.

(5) Funding to cover the expenses of a session shall be charged back to the retirement fund of each plan for which sessions are provided pursuant to subsection (2) of this section on a pro rata share based on the number of members in each plan, except that a nominal registration fee may be charged to each person attending an in-person training session to cover the costs for meals, meeting rooms, or other expenses incurred that are incident to an in-person training session.

Source: Laws 1986, LB 311, § 1; Laws 1992, Third Spec. Sess., LB 14, § 31; Laws 1995, LB 369, § 9; Laws 1996, LB 900, § 1076; Laws 1996, LB 1044, § 979; Laws 1997, LB 624, § 44; Laws 1998, LB 497, § 29; Laws 2011, LB509, § 52; Laws 2013, LB263, § 44; Laws 2022, LB700, § 17.

Cross References

Class V School Employees Retirement Act, see section 79-978.01.

County Employees Retirement Act, see section 23-2331.

Judges Retirement Act, see section 24-701.01.

Nebraska State Patrol Retirement Act, see section 81-2014.01.

School Employees Retirement Act, see section 79-901.

State Employees Retirement Act, see section 84-1331.

84-1511.01 Repealed. Laws 2022, LB700, § 19.

84-1512 Board; access to records; director; duties; employer education program.

(1) The Public Employees Retirement Board, for purposes of administering the various retirement systems under its jurisdiction, shall receive from the Department of Administrative Services and other employers such information as is necessary for the efficient and accurate administration of the systems and shall consult with the Department of Administrative Services and other employ-

ers as to the form in which the information is to be presented and received by the board. The information in the records shall be provided by the employers in an accurate and verifiable form, as specified by the director of the Nebraska Public Employees Retirement Systems. The director shall, from time to time, carry out testing procedures to verify the accuracy of such information. The director shall have access to records maintained by the Department of Administrative Services on the Nebraska employees information system database for the purpose of obtaining any information which may be necessary to verify the accuracy of information and administer the systems and the holder of the records shall comply with a request by the director for access by providing such facts and information to the director in a timely manner.

(2) The director shall develop and implement an employer education program using principles generally accepted by public employee retirement systems so that all employers have the knowledge and information necessary to prepare and file reports as the board requires.

(3) The information obtained by the board pursuant to this section shall not be considered public records subject to sections 84-712 to 84-712.09, except that the following information shall be considered public records: The member's name, the retirement system in which the member is a participant, the date the member's participation in the retirement system commenced, and the date the member's participation in the retirement system ended, if applicable.

Source: Laws 1986, LB 311, § 41; Laws 2000, LB 1192, § 26; Laws 2005, LB 503, § 22; Laws 2009, LB188, § 19.

84-1513 Board; members; personal liability.

No member of the Public Employees Retirement Board shall be personally liable, except in cases of willful dishonesty, gross negligence, or intentional violations of law, for actions relating to administrative decisions pertaining to the retirement funds of retirement plans administered by the board.

Source: Laws 1986, LB 311, § 42; Laws 1998, LB 1191, § 81.

84-1514 Class V Retirement System Payment Processing Fund; created; use; investment; transfers of funds; liability.

The Class V Retirement System Payment Processing Fund is created for the purpose of transferring funds as specified in section 79-986 and for paying expenses associated with the transfer of such funds. The fund shall consist of the amounts transferred from the custodial bank that holds the assets of a retirement system provided for under the Class V School Employees Retirement Act to make payments for purposes specified in the Class V School Employees Retirement Act and to pay administrative expenses incurred under this section by the Public Employees Retirement Board. The fund shall reside with the Nebraska Public Employees Retirement Systems for the sole purpose of conducting the transactions necessary to implement 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 Nebraska Public Employees Retirement Systems, Public Employees Retirement Board, State Treasurer, Nebraska Investment Council, and employees of each of such agencies shall not have responsibility to review or verify the accuracy of the requests for transfer of funds for payments and shall not be

liable for any claims, suits, losses, damages, fees, and costs related to the payment of such benefits, refunds, and expenses.

Source: Laws 2016, LB447, § 48.

Cross References

Class V School Employees Retirement Act, see section 79-978.01.

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 16

NEBRASKA STATE INSURANCE PROGRAM

(a) GENERAL PROVISIONS

Section	
84-1601.	Program; established; coverage; employees of the Nebraska State Patrol; optional coverage.
84-1602.	Program; administration.
84-1603.	Selection of insurance carrier; powers and duties.
84-1604.	Employees eligible.
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84-1606.	Optional health insurance coverage; authorized.
84-1607.	Life insurance contract; extension of special benefits; payment.
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84-1615.	Coverage; when provided.
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(b) DIRECT PRIMARY CARE PILOT PROGRAM ACT

84-1618.	Act, how cited.
84-1619.	Terms, defined.
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84-1621.	Department; duties.
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84-1624.	Direct provider; participation requirements; monthly payment.
84-1625.	Care quality and patient satisfaction measurements.
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84-1627.	Rules and regulations.

(a) GENERAL PROVISIONS

84-1601 Program; established; coverage; employees of the Nebraska State Patrol; optional coverage.

(1) There is hereby established a program of group life and health insurance for all permanent employees of this state who work one-half or more of the regularly scheduled hours during each pay period, excluding employees of the University of Nebraska, the state colleges, and the community colleges. Such program shall be known as the Nebraska State Insurance Program and shall

replace any current program of such insurance in effect in any agency and funded in whole or in part by state contributions.

(2) Temporary employees of the state who have a work assignment of at least six months' duration and who work at least twenty hours per week may purchase health insurance through the Nebraska State Insurance Program. The state shall pay the same proportion of the insurance premium for temporary employees as is established through the collective bargaining process for permanent employees. For purposes of this subsection, temporary employees means individuals (a) employed in the Temporary Employee Pool as described in subdivision (6) of section 81-1307 and (b) hired directly by state agencies. In no event shall a temporary employee mean an individual hired through a private employment agency.

(3) For purposes of sections 84-1601 to 84-1615, health insurance may be construed to include coverage for disability and dental health care services.

(4) Any commissioned employee of the Nebraska State Patrol who on or after July 17, 1986, has reached fifty-one years of age or becomes medically disabled and who will not receive benefits from the federal social security program shall be afforded the opportunity to remain enrolled in the state employees group health insurance program until age sixty-five. Employees electing this option shall be responsible for the entire premium cost, including the state's share, the employee's share, and an administrative fee consistent with that allowed by federal guidelines for continuation of health insurance.

Source: Laws 1973, LB 516, § 1; Laws 1974, LB 789, § 1; Laws 1981, LB 244, § 1; Laws 1982, LB 970, § 1; Laws 1984, LB 115, § 1; Laws 1984, LB 705, § 1; Laws 1986, LB 74, § 1; Laws 1987, LB 491, § 1; R.S.1943, (1988), § 44-1620; Laws 1989, LB 303, § 1; Laws 1998, LB 1162, § 85; Laws 1999, LB 113, § 7; Laws 2000, LB 654, § 47.

Public employee benefits to be realized at retirement are not mere gratuities but are deferred compensation. *Omer v. Tagg*, 235 Neb. 527, 455 N.W.2d 815 (1990).

84-1602 Program; administration.

Sections 84-1601 to 84-1615 shall be administered by the personnel division of the Department of Administrative Services. The Director of Personnel may employ such administrative, clerical, secretarial, and technical assistants and consultants as are required for the administration of such sections.

Source: Laws 1973, LB 516, § 2; Laws 1987, LB 491, § 3; R.S.1943, (1988), § 44-1621; Laws 1992, Third Spec. Sess., LB 14, § 32; Laws 1996, LB 1252, § 2; Laws 2000, LB 654, § 48.

84-1603 Selection of insurance carrier; powers and duties.

The personnel division of the Department of Administrative Services shall select, with the assistance of the Risk Manager and the Chief Negotiator, one or more carriers or combinations of carriers licensed to do insurance business in Nebraska to serve as administrator of the insurance contract or contracts. Such selection shall be made after open competitive bidding in which any carrier authorized to provide the type or types of insurance coverage involved shall be eligible to participate. The personnel division may develop bid specifications which provide for various forms of plan design and funding methods, including

plans of self-insurance or any combination of such methods. The personnel division may utilize such expert technical assistance provided by the Risk Manager, the Chief Negotiator, and other state agencies or outside consultants as may be required to establish and evaluate criteria for selection of carriers. The insurance contract or contracts may be subject to rebidding at any time after the inception of this program at the discretion of the personnel division.

Source: Laws 1973, LB 516, § 3; Laws 1981, LB 273, § 7; Laws 1984, LB 880, § 2; Laws 1987, LB 491, § 4; R.S.1943, (1988), § 44-1622; Laws 1989, LB 303, § 3; Laws 1992, Third Spec. Sess., LB 14, § 33; Laws 1996, LB 1252, § 3; Laws 2000, LB 654, § 49.

84-1604 Employees eligible.

The coverages provided for by sections 84-1601 to 84-1615 shall be afforded to each permanent state employee who works one-half or more of the regularly scheduled hours during each pay period, commencing after thirty days of such employment, and to each temporary employee only as described in subsection (2) of section 84-1601, commencing after thirty days of such employment. Permanent and temporary employees who are employed less than the regularly scheduled hours as defined for a permanent employee shall be entitled to state contributions on a proportionately reduced basis. The life and health insurance coverages provided by sections 84-1601 to 84-1615 shall be totally independent of one another and the loss experience and the rates for the two coverages shall be maintained separate and apart from one another.

Source: Laws 1973, LB 516, § 8; Laws 1974, LB 789, § 6; Laws 1979, LB 391, § 2; Laws 1984, LB 13, § 80; Laws 1986, LB 529, § 50; Laws 1987, LB 491, § 7; R.S.1943, (1988), § 44-1627; Laws 1998, LB 1162, § 86.

84-1604.01 Certain blind persons; eligibility.

Any person who is blind as defined in section 71-8603 and who provides services under contract to the State of Nebraska to a disabled person as defined in section 68-1503 shall be afforded the opportunity to enroll in the state employees group health insurance program until age sixty-five. Eligible persons electing this option shall be responsible for the entire premium cost and an administrative fee consistent with that allowed by federal guidelines for continuation of health insurance.

Source: Laws 1998, LB 1073, § 169; Laws 2000, LB 352, § 18.

84-1605 Contract for insurance.

Out of appropriations made for that purpose, the personnel division of the Department of Administrative Services shall (1) first enter into a contract providing, entirely at state expense, ten thousand dollars of basic life insurance protection and (2) enter into a contract to purchase a contract of group health insurance to be financed by the state to the extent that appropriations made for that purpose are available and, if necessary, by contributions from each employee. Each such contract shall provide insurance coverage for each employee specified in section 84-1601. Participation in the program of group health and life insurance shall be optional with the employee.

Source: Laws 1973, LB 516, § 4; Laws 1974, LB 789, § 2; Laws 1981, LB 556, § 2; Laws 1981, LB 273, § 8; Laws 1987, LB 491, § 5;

R.S.1943, (1988), § 44-1623; Laws 1989, LB 303, § 5; Laws 1992, Third Spec. Sess., LB 14, § 34; Laws 1996, LB 1252, § 4; Laws 2000, LB 654, § 50.

84-1606 Optional health insurance coverage; authorized.

The personnel division of the Department of Administrative Services may elect to offer a group health insurance option to employees subject to sections 84-1601 to 84-1615. Such benefits shall be offered at the rates listed in section 84-1611, and additional contributions necessary to cover the costs of such benefits may be required from employees.

Source: Laws 1983, LB 632, § 2; R.S.1943, (1988), § 44-1622.01; Laws 1989, LB 303, § 4; Laws 1992, Third Spec. Sess., LB 14, § 35; Laws 1993, LB 325, § 1; Laws 1996, LB 1252, § 5; Laws 2000, LB 654, § 51.

84-1607 Life insurance contract; extension of special benefits; payment.

The group life insurance contract or contracts may permit the extension of special benefits, such as accidental death and dismemberment benefits, amounts of life insurance in addition to the amount provided in section 84-1605, and the extension of coverage to dependents. Any coverage under this section shall be borne solely by the employee.

Source: Laws 1973, LB 516, § 5; Laws 1974, LB 789, § 3; R.S.1943, (1988), § 44-1624.

84-1608 Health insurance contract; extension of special benefits; payment.

The group health insurance contract or contracts may permit the extension of special benefits, such as insurance over and above that provided by the basic coverage specified in section 84-1605, dental health insurance, disability insurance, accidental death and dismemberment benefits, disability income replacement benefits, and the extension of coverage to dependents. Any coverage under this section may be borne solely by the employee.

Source: Laws 1973, LB 516, § 6; Laws 1974, LB 789, § 4; Laws 1981, LB 244, § 2; Laws 1983, LB 632, § 3; Laws 1984, LB 115, § 2; R.S.1943, (1988), § 44-1625.

84-1609 Special coverages; availability.

The special coverages permitted by sections 84-1607 and 84-1608 shall be made available uniformly to all employees, but each employee shall retain the option to choose the special coverage or coverages which he or she desires or to reject all such special coverages.

Source: Laws 1973, LB 516, § 7; Laws 1974, LB 789, § 5; Laws 1987, LB 491, § 6; R.S.1943, (1988), § 44-1626.

84-1610 Supplemental coverage; restrictions; right to purchase.

No agency shall provide for its employees any program of life or health insurance supplementary to that provided under sections 84-1601 to 84-1615, except as provided in sections 84-1601, 84-1607, and 84-1608. The provisions of this section shall not deny an employee the right to purchase through payroll

deduction entirely at his own expense individual life and health insurance programs other than those provided under sections 84-1601 to 84-1615.

Source: Laws 1973, LB 516, § 9; Laws 1974, LB 789, § 7; R.S.1943, (1988), § 44-1628.

84-1611 Health insurance or health maintenance organization program; state contribution; amount; labor contract; effect.

(1) For any contract period or periods beginning on or after July 1, 1995, the state shall make the following contributions from the various funds toward payment of a health insurance or health maintenance organization program which may include coverage for dependents:

(a) For any employee with a service date of May 4, 1993, or after, the state shall pay seventy-nine percent of the total cost which was in effect on July 1, 1994, for the plan, option, and coverage chosen by the employee. For any plan effective on or after July 1, 1995, and for any employee with a service date of May 4, 1993, or after, the state shall pay seventy-nine percent of the total cost of the plan as of the effective date of the plan for the option and coverage chosen by the employee;

(b) For any employee who has a change in plan, option, or coverage after April 25, 1993, the state shall pay seventy-nine percent of the total cost which was in effect on July 1, 1994, for the plan, option, and coverage chosen by the employee. For any plan effective on or after July 1, 1995, and for any employee who has a change in plan, option, or coverage after April 25, 1993, the state shall pay seventy-nine percent of the total cost of the plan as of the effective date of the plan for the option and coverage chosen by the employee;

(c) For any employee who is required to change health carriers because of the termination of the plan and who does not change either the option or coverage, the state shall pay an amount equal to seventy-nine percent of the total cost which was in effect on July 1, 1994, for the optional major medical plan for the same coverage as the plan chosen by the employee, subject to the limitations in subsection (2) of this section;

(d) For any employee who chooses any coverage of the preferred provider organization plan, the state shall pay an amount equal to seventy-nine percent of the total cost which was in effect on July 1, 1994, for the optional major medical plan for the same coverage chosen by the employee; and

(e) For all other employees, except as limited in subsection (2) of this section, the state shall pay an amount equal to seventy-nine percent of the total cost which was in effect on July 1, 1994, for the optional major medical plan for the same coverage as the plan chosen by the employee.

(2)(a) Under no circumstances shall the state's contribution exceed the actual cost of the plan, option, and coverage chosen by the employee.

(b) The state's contribution shall not be less than seventy-nine percent of the total cost which was in effect on July 1, 1994, for the plan, option, and coverage chosen by the employee.

(3) For purposes of this section, (a) coverage shall mean the rate categories of one-party, two-party, four-party, and family, as offered under any contract entered into for medical benefits, (b) option shall mean one of the choices of levels of medical and other benefits offered by a carrier, and (c) service date

shall mean the date maintained in the Nebraska employees information system and used for calculating vacation and sick leave benefits.

(4) If any provision of this section varies from the terms of a labor contract, the terms of the labor contract shall prevail for the employees covered by the labor contract.

Source: Laws 1976, LB 971, § 1; Laws 1977, LB 545, § 1; Laws 1978, LB 771, § 1; Laws 1978, LB 923, § 1; Laws 1981, LB 556, § 1; Laws 1982, LB 970, § 2; Laws 1983, LB 632, § 1; Laws 1984, LB 880, § 1; Laws 1987, LB 491, § 2; Laws 1987, LB 783, § 1; R.S.1943, (1988), § 44-1620.01; Laws 1989, LB 303, § 2; Laws 1991, LB 846, § 1; Laws 1993, LB 325, § 2; Laws 1995, LB 395, § 4.

84-1612 Contributions by employees; payroll deductions.

All contributions by employees under sections 84-1601 to 84-1615 shall be made by payroll deductions. As each new employee becomes eligible for coverage under sections 84-1601 to 84-1615, the Director of Administrative Services shall certify the amount to be deducted each pay period from the employee's pay under sections 84-1601 to 84-1615. When there is any change in the amount of required contribution, such change shall be similarly certified. Such amount shall be deducted each pay period by the director.

Source: Laws 1973, LB 516, § 10; Laws 1987, LB 491, § 8; R.S.1943, (1988), § 44-1629.

84-1613 State Employees Insurance Fund; created; use; investment.

The State Employees Insurance Fund is established. The fund shall be administered by the personnel division of the Department of Administrative Services. All funds appropriated to pay the state's share of the cost of the coverages provided by sections 84-1601 to 84-1615 and all payroll deductions made under sections 84-1601 to 84-1615 shall be credited to the fund. The division shall make premium payments to the carrier, carriers, or combinations of carriers selected under section 84-1603 from this fund. The division may also use the fund to make incentive payments to state employees pursuant to section 44-1413.

Any funds in the State Employees Insurance Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

On or before October 1, 2001, the State Treasurer shall transfer one million five hundred thousand dollars from the excess state share of life insurance history money of the State Employees Insurance Fund to the Workers' Compensation Claims Revolving Fund.

Source: Laws 1973, LB 516, § 11; Laws 1981, LB 273, § 9; R.S.1943, (1988), § 44-1630; Laws 1989, LB 303, § 6; Laws 1994, LB 1066, § 133; Laws 1996, LB 1252, § 6; Laws 2000, LB 654, § 52; Laws 2001, LB 541, § 7; Laws 2018, LB1119, § 26.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

84-1614 Program; applicability of law.

Any group insurance provided by sections 84-1601 to 84-1615 shall be subject to the provisions of Chapter 44, article 16, except that if any provision of sections 84-1601 to 84-1615 is in conflict therewith, the provisions of sections 84-1601 to 84-1615 shall govern.

Source: Laws 1973, LB 516, § 12; R.S.1943, (1988), § 44-1631.

84-1615 Coverage; when provided.

Coverages under sections 84-1601 to 84-1615 shall be provided commencing January 1, 1974.

Source: Laws 1973, LB 516, § 13; R.S.1943, (1988), § 44-1632.

84-1616 Health and Life Benefit Administration Cash Fund; created; use; investment.

The Health and Life Benefit Administration Cash Fund is created. The fund shall consist of payments made by individuals eligible for program benefits, transfers from the State Employees Insurance Fund for administrative and operation expenses as authorized by the Legislature, and interest earnings as authorized by the Legislature. The fund shall be used by the personnel division of the Department of Administrative Services to administer the provisions of the federal Public Health Service Act and for the administration of the section 125 plan. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1997, LB 314, § 22; Laws 2000, LB 654, § 53.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

84-1617 Personnel division of the Department of Administrative Services; report.

The personnel division of the Department of Administrative Services shall provide electronically an annual report to the Clerk of the Legislature. The report shall include the following information based on the prior fiscal year: (1) The number of temporary employees employed by the state; (2) the number of such temporary employees who were eligible for health insurance coverage pursuant to section 84-1601; (3) the number of such temporary employees who elected coverage; and (4) the average length of health insurance coverage for those temporary employees who elected coverage.

Source: Laws 1998, LB 1162, § 84; Laws 2012, LB782, § 233.

(b) DIRECT PRIMARY CARE PILOT PROGRAM ACT

84-1618 Act, how cited.

Sections 84-1618 to 84-1627 shall be known and may be cited as the Direct Primary Care Pilot Program Act.

Source: Laws 2018, LB1119, § 1.

84-1619 Terms, defined.

For purposes of the Direct Primary Care Pilot Program Act:

- (1) Department means the Department of Administrative Services;
- (2) Direct primary care health plan means a health plan which includes primary care services provided by a participating provider, pharmaceutical care as defined in section 38-2831 provided by a licensed pharmacist, and health care coverage for medical specialists, hospitals, pharmacy, and other medical coverage the department deems appropriate;
- (3) Direct provider has the same meaning as in section 71-9503;
- (4) Enrollee means a state employee or his or her dependent who is enrolled in the pilot program;
- (5) Nebraska State Insurance Program means the health insurance offered to state employees and their dependents under sections 84-1601 to 84-1615;
- (6) Participating provider means a direct provider who is participating in the pilot program;
- (7) Pilot program means the Direct Primary Care Pilot Program established under the Direct Primary Care Pilot Program Act;
- (8) Plan administrator means the entity with which the department contracts to administer the direct primary care health plan;
- (9) Primary care has the same meaning as in section 71-9503; and
- (10) State employee means an employee participating in the Nebraska State Insurance Program.

Source: Laws 2018, LB1119, § 2.

84-1620 Direct Primary Care Pilot Program; established.

The Direct Primary Care Pilot Program is established within the Nebraska State Insurance Program. The pilot program shall begin in fiscal year 2019-20 and continue through fiscal year 2022-23. Through the pilot program the Nebraska State Insurance Program shall include direct primary care health plans. Thereafter the department may continue to offer the direct primary care health plans.

Source: Laws 2018, LB1119, § 3.

84-1621 Department; duties.

For the pilot program, the department shall provide enrollees at least two different direct primary care health plans including a high-deductible option and a low-deductible option for health care coverage outside of primary care. The department may include wellness incentives in the direct primary care health plans.

Source: Laws 2018, LB1119, § 4.

84-1622 Participation.

A state employee may participate at open enrollment in the pilot program on a first-come, first-served basis dependent on participation by participating providers and limitations on enrollees served per participating providers.

Source: Laws 2018, LB1119, § 5.

84-1623 Plan administrator; duties.

Any plan administrator for health care plans offered under the Nebraska State Insurance Program shall cooperate with the implementation of the pilot program and shall share real-time claims data for state employees participating in the pilot program with participating providers.

Source: Laws 2018, LB1119, § 6.

84-1624 Direct provider; participation requirements; monthly payment.

(1) To qualify for participation in the pilot program, a direct provider shall:

- (a) Provide primary care to an enrollee;
- (b) Coordinate care across all care settings;
- (c) Oversee transitions in care between settings; and
- (d) Minimize the risk of gaps in care.

(2) The participating providers shall receive a monthly payment of a per-member, per-month fee for each enrollee for any month or portion of a month in which he or she is enrolled in the pilot program.

Source: Laws 2018, LB1119, § 7.

84-1625 Care quality and patient satisfaction measurements.

A participating provider shall continuously monitor care quality in accordance with a standardized set of care quality and patient satisfaction measurements. Such care quality measurements shall include, but not be limited to, the following:

- (1) Patient engagement measurement, including, but not limited to, the percentage of enrollees who have:
 - (a) Completed a health risk assessment; and
 - (b) Completed a face-to-face visit to the enrollee's participating provider;
- (2) Prevention measurement, including, but not limited to, the percentage of enrollees who have received appropriate screenings for their age or gender; and
- (3) Chronic disease management.

Source: Laws 2018, LB1119, § 8.

84-1626 Report.

Beginning in fiscal year 2021-22, the department shall provide a report to the Governor and the Legislature by September 1 of each year. The report shall evaluate the clinical and financial performance of the pilot program. The report shall be submitted to the Legislature electronically.

Source: Laws 2018, LB1119, § 9.

84-1627 Rules and regulations.

The department may adopt and promulgate rules and regulations as necessary to implement the Direct Primary Care Pilot Program Act.

Source: Laws 2018, LB1119, § 10.

CHAPTER 85

STATE UNIVERSITY, STATE COLLEGES, AND POSTSECONDARY EDUCATION

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ARTICLE 1

UNIVERSITY OF NEBRASKA

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85-1,117. Renovation of Morrill Hall; Board of Regents; powers.
85-1,118. Repealed. Laws 2003, LB 68, § 11.
85-1,119. Kearney State College; transfer of property, obligations, and employees; collective bargaining.
85-1,120. Repealed. Laws 2003, LB 68, § 11.
85-1,121. Repealed. Laws 2003, LB 68, § 11.
85-1,122. University of Nebraska at Kearney; provisions applicable.
85-1,123. University of Nebraska at Kearney Cash Fund; University of Nebraska at Kearney Trust Fund; created; use; investment.
85-1,124. Repealed. Laws 2003, LB 68, § 11.
85-1,125. Repealed. Laws 2000, LB 1379, § 7.
85-1,126. Risk-loss trusts authorized; requirements.
85-1,127. Risk-loss trust; applicability of provisions; Attorney General; State Claims Board; duties.
85-1,128. University of Nebraska Eppley Science Hall Construction Fund; created; use; investment.
85-1,129. University of Nebraska Eppley Science Hall Construction Fund; legislative intent.
85-1,130. Repealed. Laws 2012, LB 782, § 253.
85-1,131. Legislative findings.
85-1,132. Findings and declarations.
85-1,133. Football players; compensation.
85-1,134. Stipends authorized.
85-1,135. Construction of sections.
85-1,136. Sections; when operative.
85-1,137. Alternative to stipend; requirement.
85-1,138. Transferred to section 68-962.
85-1,139. Transferred to section 68-963.
85-1,140. Transferred to section 68-964.
85-1,141. Transferred to section 68-965.
85-1,142. Transferred to section 68-966.

85-101 University of Nebraska; establishment; name.

There has been established and shall be maintained in this state an institution under the name and style of the University of Nebraska.

Source: Laws 1869, § 1, p. 172; R.S.1913, § 7081; C.S.1922, § 6713; C.S.1929, § 85-101; R.S.1943, § 85-101.

University of Nebraska was created as a body corporate, and its general government vested in a Board of Regents. State ex rel. Board of Regents of the University of Nebraska v. Moore, 46 Neb. 373, 64 N.W. 975 (1895).

85-102 University of Nebraska; object.

The object of the University of Nebraska shall be to afford to the inhabitants of this state the means of acquiring a thorough knowledge of the various branches of literature, science and arts.

Source: Laws 1869, § 2, p. 172; R.S.1913, § 7082; C.S.1922, § 6714; C.S.1929, § 85-102; R.S.1943, § 85-102; Laws 2023, LB705, § 109.

Affording the means of acquiring a thorough knowledge of the various branches of literature, science and the arts is not the limit of the purposes, powers or activities of the University of Nebraska. Fisher v. Board of Regents, 108 Neb. 666, 189 N.W. 161 (1922).

85-102.01 University of Nebraska; composition.

The University of Nebraska shall be composed of a chief governing administrative unit, four universities which shall be the University of Nebraska-Lincoln, the University of Nebraska at Omaha, the University of Nebraska at Kearney, and the University of Nebraska Medical Center, and such other institutions and units as may be designated by the Legislature.

Source: Laws 1973, LB 149, § 1; Laws 1989, LB 247, § 18.

85-102.02 Universities; program responsibilities.

(1) The University of Nebraska-Lincoln shall have responsibility for operating comprehensive programs of undergraduate instruction and primary responsibility, except in the health-related disciplines, for operating comprehensive programs of graduate, postgraduate, and professional instruction, research, and public service as authorized by the Board of Regents of the University of Nebraska consistent with the role and mission assignments provided in Chapter 85, article 9.

(2) The University of Nebraska at Omaha shall have responsibility for operating general programs of undergraduate instruction and programs of graduate instruction, research, and public service as authorized by the Board of Regents consistent with the role and mission assignments provided in Chapter 85, article 9.

(3) The University of Nebraska at Kearney shall have responsibility for operating general programs of undergraduate instruction and programs of graduate instruction, research, and public service as authorized by the Board of Regents consistent with and limited by the role and mission assignments provided in Chapter 85, article 9.

(4) The University of Nebraska Medical Center shall have primary responsibility in the health-related disciplines for operating programs of undergraduate instruction and comprehensive programs of graduate, postgraduate, and professional instruction, research, and public service as authorized by the Board of Regents consistent with the role and mission assignments provided in Chapter 85, article 9.

Source: Laws 1989, LB 247, § 19.

85-103 University of Nebraska; government; Board of Regents; election; vacancies.

The general government of the University of Nebraska shall be vested in a board of eight regents elected from districts as provided in section 32-510. Vacancies occurring in the board shall be filled as provided in section 32-573.

Source: Laws 1869, § 3, p. 172; Laws 1877, § 1, p. 56; R.S.1913, § 7083; C.S.1922, § 6715; C.S.1929, § 85-103; R.S.1943, § 85-103; Laws 1947, c. 351, § 2, p. 1102; Laws 1961, c. 457, § 1, p. 1396; Laws 1969, c. 847, § 2, p. 3188; Laws 1971, LB 1035, § 1; Laws 1991, LB 617, § 1; Laws 1994, LB 76, § 611; Laws 2003, LB 181, § 6.

Cross References

Election provisions, see the Election Act, section 32-101.

Official bonds and oaths, see Chapter 11.

Board of Regents can exercise only such powers as are expressly given to it, or which may be necessary to carry into effect those powers specially given. Regents of the University of Nebraska v. McConnell, 5 Neb. 423 (1877).

85-103.01 University of Nebraska; Board of Regents; districts; numbers; boundaries; established by maps; Clerk of Legislature; Secretary of State; duties.

(1) For the purpose of section 85-103, the state is divided into eight districts. Each district shall be entitled to one regent on the board.

(2) The numbers and boundaries of the districts are designated and established by maps identified and labeled as maps REG21-39003, REG21-39003-1, REG21-39003-2, REG21-39003-3, REG21-39003-4, REG21-39003-5, REG21-39003-6, REG21-39003-7, and REG21-39003-8, filed with the Clerk of the Legislature, and incorporated by reference as part of Laws 2021, LB8, One Hundred Seventh Legislature, First Special Session.

(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 October 1, 2021.

(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 website the maps referred to in subsection (2) of this section identifying the boundaries for the districts.

Source: Laws 1969, c. 847, § 3, p. 3189; Laws 1971, LB 1035, § 2; Laws 1981, LB 553, § 1; Laws 1991, LB 617, § 2; Laws 2001, LB 854, § 2; Laws 2011, LB701, § 1; Laws 2021, First Spec. Sess., LB8, § 1.

Cross References

Constitutional provisions, see Article VII, section 10, Constitution of Nebraska.

85-103.02 University of Nebraska; Board of Regents; population figures and maps; basis.

For purposes of section 85-103.01, the Legislature adopts the official population figures and maps from the 2020 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 1035, § 3; Laws 1981, LB 553, § 2; Laws 1991, LB 617, § 3; Laws 2001, LB 854, § 3; Laws 2011, LB701, § 2; Laws 2021, First Spec. Sess., LB8, § 2.

85-104 Board of Regents; meetings; open to public; closed sessions; record of meetings; expenses.

All meetings of the Board of Regents shall be open to the public. The board may hold closed sessions in accordance with the Open Meetings Act. Public record shall be made and kept of all meetings and proceedings of the board. The regents shall meet at least twice each year at the administration building. They shall receive for their services no compensation, but they may be reimbursed for expenses incurred in the performance of their official duties as provided in sections 81-1174 to 81-1177.

Source: Laws 1869, § 23, p. 178; Laws 1877, § 1, p. 58; Laws 1907, c. 148, § 1, p. 462; R.S.1913, § 7111; C.S.1922, § 6743; C.S.1929, § 85-129; R.S.1943, § 85-104; Laws 1975, LB 325, § 8; Laws 1981, LB 204, § 217; Laws 1996, LB 900, § 1077; Laws 2004, LB 821, § 42; Laws 2020, LB381, § 137.

Cross References

Open Meetings Act, see section 84-1407.

85-105 Board of Regents; organization; property; powers.

The Board of Regents shall have full power to appoint its own presiding officer and secretary. It shall constitute a body corporate, to be known as the Board of Regents of the University of Nebraska, and as such may sue and be sued and may make and use a common seal and alter the same at pleasure. It may acquire real and personal property for the use of the university and may dispose of the same whenever the university can be benefited thereby, except that it shall never dispose of grounds upon which a building of the university having a market value in excess of one million dollars is located without the consent of the Legislature.

Source: Laws 1869, § 5, p. 173; Laws 1877, § 1, p. 56; R.S.1913, § 7085; C.S.1922, § 6717; C.S.1929, § 85-105; R.S.1943, § 85-105; Laws 1987, LB 656, § 1; Laws 2003, LB 68, § 1.

The University of Nebraska is a body corporate that may sue and be sued. *Stadler v. Curtis Gas, Inc.*, 182 Neb. 6, 151 N.W.2d 915 (1967).

Legislature could require Board of Regents to establish experimental stations. *State ex rel. Bushee v. Whitmore*, 86 Neb. 399, 125 N.W. 606 (1910), modifying 85 Neb. 566, 123 N.W. 1051 (1909).

Board of Regents has no power to disburse endowment fund without appropriation. *State ex rel. Bessey v. Babcock*, 17 Neb. 610, 24 N.W. 202 (1885).

Article VII, section 10, Constitution of Nebraska, and this section do not grant power to waive immunity from suit in federal court. *Board of Regents of University of Nebraska v. Dawes*, 370 F.Supp. 1190 (D. Neb. 1974).

85-106 Board of Regents; general powers; duties; retirement benefits; requirements.

The Board of Regents shall have the power:

- (1) To enact laws for the government of the university;
- (2) To elect a president, vice presidents, chancellors, vice chancellors, deans, associate deans, assistant deans, directors, associate directors, assistant di-

rectors, professors, associate professors, assistant professors, instructors, other members of the faculty staff, and employees generally of the university and to provide for academic tenure for professors, associate professors, and assistant professors;

(3) To prescribe the duties of such persons not inconsistent with section 85-1,105;

(4) To fix their compensation;

(5) To provide, in its discretion, retirement benefits for present and future employees of the university, subject to the following:

(a) The cost of such retirement benefits shall be funded in accordance with sound actuarial principles with the necessary contributions for both past service and future service being treated in the university budget in the same way as any other operating expense;

(b) The university contribution under any such retirement plan shall be (i) the rate established by the Board of Regents and not more than eight percent of each university employee's full-time salary or wage earnings for any calendar year before any agreement for reduction of salary or wage earnings and (ii) pursuant to an agreement for reduction of salary or wage earnings, the amount of the reduction of salary or wage earnings;

(c) Each employee's contribution shall be the rate established by the Board of Regents and shall not be required to exceed the university's contribution under subdivision (5)(b)(i) of this section, except that in lieu of making such contribution, each such employee may enter into an agreement for reduction of salary or wages for the purchase by the Board of Regents of annuity contracts for such employee, under the provisions of the Internal Revenue Code, but the amount of the reduction of salary or wages allowable under this subdivision may not include credit for service prior to March 29, 1972;

(d) The retirement benefits of any employee for service prior to September 1, 1961, shall be those provided under the retirement plan then in force, which benefits shall not be abridged, except that such retirement benefits shall become fully vested in the event of an employee's termination of employment if such employee has at least ten years of service at the date of termination;

(e) Continued contributions to the system until the date of retirement as provided in section 85-606; and

(f) The investment of retirement funds shall be pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act, but no change in the type of investment of such funds shall be made without the prior approval of the Board of Regents;

(6) To equalize and provide for uniform benefits for all present and future employees, including group life insurance, group hospital-medical insurance, group long-term disability income insurance, and retirement benefits;

(7) To provide, through the University Extension Division, for the holding of classes at various localities throughout the state avoiding unnecessary duplication of courses offered by other educational institutions in such localities and consistent with the orders of the Coordinating Commission for Postsecondary Education issued pursuant to sections 85-1413 and 85-1414;

(8) To remove the president, vice presidents, chancellors, vice chancellors, deans, associate deans, assistant deans, directors, associate directors, assistant directors, professors, associate professors, assistant professors, instructors,

other members of the faculty staff, and employees generally, when the interests of the university require it; and

(9) To pay expenses for recruitment of academic, administrative, professional, and managerial personnel.

The Board of Regents shall institute a continuing program of preventive maintenance and a program of deferred maintenance consistent with the provisions of the Deferred Building Renewal Act and shall consult with the Nebraska Arts Council and acquire works of art for the original construction of any public building under its supervision consistent with sections 82-317 to 82-329 and 85-106.01 to 85-106.03.

Source: Laws 1869, § 6, p. 173; Laws 1875, § 2, p. 154; R.S.1913, § 7086; C.S.1922, § 6718; C.S.1929, § 85-106; R.S.1943, § 85-106; Laws 1949, c. 311, § 1, p. 1028; Laws 1959, c. 458, § 1, p. 1524; Laws 1959, c. 459, § 1, p. 1526; Laws 1967, c. 621, § 1, p. 2083; Laws 1969, c. 848, § 1, p. 3190; Laws 1969, c. 849, § 1, p. 3191; Laws 1969, c. 584, § 120, p. 2423; Laws 1972, LB 1176, § 1; Laws 1973, LB 248, § 2; Laws 1973, LB 149, § 2; Laws 1973, LB 423, § 1; Laws 1977, LB 309, § 20; Laws 1978, LB 664, § 9; Laws 1980, LB 817, § 1; Laws 1981, LB 463, § 2; Laws 1991, LB 663, § 59; Laws 1994, LB 1066, § 134; Laws 1995, LB 574, § 89.

Cross References

Deferred Building Renewal Act, see section 81-190.

Nebraska Capital Expansion Act, see section 72-1269.

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

State Capitol, improvement district, powers of board, see section 81-1108.31.

85-106.01 University of Nebraska; new capital construction; appropriation; percentage used for works of art; when.

After January 1, 1979, at least one percent of any appropriation for the original construction of any public building under the supervision of the Board of Regents of the University of Nebraska shall be spent for the acquisition of works of art. The works of art may be an integral part of the structure, attached to the structure, detached within or outside of the structure, or may be exhibited by the Board of Regents of the University of Nebraska in other public facilities.

Source: Laws 1978, LB 664, § 10.

85-106.02 Board of Regents; works of art; duties.

The Board of Regents of the University of Nebraska, in consultation with the Nebraska Arts Council, shall determine the amount of money to be made available for the purchases of art for each project under its supervision. The selection of, commissioning of artists for, reviewing of design, execution and placement of, and the acceptance of works of art for each project shall be the responsibility of the Board of Regents in consultation with the Nebraska Arts Council.

Source: Laws 1978, LB 664, § 11.

85-106.03 Board of Regents; insure compliance with sections; manner.

The Board of Regents shall inform the Director of Administrative Services that sections 82-317 to 82-329, 85-106 to 85-106.03, and 85-304 to 85-304.03

have been complied with for projects under its supervision before a warrant may be issued for payment.

Source: Laws 1978, LB 664, § 12.

85-106.04 Retirement benefits; certain employees; cost-of-living adjustment; how computed.

Commencing on July 22, 1978, to reflect changes in the cost of living and wage levels that have occurred subsequent to the date of retirement of certain persons of the University of Nebraska who have earned retirement benefits while in the employ of the University of Nebraska prior to September 1, 1961, and who have retired prior to July 22, 1978:

(1) The total accumulation of retirement benefits earned under the retirement plan in force prior to September 1, 1961, shall be adjusted by the percentage of increase in the employer's wage levels which shall mean the average of salaries paid for the nine-month academic year to employees from the year of each person's retirement to the fiscal year ending June 30, 1977, which total, as adjusted, shall then be the total accumulation of retirement benefits prior to September 1, 1961; and

(2) The two thousand four hundred dollar maximum benefits provision under the university retirement plan in effect prior to September 1, 1961, shall be removed.

Source: Laws 1978, LB 198, § 1.

85-106.05 Board of Regents; insurance program for student athletes; duties.

The Board of Regents of the University of Nebraska shall establish an insurance program which provides coverage to student athletes for personal injuries or accidental death while participating in university-organized play or practice in an intercollegiate athletic event. Such insurance program shall include, but not be limited to, the following coverages:

(1) All reasonable and necessary hospital, medical, and surgical services for a period of six years after the date of injury up to a maximum amount of one million dollars;

(2) For any total disability lasting longer than one year from the date of injury and which prevents further participation by the student in intercollegiate athletics, a minimum annuity of two thousand dollars per month to be paid to the disabled person beginning one year after the date of injury and continuing thereafter during the period of total disability, but not beyond six years from the date of injury;

(3) For any permanent and total disability, a minimum annuity of three thousand dollars per month to be paid to the disabled person beginning six years after the date of injury and continuing thereafter during the period of total disability;

(4) For any permanent partial disability when there is at least a seventy percent loss of use of a limb and when the student is unable to further participate in intercollegiate athletics, the plan shall provide for payment of a lump-sum benefit in the minimum amount of ten thousand dollars one year after the date of injury; and

(5) For accidental death or dismemberment while participating in university-organized play or practice in an intercollegiate athletic event, the plan shall

provide for payment of a lump-sum benefit in the minimum amount of one hundred thousand dollars.

Such insurance program may include self-insurance by the University of Nebraska of any risk or deductible amount specified by the Board of Regents and, with respect to hospital, medical, and surgical services, may be coordinated with any other valid and collectible insurance providing coverage for a student athlete outside of the university's insurance program so that accident and health coverage is provided by the University of Nebraska without duplication of any such outside insurance coverage.

Source: Laws 1984, LB 764, § 2; Laws 1994, LB 381, § 1.

85-106.06 Board of Regents; chief executive officer; chief administrative officers; appointment; public notice.

(1) The chief executive officer of the University of Nebraska shall be appointed by the Board of Regents using the enhanced public scrutiny process in subsection (3) of this section, hold office at the pleasure of the board, and receive such compensation as the board may prescribe.

(2) The University of Nebraska-Lincoln, the University of Nebraska at Omaha, the University of Nebraska at Kearney, the University of Nebraska Medical Center, and any other postsecondary educational institution designated by the Legislature to be a part of the University of Nebraska shall be governed by the Board of Regents, and each shall be managed and administered in the manner prescribed by the board. The chief administrative officer of each such postsecondary educational institution shall be appointed, hold office, and be compensated as prescribed by the Board of Regents. The appointment shall be made using the enhanced public scrutiny process in subsection (4) of this section.

(3)(a) The Board of Regents shall provide public notice of a priority candidate for the position of chief executive officer of the University of Nebraska to be appointed pursuant to subsection (1) of this section. The public notice shall be provided at least thirty days before the date of the public meeting of the Board of Regents at which a final action or vote is to be taken on the employment of the priority candidate. The Board of Regents shall make available the employment application, resume, reference letters, and school transcripts related to the priority candidate prior to or at the time of providing such public notice.

(b) Prior to such public meeting and after the notice is provided, the Board of Regents shall provide a public forum at each campus of the University of Nebraska for the priority candidate for the position of chief executive officer to provide the public, including the media and students, faculty, and staff of the University of Nebraska, with an opportunity to meet and ask questions or provide input regarding the priority candidate.

(4)(a) The chief executive officer of the University of Nebraska shall provide public notice of a priority candidate for a position appointed pursuant to subsection (2) of this section. The chief executive officer shall not make a final appointment for any such position until at least thirty days have elapsed after the notice is provided. The chief executive officer shall make available the employment application, resume, reference letters, and school transcripts related to the priority candidate prior to or at the time of providing such public notice.

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(b) The chief executive officer shall, within such thirty-day period, provide a public forum at the applicable campus of the University of Nebraska for the priority candidate for a position appointed pursuant to subsection (2) of this section to provide the public, including the media and students, faculty, and staff of the University of Nebraska, with an opportunity to meet and ask questions or provide input regarding the priority candidate.

(5) For purposes of this section, priority candidate means an individual preliminarily selected to fill a vacancy in a position appointed pursuant to subsection (1) of this section subject to a final vote of the Board of Regents or to fill a vacancy in a position appointed pursuant to subsection (2) of this section.

Source: Laws 2003, LB 68, § 2; Laws 2016, LB1109, § 2.

85-107 University of Nebraska; colleges and institute; enumerated; section, how construed.

(1) The University of Nebraska may embrace the colleges and institute listed in this section and any other colleges and institutes as may be established by the Board of Regents of the University of Nebraska with the approval of the Coordinating Commission for Postsecondary Education.

(2) The colleges and institute of the University of Nebraska-Lincoln shall be as follows:

- (a) Architecture;
- (b) Arts and Sciences;
- (c) Business Administration;
- (d) Engineering and Technology;
- (e) Home Economics;
- (f) Journalism;
- (g) Law;
- (h) Teachers; and

(i) University of Nebraska Institute of Agriculture and Natural Resources which shall embrace divisions and administrative units as provided in section 85-1,104.

(3) The colleges of the University of Nebraska at Omaha shall be as follows:

- (a) Arts and Sciences;
- (b) Business Administration;
- (c) Continuing Studies;
- (d) Education;
- (e) Fine Arts; and
- (f) Public Affairs and Community Service.

(4) The colleges of the University of Nebraska at Kearney shall be as follows:

- (a) Business and Technology;
- (b) Education;
- (c) Fine Arts and Humanities; and
- (d) Natural and Social Sciences.

(5) The colleges of the University of Nebraska Medical Center shall be as follows:

- (a) Dentistry;
- (b) Medicine;
- (c) Nursing; and
- (d) Pharmacy.

(6) In addition to the colleges and institute listed in this section, there shall be a graduate college which shall exist and be administered as a university-wide college.

(7) Nothing contained in this section shall be construed to limit the authority of the Board of Regents of the University of Nebraska to (a) merge existing colleges established on a campus level into systemwide administrative units, (b) merge or eliminate existing colleges established on a campus level, or (c) merge or eliminate divisions and administrative units of the University of Nebraska Institute of Agriculture and Natural Resources.

Source: Laws 1869, § 7, p. 173; Laws 1877, § 1, p. 56; Laws 1909, c. 141, § 1, p. 499; R.S.1913, § 7084; Laws 1915, c. 127, § 1, p. 287; Laws 1919, c. 164, § 1, p. 368; C.S.1922, § 6716; C.S.1929, § 85-104; R.S.1943, § 85-107; Laws 1953, c. 360, § 1, p. 1140; Laws 1955, c. 350, § 2, p. 1071; Laws 1963, c. 540, § 1, p. 1686; Laws 1969, c. 850, § 1, p. 3197; Laws 1972, LB 1237, § 1; Laws 1973, LB 275, § 1; Laws 1976, LB 995, § 1; Laws 1985, LB 28, § 1; Laws 1985, LB 204, § 3; Laws 1991, LB 663, § 60.

Board of Regents is charged with management of operation of University Hospital. Board of Regents v. County of Lancaster, 154 Neb. 398, 48 N.W.2d 221 (1951).

Experiment stations may be maintained in connection with the College of Agriculture. State ex rel. Bushee v. Whitmore, 85 Neb. 566, 123 N.W. 1051 (1909).

85-107.01 Repealed. Laws 1991, LB 663, § 137.

85-108 Colleges; government; program of instruction; approval.

The immediate government of each college shall be by its own faculty, which shall consist of the professors therein, but no program of instruction shall be adopted without approval of the program in the manner prescribed by the Board of Regents.

Source: Laws 1869, § 13, p. 176; R.S.1913, § 7091; C.S.1922, § 6723; C.S.1929, § 85-110; R.S.1943, § 85-108; Laws 2003, LB 68, § 3.

85-109 Chairs of instruction; faculty; duties in more than one college.

The Board of Regents shall be empowered to establish in these several colleges such chairs of instruction as may be proper, and so many of them as the funds of the university may allow. It is also authorized to require professors to perform duties in more than one of the several colleges whenever the board shall deem it wise and proper so to do.

Source: Laws 1869, § 9, p. 175; Laws 1877, § 1, p. 57; R.S.1913, § 7087; C.S.1922, § 6719; C.S.1929, § 85-107; R.S.1943, § 85-109.

85-110 Board of Regents; memorandum of understanding with State Board of Education; policy to share student data.

The Board of Regents of the University of Nebraska shall enter into a memorandum of understanding on or before September 1, 2010, with the State Board of Education to adopt a policy to share student data. At a minimum, the

policy shall ensure that the exchange of information is conducted in conformance with the requirements of the federal Family Educational Rights and Privacy Act of 1974, as amended, 20 U.S.C. 1232g, and all federal regulations and applicable guidelines adopted in accordance with such act, as such act, regulations, and guidelines existed on January 1, 2010.

Source: Laws 2010, LB1071, § 34.

85-111 Faculty; rules and regulations; problems of state interest.

The Board of Regents shall make, from time to time, such rules and regulations as it deems wise governing the duties of members of the several faculties of the university in respect to scientific, economic or other problems of general or special interest to the people of the state. All money which may be appropriated by the Legislature for any purpose involving the cooperation of the university staffs of instruction or experimentation shall be administered and expended under the direction and control of the board in the manner now provided by law for expenditure of university funds generally.

Source: Laws 1911, c. 137, § 1, p. 448; R.S.1913, § 7123; C.S.1922, § 6755; C.S.1929, § 85-141; R.S.1943, § 85-111; Laws 1945, c. 3, § 2, p. 68.

85-111.01 Repealed. Laws 1979, LB 194, § 3.

85-112 University of Nebraska; admission requirements; powers of Board of Regents.

Students seeking admission to any postsecondary educational institution governed by the Board of Regents or to any college or school of any such institution shall, precedent to admission, complete such requirements as may be prescribed or authorized by the Board of Regents.

Source: Laws 1869, § 15, p. 176; G.S.1873, c. 78, § 15, p. 1053; R.S.1913, § 7093; C.S.1922, § 6725; C.S.1929, § 85-112; Laws 1939, c. 137, § 1, p. 585; C.S.Supp.,1941, § 85-112; R.S.1943, § 85-112; Laws 2003, LB 68, § 4.

85-112.01 Repealed. Laws 2003, LB 68, § 11.

85-112.02 Repealed. Laws 2003, LB 68, § 11.

85-113 Repealed. Laws 2003, LB 68, § 11.

85-114 Agricultural, engineering, and scientific courses; attendance.

The Board of Regents shall provide a rule for attendance upon the agricultural college and civil engineering and scientific courses by persons whose employments are such as to allow of their pursuit of study only a portion of the year.

Source: Laws 1869, § 19, p. 177; R.S.1913, § 7098; C.S.1922, § 6730; C.S.1929, § 85-116; R.S.1943, § 85-114.

85-115 Textbooks; sale; price.

The Board of Regents shall procure and have available for sale all textbooks to be used by students in the university, and shall sell them to students at a fair price, not exceeding the list price thereof.

Source: Laws 1869, § 17, p. 177; R.S.1913, § 7096; C.S.1922, § 6728; C.S.1929, § 85-114; R.S.1943, § 85-115; Laws 1947, c. 352, § 1, p. 1103.

85-116 Students; equal privileges.

No person shall be deprived of the privileges of this institution because of age, sex, color or nationality.

Source: Laws 1869, § 18, p. 177; R.S.1913, § 7097; C.S.1922, § 6729; C.S.1929, § 85-115; R.S.1943, § 85-116.

This section does not create a property interest sufficient to support an action alleging reverse sex discrimination in an intercollegiate sport. *Fluitt v. University of Nebraska*, 489 F.Supp. 1194 (D. Neb. 1980).

85-117 Degrees, diplomas; powers of Board of Regents.

The Board of Regents shall have exclusive authority to confer degrees and grant diplomas, but each college may, in its discretion, grant rewards of merit to its own students. No student upon graduation shall receive any diploma or degree unless he shall have been recommended for such honor by the faculty of the college in which he shall have pursued his studies. The board shall also have power to confer the usual honorary degrees upon other persons in recognition of their learning or devotion to literature, science, or art; but no degree shall be conferred in consideration of the payment of money or other valuable thing.

Source: Laws 1869, § 14, p. 176; R.S.1913, § 7092; C.S.1922, § 6724; C.S.1929, § 85-111; R.S.1943, § 85-117; Laws 1953, c. 361, § 1, p. 1141.

85-118 Buildings; plans; approval.

No superstructural work upon any building for the university shall be commenced until the designs and plans therefor shall have been approved in the manner prescribed by the Board of Regents.

Source: Laws 1869, § 24, p. 179; R.S.1913, § 7112; C.S.1922, § 6744; C.S.1929, § 85-130; R.S.1943, § 85-118; Laws 2003, LB 68, § 5.

85-119 Board of Regents; Nebraska Innovation Campus; report to Legislature; contents.

The Board of Regents of the University of Nebraska approved the creation of the Nebraska Innovation Campus in 2009. The objective of the Nebraska Innovation Campus is to leverage the research and talent of the University of Nebraska to produce economic development for the State of Nebraska. The Board of Regents subsequently created the Nebraska Innovation Campus Development Corporation whose function is to provide strategic direction and oversight over the development of the Nebraska Innovation Campus.

The Legislature finds that innovation is increasingly important in the creation of new companies and the success of established ones. The Legislature acknowledges the importance of achieving the objective of the Nebraska Innova-

tion Campus which will require a long-term strategy and may require continuing state support.

The Legislature determines that quantifiable measurements and benchmarks are required to track and evaluate the performance of the Nebraska Innovation Campus and its development corporation.

The following measurements regarding the Nebraska Innovation Campus shall be reported to the Legislature by the Board of Regents, to the extent the information is not confidential information of a private sector company:

- (1) The percentage of investments by the state and university compared to private sector investments;
- (2) The number of square feet of construction;
- (3) The number of private sector companies located on Nebraska Innovation Campus;
- (4) The number of private sector jobs located on Nebraska Innovation Campus;
- (5) The amount of private sector research funding to the university attributable to Nebraska Innovation Campus;
- (6) The number of internships or other employment opportunities provided by private sector companies at Nebraska Innovation Campus to university students;
- (7) The percentage of facilities leased by private sector companies;
- (8) The number of new businesses started or supported at Nebraska Innovation Campus;
- (9) The number of conferences and participants at Nebraska Innovation Campus; and
- (10) The background and credentials of the appointments to the Nebraska Innovation Campus Development Corporation Board of Directors.

The report shall be submitted electronically to the Clerk of the Legislature by December 1 of each year.

Source: Laws 2016, LB1093, § 5.

85-120 University of Nebraska Institute of Agriculture and Natural Resources; model farm; alienation prohibited.

State land set aside by the Governor for a model farm as a part of the University of Nebraska Institute of Agriculture and Natural Resources shall not be disposed of for any other purpose.

Source: Laws 1869, § 10, p. 175; R.S.1913, § 7088; C.S.1922, § 6720; C.S.1929, § 85-108; R.S.1943, § 85-120; Laws 1991, LB 663, § 61.

85-121 Nebraska College of Technical Agriculture at Curtis; creation; location; purpose.

For the furtherance and promotion of agriculture and stockraising interests of this state, a technical college of agriculture is hereby established near the town of Curtis in Frontier County, Nebraska. Such college shall be maintained under the conditions prescribed in this section and sections 85-121.03 and 85-121.04 and shall be known as the Nebraska College of Technical Agriculture

at Curtis. Such college of agriculture shall be under the control and management of the Board of Regents of the University of Nebraska.

The Nebraska College of Technical Agriculture at Curtis shall be devoted to a statewide mission of instruction relating to food and agriculture at less than the baccalaureate degree, with concentration on the applied associate degree. The program shall be organized to provide expedient response to the changes needed in technical education to serve the agricultural industry of the state.

Source: Laws 1911, c. 138, § 1, p. 449; R.S.1913, § 7130; C.S.1922, § 6762; C.S.1929, § 85-148; R.S.1943, § 85-121; Laws 1987, LB 656, § 2; Laws 1988, LB 1042, § 1; Laws 1991, LB 663, § 62; Laws 2003, LB 7, § 1.

85-121.01 Repealed. Laws 1988, LB 1042, § 5.

85-121.02 Repealed. Laws 1988, LB 1042, § 5.

85-121.03 Appropriation required.

The Legislature shall appropriate from the General Fund the money necessary to carry out the duties and programs of the Nebraska College of Technical Agriculture at Curtis. The appropriation shall be made to the Board of Regents of the University of Nebraska for the sole purpose of maintaining the duties, programs, and facilities of such college.

Source: Laws 1988, LB 1042, § 2; Laws 1991, LB 663, § 63; Laws 1993, LB 239, § 6; Laws 2003, LB 7, § 2.

85-121.04 Program review; required.

The Nebraska College of Technical Agriculture at Curtis or any educational program of such college shall be subject to program review pursuant to the Coordinating Commission for Postsecondary Education Act.

Source: Laws 1988, LB 1042, § 3; Laws 1991, LB 663, § 64.

Cross References

Coordinating Commission for Postsecondary Education Act, see section 85-1401.

85-121.05 Repealed. Laws 2003, LB 7, § 9.

85-122 University funds; designation; investment; disbursements; travel expenses.

The several funds for the support of the university shall be constituted and designated as follows: (1) The Permanent Endowment Fund; (2) the Temporary University Fund; (3) the University Cash Fund; (4) the United States Morrill Fund; (5) the United States Experiment Station Fund; (6) the University Trust Fund; (7) the United States Agricultural Extension Fund; (8) the Veterinary School Fund; (9) the University of Nebraska at Omaha Cash Fund; (10) the University of Nebraska at Omaha Trust Fund; (11) the University of Nebraska at Kearney Cash Fund; (12) the University of Nebraska at Kearney Trust Fund; (13) the Agricultural Field Laboratory Fund; (14) the Animal Research and Diagnosis Revolving Fund; (15) the University Facility Improvement Fund; (16) the University of Nebraska Eppley Science Hall Construction Fund; and (17) the University Facilities Fund. No portion of the funds designated above derived from taxation shall be disbursed for mileage or other traveling expenses except as authorized by sections 81-1174 to 81-1177. No expenditures shall be

made for or on behalf of the School of Veterinary Medicine and Surgery except from money appropriated to the Veterinary School Fund. Any money in the funds designated in this section 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 except as provided in sections 85-123.01, 85-125, 85-192, and 85-1,123.

Source: Laws 1869, § 21, p. 177; Laws 1877, § 1, p. 57; Laws 1899, c. 76, § 1, p. 325; R.S.1913, § 7100; C.S.1922, § 6732; C.S.1929, § 85-118; Laws 1933, c. 96, § 23, p. 400; Laws 1941, c. 180, § 11, p. 707; C.S.Supp.,1941, § 85-118; R.S.1943, § 85-122; Laws 1945, c. 257, § 1, p. 797; Laws 1949, c. 312, § 1, p. 1030; Laws 1951, c. 344, § 1, p. 1131; Laws 1955, c. 350, § 5, p. 1072; Laws 1969, c. 584, § 122, p. 2425; Laws 1983, LB 410, § 2; Laws 1986, LB 842, § 2; Laws 1987, LB 218, § 2; Laws 1988, LB 864, § 67; Laws 1989, LB 247, § 20; Laws 1990, LB 1220, § 2; Laws 1992, Third Spec. Sess., LB 9, § 2; Laws 1994, LB 1066, § 135; Laws 2011, LB378, § 31; Laws 2012, LB710, § 1; Laws 2018, LB1005, § 50.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

Income from government grants may be disbursed by Board of Regents without specific biennial appropriations. State ex rel. Ledwith v. Brian, 84 Neb. 30, 120 N.W. 916 (1909).

After custody of funds was given to State Treasurer, specific appropriation of funds became necessary to authorize disburse-

ment by Board of Regents. State ex rel. Bessey v. Babcock, 17 Neb. 610, 24 N.W. 202 (1885).

85-122.01 United States Agricultural Extension Fund; source; disbursement.

The United States Agricultural Extension Fund shall consist of all money which may come into the possession of the State Treasurer for use or expenditure by the University of Nebraska by reason of any laws, now existing or subsequently enacted by the United States, whereby money is appropriated to or provided for agricultural extension purposes. The agricultural extension fund when appropriated by the Legislature shall be applied exclusively to the uses and objects designated by any laws now existing or subsequently enacted by the United States relative thereto. It shall at all times be subject to the orders of the Board of Regents for expenditure for said uses only.

Source: Laws 1949, c. 309, § 1, p. 1026.

85-123 Permanent Endowment Fund; source; accounts; investment.

The Permanent Endowment Fund shall be kept in two accounts: In the first account, all money derived as principal from the sale of lands donated to the state by the United States to establish and endow a state university under the Act of Congress of April 19, 1864; and in the second account, all money derived as principal from the sale of lands donated to the state by the United States, to provide colleges for the benefit of agriculture and the mechanic arts, by an Act of Congress approved July 2, 1862. All such money derived from federal grants shall be invested in the manner provided by law for the investment of the permanent school fund of the state, in the same kind of securities, and by the same officers charged with that duty, in accordance with the provisions of section 72-202 as may from time to time be amended by the Legislature. All

money acquired by the Board of Regents of the University of Nebraska by donation or bequest to it, including money derived as principal from the sale of lands or other property so acquired or so derived, shall belong to the University Trust Fund and be administered in accordance with the provisions of section 85-123.01. The Permanent Endowment Fund shall never be appropriated by the Legislature nor be expended for any purpose whatsoever.

Source: Laws 1869, § 21, p. 177; Laws 1877, § 1, p. 57; Laws 1899, c. 76, § 1, p. 325; R.S.1913, § 7101; C.S.1922, § 6733; C.S.1929, § 85-119; R.S.1943, § 85-123; Laws 1945, c. 257, § 2, p. 798; Laws 1983, LB 238, § 2.

85-123.01 University Trust Fund, defined; management and investment.

(1) The University Trust Fund shall consist of all property, real or personal, acquired by the Board of Regents of the University of Nebraska by donation or bequest to it, including money derived as principal from the sale of land or other property so acquired or derived.

(2) The University Trust Fund shall be held, managed, and invested in such manner as directed by the Board of Regents of the University of Nebraska. No money in the fund shall be held, managed, or invested by the State Treasurer or the state investment officer pursuant to the Nebraska Capital Expansion Act or the Nebraska State Funds Investment Act.

Source: Laws 1945, c. 257, § 3, p. 798; Laws 1959, c. 263, § 22, p. 950; Laws 1967, c. 622, § 1, p. 2085; Laws 1969, c. 584, § 123, p. 2425; Laws 2018, LB1005, § 51.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

85-124 Temporary University Fund; source; use.

The Temporary University Fund shall consist of (1) the proceeds of investments of the permanent fund; (2) the rental of the university and agricultural college lands leased, and the interest upon deferred payments on sales of the lands aforesaid; (3) the rentals or income of lands or other property donated without particular objects or uses being specified; and (4) such sums as may be from time to time appropriated to the use of the university. All money accruing to this fund is hereby appropriated for the maintenance of the university, including buildings and permanent improvements, and the same may be applied by the Board of Regents to any and all university needs except the income from donations made for particular purposes, which income shall be used and applied as hereinbefore specified only.

Source: Laws 1869, § 21, p. 177; Laws 1877, § 1, p. 57; Laws 1899, c. 76, § 1, p. 325; R.S.1913, § 7102; Laws 1921, c. 24, § 4, p. 151; C.S.1922, § 6734; C.S.1929, § 85-120; R.S.1943, § 85-124.

One mill tax levy under former act was not repealed by revenue act of 1903. *State ex rel. Ledwith v. Searle*, 79 Neb. 111, 112 N.W. 380 (1907).

85-125 University Cash Fund; source; use; investment.

The University Cash Fund shall consist of the matriculation and diploma fees, registration fees, laboratory fees, tuition fees, summer session or school fees, all

other money or fees collected from students by the authority of the Board of Regents for university purposes, and receipts from all university activities collected by the board in connection with the operation of the university. A record shall be kept by the board separating such money into appropriate and convenient accounts. All money and funds accruing to the University Cash Fund shall be used for the maintenance and operation of the university and its activities and shall at all times be subject to the orders of the Board of Regents accordingly. The fund shall be in the custody of the State Treasurer, and 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, except that there may be retained by the Board of Regents a sum not to exceed two percent of the fund, which shall be available to make settlement and equitable adjustments to students entitled thereto, to carry on university activities contributing to the fund, and to provide for contingencies. No warrant shall be issued against such fund unless there is money in the hands of the State Treasurer sufficient to pay the same.

Source: Laws 1869, § 21, p. 177; Laws 1877, § 1, p. 57; Laws 1899, c. 76, § 1, p. 325; R.S.1913, § 7103; C.S.1922, § 6735; C.S.1929, § 85-121; R.S.1943, § 85-125; Laws 1949, c. 313, § 1, p. 1031; Laws 1967, c. 623, § 1, p. 2087; Laws 1979, LB 248, § 1; Laws 1985, LB 151, § 1; Laws 2011, LB378, § 32.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

Funds herein, not derived from taxation, are considered "appropriated" by section 85-131, and are under direct control of Board of Regents. Board of Regents v. Exon, 199 Neb. 146, 256 N.W.2d 330 (1977).

Mandatory fees for support of a student newspaper and other activities are public funds for which reasonable supervision by

university authorities is required, and their use will not be enjoined except in a clear case. Larson v. Board of Regents, 189 Neb. 688, 204 N.W.2d 568 (1973).

85-126 United States Morrill Fund; source; use.

The United States Morrill Fund shall consist of all money appropriated by the United States to this state for its university to aid instruction, and to furnish the facilities for instruction, in certain branches in accordance with the provisions of an Act of Congress approved August 30, 1890, entitled An act to apply a portion of the proceeds of the public lands to the more complete endowment and support of the colleges for the benefit of agriculture and the mechanic arts established under the provisions of an Act of Congress approved July 2, 1862, and acts supplemental thereto. The said fund shall be applied exclusively to the uses and purposes prescribed by the Act or Acts of Congress relating thereto, and the fund is hereby appropriated accordingly, and shall at all times be subject to the orders of the Board of Regents for the purpose specified by Act of Congress only.

Source: Laws 1869, § 21, p. 177; Laws 1877, § 1, p. 57; Laws 1899, c. 76, § 1, p. 325; R.S.1913, § 7104; C.S.1922, § 6736; C.S.1929, § 85-122; R.S.1943, § 85-126.

85-127 United States Experiment Station Fund; source; use.

The United States Experiment Station Fund shall consist of (1) all money which may come into the possession of the State Treasurer on and after July 1, 1899, accruing under an Act of Congress approved March 2, 1887, entitled An

act to establish agricultural experiment stations in connection with the colleges established in the several states under the provisions of an act approved July 2, 1862, and the acts supplemental thereto, and (2) all money which may hereafter be received by virtue of any Act of Congress supplemental to the agricultural experiment station act and for the same purposes. The fund is hereby appropriated to be applied exclusively to the uses and objects designated by the Act or Acts of Congress relating thereto and shall at all times be subject to the orders of the Board of Regents for expenditure for such uses only.

Source: Laws 1869, § 21, p. 177; Laws 1877, § 1, p. 57; Laws 1899, c. 76, § 1, p. 325; R.S.1913, § 7105; C.S.1922, § 6737; C.S.1929, § 85-123; R.S.1943, § 85-127; Laws 1987, LB 25, § 1.

Board of Regents may disburse fund without special appropriation. State ex rel. Spencer Lens Co. v. Searle, 77 Neb. 155, 109 N.W. 770 (1906).

85-128 University funds; State Treasurer; custodian; disbursement.

The State Treasurer shall be the custodian of all the funds of the university. Disbursements from the funds named in sections 85-124 to 85-127 shall be made in accordance with the provisions of law relating to the disbursement of university funds in the hands of the State Treasurer as provided by law.

Source: Laws 1869, § 21, p. 177; Laws 1877, § 1, p. 57; Laws 1899, c. 76, § 1, p. 325; R.S.1913, § 7106; C.S.1922, § 6738; C.S.1929, § 85-124; R.S.1943, § 85-128.

85-129 University funds; State Treasurer; duties.

The State Treasurer shall be the treasurer of the state university and the custodian of all funds donated to the university or to the Agricultural Research Division by the United States, including the Morrill, Hatch, and Adams funds, all other donations, gifts, and bequests, income from land and productive funds, fees paid by students, and all funds for the use of the university derived from any source, except (1) funds created by taxation and paid into the state treasury as taxes and (2) the University Trust Fund which shall be held and managed in the manner provided by section 85-123.01.

Source: Laws 1907, c. 147, § 1, p. 461; R.S.1913, § 7109; C.S.1922, § 6741; C.S.1929, § 85-127; R.S.1943, § 85-129; Laws 1967, c. 622, § 2, p. 2086; Laws 1991, LB 663, § 66.

85-130 University funds; Board of Regents; disbursements.

The university funds, other than those created by taxation, shall be held subject to the order of the Board of Regents and shall be disbursed for the purposes prescribed by law, upon presentation of warrants to the Director of Administrative Services, to be issued on certificates of the Board of Regents executed as required by law, except that no portion of such funds, not created by taxation, shall be disbursed for mileage or other traveling expenses except as provided in sections 81-1174 to 81-1177.

Source: Laws 1907, c. 147, § 2, p. 461; R.S.1913, § 7107; C.S.1922, § 6739; C.S.1929, § 85-125; Laws 1933, c. 96, § 24, p. 401; Laws 1941, c. 180, § 12, p. 708; C.S.Supp.,1941, § 85-125; R.S.1943, § 85-130; Laws 1983, LB 410, § 3; Laws 1988, LB 864, § 68.

§ 85-131 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

85-131 University funds; disbursements; how made.

Disbursements from the university funds shall be made by the State Treasurer upon warrants drawn by the Director of Administrative Services who shall issue warrants upon certificates issued as authorized by the Board of Regents.

Source: Laws 1875, § 4, p. 155; R.S.1913, § 7108; C.S.1922, § 6740; C.S.1929, § 85-126; R.S.1943, § 85-131; Laws 1979, LB 194, § 2; Laws 2003, LB 68, § 6.

Funds herein can be expended only by the Board of Regents. Board of Regents v. Exon, 199 Neb. 146, 256 N.W.2d 330 (1977).

By this section, it is unnecessary to authorize disbursement of income from trust funds by Board of Regents. State ex rel. Ledwith v. Brian, 84 Neb. 30, 120 N.W. 916 (1909).

85-132 Gifts and bequests; acceptance.

The Board of Regents may accept gifts and bequests of property subject to a reservation of the income for a stated period or for the life of the donor or the life or lives of other persons designated.

Source: Laws 1911, c. 136, § 1, p. 448; R.S.1913, § 7110; C.S.1922, § 6742; Laws 1923, c. 66, § 1, p. 198; Laws 1927, c. 79, § 1, p. 244; C.S.1929, § 85-128; R.S.1943, § 85-132; Laws 2003, LB 68, § 7.

85-133 Board of Regents; eminent domain; procedure.

The Board of Regents of the University of Nebraska is hereby given power and authority to acquire by eminent domain lands necessary for the university. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1905, c. 158, § 1, p. 606; R.S.1913, § 7117; C.S.1922, § 6749; C.S.1929, § 85-135; R.S.1943, § 85-133; Laws 1951, c. 101, § 122, p. 504.

85-134 University of Nebraska Medical Center Medical Education Revolving Fund; established; use; investment.

The University of Nebraska Medical Center Medical Education Revolving Fund is hereby established to be administered by the Department of Health and Human Services. The fund shall be used to fund medical education. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2004, LB 1005, § 137; Laws 2007, LB296, § 811.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

85-135 Repealed. Laws 1951, c. 101, § 127.

85-136 Repealed. Laws 1951, c. 101, § 127.

85-137 Repealed. Laws 1951, c. 101, § 127.

85-138 Repealed. Laws 1951, c. 101, § 127.

85-139 Repealed. Laws 2003, LB 68, § 11.

85-140 Repealed. Laws 1953, c. 362, § 2.

85-141 Repealed. Laws 1953, c. 362, § 2.

85-142 Repealed. Laws 1953, c. 362, § 2.

85-143 Repealed. Laws 1953, c. 362, § 2.

85-144 Repealed. Laws 1953, c. 362, § 2.

85-145 Agricultural experiment stations; acceptance of provisions of federal act.

Full and complete acceptance, ratification and assent is hereby made and given by the State of Nebraska to all of the provisions, terms, grants and conditions and purposes of the grants made and prescribed by the Act of Congress of the United States, entitled An act to establish agricultural experiment stations in connection with the colleges established in the several states under the provisions of an act approved July 2, 1862, and of the acts supplementary thereto.

Source: Laws 1887, c. 88, § 1, p. 637; R.S.1913, § 7131; C.S.1922, § 6763; C.S.1929, § 85-149; R.S.1943, § 85-145.

85-146 Agricultural experiment stations; federal aid; acceptance.

Full and complete assent is given by the State of Nebraska to the provisions of an act of the Sixty-eighth Congress of the United States, Second Session, House Roll No. 157, Calendar No. 1226, approved February 24, 1925, and entitled "An act to authorize the more complete endowment of the agricultural experiment stations, and for other purposes." The University of Nebraska is designated to receive the benefits of said act and to conduct the work and experiments in accordance with said act. The Board of Regents of the university is empowered to receive the grants under the provisions of said act, and is directed to conduct the work and experiments, and make the reports as required by the provisions of said act.

Source: Laws 1925, c. 11, § 1, p. 80; C.S.1929, § 85-155; R.S.1943, § 85-146.

85-147 Agriculture and mechanic arts; acceptance of federal act.

Full and complete acceptance, ratification and assent is made and given by the State of Nebraska to all and every of the grants, purposes, terms and conditions set forth in an Act of the Congress of the United States, approved August 30, 1890, entitled An act to apply a portion of the proceeds of the public lands to the more complete endowment and support of the colleges for the benefit of agriculture and the mechanic arts, established under the provisions of an Act of Congress, approved July 2, 1862.

Source: Laws 1891, c. 52, § 1, p. 358; R.S.1913, § 7132; C.S.1922, § 6764; C.S.1929, § 85-150; R.S.1943, § 85-147.

85-148 Agriculture and mechanic arts; appropriation and use of money received.

All money received by the State Treasurer, or other state officer, in pursuance and by virtue of the said Act of Congress, is specifically appropriated and set

apart solely for the more complete endowment, support and maintenance of the college for the benefit of agriculture and the mechanic arts existing in this state under the provisions of an Act of Congress approved July 2, 1862, and designated by law as the Industrial College of the University of Nebraska. All of the money shall be immediately paid over by the treasurer to the authorities of the college designated in section 85-149, without further warrant or authority than is contained herein.

Source: Laws 1891, c. 52, § 2, p. 358; R.S.1913, § 7133; C.S.1922, § 6765; C.S.1929, § 85-151; R.S.1943, § 85-148.

85-149 Agriculture and mechanic arts; Board of Regents; powers and duties.

For all intents and purposes of sections 85-145, 85-147 and 85-148, and of the said Act of Congress, and to carry the latter into full effect in this state, the Board of Regents of the University of Nebraska shall be the trustees of the college described in said Act of Congress, approved August 30, 1890, and referred to in sections 85-147 and 85-148. Such fiscal officer as the board may name and designate and appoint to receive and disburse the money under its orders, shall, for all intents and purposes of said section, and of the Act of Congress last mentioned, be the treasurer of the college, and to this officer the State Treasurer shall immediately pay over, upon the order of the board, all money which is now in his hands or which may be hereafter received by virtue of the said Act of Congress for the use and benefit of said college. The board is hereby authorized and empowered to make such orders and regulations for the security, control, management and disbursement of the money as to it shall seem wise and proper and for the best interests of the college.

Source: Laws 1891, c. 52, § 3, p. 359; R.S.1913, § 7134; C.S.1922, § 6766; C.S.1929, § 85-152; R.S.1943, § 85-149.

85-150 Cooperative extension work; federal aid; acceptance; disbursement.

Whole and complete assent and acceptance is given to the provisions and requirements of the Act of Congress passed May 8, 1914, providing for cooperative extension work. The State Treasurer is authorized to receive the grants of money appropriated and to pay warrants drawn by the Director of Administrative Services upon certificates presented by the Board of Regents of the University of Nebraska in payment of expenses of the Cooperative Extension Service of the University of Nebraska in accordance with the terms and conditions specified in the Act of Congress.

Source: Laws 1915, c. 231, § 1, p. 535; C.S.1922, § 6767; C.S.1929, § 85-153; R.S.1943, § 85-150; Laws 1991, LB 663, § 67.

85-151 Cooperative extension work; federal aid; acceptance; payment of warrants.

The whole and complete acceptance of the Legislature of Nebraska, acting for the people of the State of Nebraska, is hereby given to the provisions and requirements of the Act of Congress, approved May 22, 1928, Chapter 687, section 1, 45 Stat. at L. The State Treasurer is authorized to receive the grants of money appropriated by Congress and to pay warrants drawn by the Director of Administrative Services upon certificates presented by the Board of Regents of the University of Nebraska in payment of expenses of the Cooperative

Extension Service of the University of Nebraska in accordance with the terms and conditions specified in the Act of Congress.

Source: Laws 1929, c. 12, § 1, p. 85; C.S.1929, § 85-154; R.S.1943, § 85-151; Laws 1991, LB 663, § 68.

85-152 Repealed. Laws 1953, c. 363, § 1.

85-153 Repealed. Laws 1953, c. 363, § 1.

85-154 Repealed. Laws 1953, c. 363, § 1.

85-155 Repealed. Laws 1953, c. 363, § 1.

85-156 Repealed. Laws 1987, LB 656, § 6.

85-157 Repealed. Laws 1987, LB 656, § 6.

85-158 Repealed. Laws 1987, LB 656, § 6.

85-159 Repealed. Laws 1987, LB 656, § 6.

85-160 Repealed. Laws 1987, LB 656, § 6.

85-161 Nebraska Forest Service; mission; core programs; duties.

The Nebraska Forest Service is acknowledged within the University of Nebraska. The State Forester appointed pursuant to section 85-162.01 shall be the administrative head of the Nebraska Forest Service and shall report to the vice chancellor of the Institute of Agriculture and Natural Resources.

The mission of the Nebraska Forest Service is to provide education and services to the people of Nebraska for the protection, utilization, and enhancement of the state's tree and forest resources. In carrying out its mission, the Nebraska Forest Service shall provide education and services covering all aspects of planting, protection, care, and utilization of the state's tree and forest resources and shall provide fire protection to all rural land in cooperation with the state's rural fire protection districts.

The Nebraska Forest Service shall provide education and services through four core programs: (1) The Rural Forestry Assistance Program; (2) the Urban and Community Forestry Program; (3) the Forest Health Program; and (4) the Rural Fire Prevention and Control Program.

In carrying out its mission, the Nebraska Forest Service shall work cooperatively with all federal, state, and local entities to maximize services and funding. The Nebraska Forest Service shall work cooperatively with the natural resources districts to coordinate services and funding for the core programs.

Source: Laws 2004, LB 917, § 1.

85-162 Nebraska Forest Service; legislative intent.

It is the intent of the Legislature to appropriate to the Board of Regents of the University of Nebraska from the General Fund the money necessary to fund the core programs and services of the Nebraska Forest Service. Such appropriations shall be for the sole purpose of carrying out such programs.

Source: Laws 2004, LB 917, § 2.

85-162.01 State Forester; appointment; duties.

There is hereby created within the University of Nebraska the office of State Forester. The State Forester shall be appointed by the Board of Regents of the University of Nebraska, shall be responsible, subject to the direction of the Board of Regents, for all forestry education and services of the University of Nebraska, and shall have general supervision in the State of Nebraska of (1) all educational work in forestry, including but not limited to demonstrations, publications and mass media information, and (2) service programs relating to forestry and forestation, including but not limited to tree distribution and planting, wildland fire control, development, protection and use of forest resources, and other programs promoting forestry and forestation.

Source: Laws 1967, c. 585, § 1, p. 1974; R.S.1943, (1981), § 85-163.02.

85-162.02 State Forester; powers.

Subject to the general direction of the Board of Regents, the State Forester shall (1) administer tree distribution programs, (2) develop and implement plans for the prevention and suppression of forest, brush and grassland fires on both public and private lands, (3) develop and implement plans for flood control and soil erosion work on forest lands of the state, (4) develop and implement plans for the protection of forest resources on both public and private lands from insect, disease and other natural pests, (5) carry on technical assistance programs with forest landowners, including growing, harvesting and marketing of wood products, (6) carry on technical assistance programs with forest product processors in the production, utilization and marketing of wood products, including but not limited to forest surveys, feasibility studies, management and marketing clinics, and (7) carry on educational programs in all phases of forestry in the state.

Source: Laws 1967, c. 585, § 2, p. 1974; R.S.1943, (1981), § 85-163.03.

85-162.03 State Forester; cooperate with other agencies.

In carrying out sections 85-162.01 to 85-162.05, the State Forester shall cooperate with (1) any agency or bureau of the United States, including, but not limited to, the Forest Service, the Natural Resources Conservation Service, the Farm Service Agency, the Bureau of Reclamation, the Corps of Engineers, and the Bureau of Outdoor Recreation, (2) any agency or bureau of the State of Nebraska or its political subdivisions, including, but not limited to, the Game and Parks Commission, the Department of Natural Resources, the State Fire Marshal, the Department of Agriculture, the Adjutant General, the Department of Economic Development, and the Conservation and Survey Division of the University of Nebraska, and (3) any incorporated municipality of the state or any political subdivision of the state, including, but not limited to, rural fire districts, natural resources districts, and weed control districts.

Source: Laws 1967, c. 585, § 3, p. 1975; Laws 1977, LB 510, § 9; R.S.1943, (1981), § 85-163.04; Laws 1998, LB 922, § 411; Laws 1999, LB 403, § 8; Laws 2000, LB 900, § 253.

85-162.04 State Forester; personnel; employment.

In carrying out sections 85-162.01 to 85-162.05, the Board of Regents may employ such personnel to work under the State Forester as it shall deem necessary or advisable.

Source: Laws 1967, c. 585, § 4, p. 1975; R.S.1943, (1981), § 85-163.05; Laws 1998, LB 922, § 412; Laws 2005, LB 39, § 1.

85-162.05 Board of Regents; State Forester; duties.

The Board of Regents of the University of Nebraska, with the advice of the State Forester, shall (1) prescribe and implement procedures relating to the implementation and administration of sections 85-162.01 to 85-162.05 and (2) enter into any arrangements and activities it may deem desirable in implementing and carrying out the intent and purposes contemplated by legislation of the federal government calling for state cooperation in the promotion of desirable practices of forestry, forestation, forest management, harvesting, processing, and marketing of forest products, control of forest pests, insects, and disease, prevention and suppression of wildland fires, watershed management, and windbreak establishment and care.

Source: Laws 1967, c. 585, § 5, p. 1975; R.S.1943, (1981), § 85-163.06; Laws 1998, LB 922, § 413.

85-163 Conservation and Survey Division; creation; duties.

There is hereby created the Conservation and Survey Division of the University of Nebraska, which shall include the following state surveys: Soil, geological, water and water power, forest, road materials, and industrial. The Conservation and Survey Division shall perform the duties hereinafter defined:

- (1) Survey and describe the natural resources of the state, including soil, water, water power, potash, forests, road materials, and cement;
- (2) Study the climate, physical features, geology, and mineral resources of the state;
- (3) Study and describe the operations, production, and importance of the leading industries of the state;
- (4) Investigate and report upon conservation problems of the state;
- (5) Study the water-bearing formations of the state, and assist the citizens in locating water supplies;
- (6) Secure and preserve the logs of wells drilled in the state, and preserve specimens from each stratum, member, or formation penetrated in said drillings, and inspect such drillings at any time during their progress, and require the person or persons in charge of drilling or prospecting to submit full data in regard to the specimens and logs of the wells;
- (7) Prepare and show lantern slides or pictures, including motion pictures, of the state's resources, industries, institutions and development, to be used for educational and industrial purposes within the state and for publicity purposes without the state, and secure and distribute other educational films and slides in Nebraska for educational purposes;
- (8) Compile and record, or publish information with reference to, the state's resources, industries and development, and when called upon so to do by an interested party, investigate and report upon oil, mineral, and gas structures and properties situated outside the state and leases or interests therein or

thereon being sold or offered for sale in Nebraska. In cases or propositions wherein said investigations show that mineral, oil, or gas properties are misrepresented, or that fraud is practiced in selling same, their officers or agents shall be notified by the Conservation and Survey Division, and if they continue to so operate the same in Nebraska after said notice is given, the division shall report its findings to the Attorney General for action; and

(9) Serve the citizens as an information bureau in regard to the resources, industries, and development of Nebraska.

Source: Laws 1921, c. 16, § 1, p. 101; C.S.1922, § 6773; C.S.1929, § 85-163; R.S.1943, § 85-163; Laws 1949, c. 314, § 1, p. 1032; Laws 1975, LB 355, § 1.

85-163.01 Repealed. Laws 1967, c. 585, § 13.

85-163.02 Transferred to section 85-162.01.

85-163.03 Transferred to section 85-162.02.

85-163.04 Transferred to section 85-162.03.

85-163.05 Transferred to section 85-162.04.

85-163.06 Transferred to section 85-162.05.

85-163.07 Repealed. Laws 1985, LB 10, § 1.

85-163.08 Repealed. Laws 1985, LB 10, § 1.

85-164 Conservation and Survey Division; powers; director; expenses.

The Conservation and Survey Division is given police power and authority for the purpose of carrying into effect and performing the duties defined in section 85-163. The Board of Regents shall appoint a chief or director of the division, who shall direct the work of the division, subject to the approval of the regents. All expenses incurred in carrying out any of the provisions of sections 85-163 to 85-165 shall be subject to the approval of the regents of the University of Nebraska, and paid out of appropriations made from time to time by the Legislature.

Source: Laws 1921, c. 16, § 2, p. 102; C.S.1922, § 6774; C.S.1929, § 85-164.

85-165 Conservation and Survey Division; agreements with federal departments.

The Conservation and Survey Division may enter into such agreements with federal departments as may be necessary to carry on cooperative surveys and investigations in the state, the agreements to be subject to the approval of the Board of Regents of the University of Nebraska.

Source: Laws 1921, c. 16, § 3, p. 103; C.S.1922, § 6775; C.S.1929, § 85-165.

85-166 Repealed. Laws 2000, LB 1135, § 34.

85-167 Bessey Memorial Fund; Board of Regents; duties.

The Board of Regents of the University of Nebraska shall carry into effect the purposes of sections 85-167 to 85-171.

Source: Laws 1917, c. 239, § 2, p. 577; C.S.1922, § 6780; C.S.1929, § 85-170; R.S.1943, § 85-167; Laws 2000, LB 1135, § 29.

85-168 Bessey Memorial Fund; purpose; amount; investment.

There is appropriated out of any money in the treasury belonging to the General Fund, and not otherwise appropriated, for the creation of the Bessey Memorial Fund the sum of four thousand dollars. The fund shall be and constitute a perpetual memorial fund evidencing the high esteem in which the people of this state hold the memory of the late Professor Charles E. Bessey, who for more than thirty years was closely identified with our state university as professor of botany, Dean of its agricultural college, Dean of Deans, and repeatedly for years its acting chancellor. He was a conspicuous figure in American science and education, one of the great teachers of his age whose work and spirit have been the inspiration of thousands of students, a leader in the development of scientific agriculture, and the value of whose life and service to Nebraska and the West cannot be estimated in terms of money. 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 1917, c. 239, § 3, p. 577; C.S.1922, § 6781; C.S.1929, § 85-171; R.S.1943, § 85-168; Laws 1969, c. 584, § 125, p. 2426; Laws 1995, LB 7, § 151.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

85-169 Bessey Memorial Fund; gifts; bequests; acceptance.

The Board of Regents of the University of Nebraska is hereby authorized, empowered, and directed to accept for the Bessey Memorial Fund gifts and bequests of money or property, whether absolutely or subject to reservation of the income thereof either for a stated period, for the life of the donor, or for the life or lives of other persons designated.

Source: Laws 1917, c. 239, § 4, p. 578; C.S.1922, § 6782; C.S.1929, § 85-172; R.S.1943, § 85-169; Laws 2000, LB 1135, § 30.

85-170 Bessey Memorial Fund; investment; disbursement.

The Board of Regents of the University of Nebraska shall from time to time invest and reinvest the Bessey Memorial Fund, as well as all unused increase or accumulations thereof, and all additions to the fund which may hereafter be made, in the same kind of securities as is now or may hereafter be authorized for investment of funds pursuant to section 72-1246. In all cases hereunder, money shall be paid out by the State Treasurer only on the direction of the Board of Regents, as in cases for the payment of expenses of the university, on appropriation duly made, and all unused funds, together with such securities, shall be in the custody of the State Treasurer.

Source: Laws 1917, c. 239, § 5, p. 578; C.S.1922, § 6783; C.S.1929, § 85-173; R.S.1943, § 85-170; Laws 1947, c. 353, § 1, p. 1104; Laws 1969, c. 584, § 126, p. 2427; Laws 2000, LB 1135, § 31.

85-171 Bessey Memorial Fund; income; use.

The Board of Regents of the University of Nebraska shall, as the Bessey Memorial Fund is collected, cause to be paid and distributed the income derived from the fund annually to such other of the widows and dependents of deceased professors as shall then have acceptably served the university for a period of at least twenty-five years. In the selection of beneficiaries among whom distribution of the surplus shall be made, the Board of Regents shall exercise its best judgment, taking into consideration all the facts and circumstances of the case.

Source: Laws 1917, c. 239, § 6, p. 578; C.S.1922, § 6784; C.S.1929, § 84-174; R.S.1943, § 85-171; Laws 2000, LB 1135, § 32.

85-172 Repealed. Laws 2003, LB 68, § 11.**85-172.01 Repealed. Laws 1965, c. 578, § 2.****85-172.02 Repealed. Laws 1965, c. 578, § 2.****85-172.03 Repealed. Laws 1967, c. 402, § 1.****85-172.04 Repealed. Laws 1967, c. 402, § 1.****85-173 Defunct postsecondary institution; records; University of Nebraska-Lincoln; depository.**

(1) Except as provided in subsection (2) of this section, the trustees or officers of any postsecondary institution, upon going out of existence or ceasing to function as a postsecondary institution, may turn over its student records to the central depository maintained by the office of registrar of the University of Nebraska-Lincoln as provided in section 85-174.

(2) The trustees or officers of any for-profit postsecondary institution as defined in section 85-2403, upon going out of existence or ceasing to function as a postsecondary institution, shall turn over its student records to the central depository maintained by the office of registrar of the University of Nebraska-Lincoln as provided in section 85-174.

Source: Laws 1937, c. 179, § 1, p. 709; C.S.Supp.,1941, § 85-179; R.S. 1943, § 85-173; Laws 2017, LB512, § 21.

85-174 Defunct postsecondary institution; records; duties of registrar.

The office of registrar of the University of Nebraska-Lincoln is hereby designated the central depository for the records of postsecondary institutions in this state that have ceased to exist or may cease to exist in the future. The registrar of the University of Nebraska-Lincoln shall, where possible, collect the records of such extinct postsecondary institution and have the supervision, care, custody, and control of such records. The registrar having the records of such postsecondary institutions, if any, shall, when requested, prepare transcripts of such records which may at any time become necessary to the former student for further scholastic work at other postsecondary institutions or for certification for teaching or other professional positions. Whenever such transcript is made, and after it has been compared with the original, it shall be certified by the registrar and shall thereafter be considered and accepted as evidence and, for all other purposes, the same as the original could be. For the

preparation of such transcript, the registrar may charge a nominal fee for services rendered.

Source: Laws 1937, c. 179, § 2, p. 709; C.S.Supp.,1941, § 85-180; R.S. 1943, § 85-174; Laws 2017, LB512, § 22.

85-175 Repealed. Laws 2017, LB512, § 42.

85-176 College of Law; state publications; number furnished free.

The following publications of the State of Nebraska shall, as they are from time to time issued, be delivered by the respective officer having custody thereof to the library of the College of Law of the University of Nebraska:

- (1) The opinions of the Nebraska Supreme Court and Court of Appeals in either print or electronic format, or both, as determined by the Supreme Court;
- (2) Five copies of the Opinions of the Attorney General, five copies of the Blue Book, and two copies each of the reports and recommendations of the Judicial Council and of the reports and recommendations of the Legislative Council;
- (3) Copies of the session laws and the journal of the Legislature as provided in section 49-506;
- (4) One copy each of the annual and biennial reports of the state officers who are required by law to make an annual or biennial report; and
- (5) Statutes issued by the Supreme Court shall be requisitioned by the librarian of the College of Law, allowing ten copies for the library of the College of Law, five copies for the Legal Aid Bureau and the editors and staff of the Nebraska Law Review, one copy each for every full-time member of the law faculty, and no more than fifteen copies for the university libraries, nonlaw faculty, and administrative officers of the university combined.

Source: Laws 1947, c. 185, § 1, p. 610; Laws 1951, c. 345, § 2, p. 1133; Laws 1961, c. 243, § 4, p. 727; Laws 1987, LB 572, § 8; Laws 1995, LB 271, § 9; Laws 2015, LB301, § 4.

85-177 College of Law; state publications; additional copies; requisition.

In order to enable the library of the College of Law to augment its collections, the librarian of the College of Law of the University of Nebraska is authorized to requisition from the respective officer having custody thereof up to one hundred copies of the following state publications: Legislative Journals, Session Laws, replacement volumes and supplements to the Revised Statutes, and Opinions of the Attorney General. The copies of the Legislative Journals and Session Laws may be provided in print or electronic format as the Secretary of State determines, upon recommendation by the Clerk of the Legislature and approval of the Executive Board of the Legislative Council.

Source: Laws 1947, c. 185, § 2, p. 611; Laws 1951, c. 345, § 3, p. 1133; Laws 1961, c. 243, § 5, p. 727; Laws 1995, LB 271, § 10; Laws 2000, LB 534, § 8; Laws 2015, LB301, § 5; Laws 2023, LB799, § 12.

85-178 Repealed. Laws 2003, LB 68, § 11.

85-179 College of Medicine; care and rehabilitation of children with disabilities; interchange of facilities for teaching and treatment.

The Board of Regents of the University of Nebraska may cooperate with public or private agencies engaged in the care and rehabilitation of children with disabilities so as to make available an interchange of facilities for teaching and treatment purposes under such terms as may be mutually agreed upon by the Board of Regents and the several agencies desiring the use of such land.

Source: Laws 1955, c. 351, § 3, p. 1073; Laws 1997, LB 346, § 59.

85-179.01 College of Medicine; physicians' assistants and associates; program for education and training; establish.

Subject to statutory authorization and approval by the Coordinating Commission for Postsecondary Education pursuant to sections 85-1413 and 85-1414, the University of Nebraska through its College of Medicine may establish, develop, implement, and from time to time amend, change, and modify a general plan or program for the education and training of physicians' assistants and physicians' associates and to accomplish such purpose may:

- (1) Establish a separate curriculum to be supervised and carried out by the faculty of the College of Medicine;
- (2) Employ such additional faculty members and otherwise procure and contract for such professional and technical assistance as may be necessary or advisable;
- (3) Acquire by purchase, lease, or gift such personal property as may be required or useful in connection with such program and the implementation thereof; and
- (4) Cooperate and contract with other governmental agencies and subdivisions of government, both state and federal, and funding organizations.

Source: Laws 1972, LB 985, § 1; Laws 1991, LB 663, § 69.

85-179.02 College of Medicine; physicians' assistant or associate, defined.

For purposes of sections 85-179.01 to 85-179.03, unless the context otherwise requires, physicians' assistant or physicians' associate shall mean a person who is qualified by training and experience to act as an assistant to, or an associate of, a licensed physician.

Source: Laws 1972, LB 985, § 2.

85-179.03 College of Medicine; physicians' assistants or associates; Board of Regents; powers.

The power and authority granted by sections 85-179.01 to 85-179.03 may be exercised in whole or in part and from time to time as the Board of Regents of the University of Nebraska may in its discretion determine.

Source: Laws 1972, LB 985, § 3.

85-179.04 Transferred to section 71-1,107.15.

85-179.05 Transferred to section 71-1,107.16.

85-179.06 Transferred to section 71-1,107.17.

85-179.07 Transferred to section 71-1,107.18.

85-179.08 Transferred to section 71-1,107.19.

85-179.09 Transferred to section 71-1,107.20.

85-179.10 Transferred to section 71-1,107.21.

85-179.11 Transferred to section 71-1,107.22.

85-179.12 Transferred to section 71-1,107.23.

85-179.13 Transferred to section 71-1,107.24.

85-179.14 Transferred to section 71-1,107.25.

85-179.15 Transferred to section 71-1,107.26.

85-179.16 Transferred to section 71-1,107.27.

85-179.17 Transferred to section 71-1,107.28.

85-179.18 Transferred to section 71-1,107.29.

85-180 Repealed. Laws 1985, LB 204, § 4.

85-180.01 Repealed. Laws 1985, LB 204, § 4.

85-180.02 Repealed. Laws 1985, LB 204, § 4.

85-180.03 Repealed. Laws 1985, LB 204, § 4.

85-180.04 Repealed. Laws 1985, LB 204, § 4.

85-180.05 Repealed. Laws 1985, LB 204, § 4.

85-180.06 Repealed. Laws 1983, LB 533, § 6.

85-180.07 Repealed. Laws 1985, LB 204, § 4.

85-180.08 Repealed. Laws 1985, LB 204, § 4.

85-180.09 Repealed. Laws 1985, LB 204, § 4.

85-180.10 Repealed. Laws 1985, LB 204, § 4.

85-180.11 Repealed. Laws 1983, LB 533, § 6.

85-180.12 Repealed. Laws 1985, LB 204, § 4.

85-180.13 Veterinary medicine and surgery; cooperative program authorized; cooperative agreement; requirements.

The educational program for veterinary medicine and surgery at the University of Nebraska may be established and operated by the Board of Regents only as a cooperative program with a college or colleges of veterinary medicine in other states subject to approval of the program by the Coordinating Commission for Postsecondary Education pursuant to sections 85-1413 and 85-1414. The Board of Regents may enter into agreements with one or more institutions of postsecondary education in states which have operational colleges of veterinary medicine for the purpose of establishing a cooperative program providing for the education and training of Nebraska resident students in veterinary medicine and cooperative activities in teaching, research, and service in veterinary medicine. Any such cooperative agreement shall provide that:

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(1) The University of Nebraska shall have joint responsibility for establishing policies in matters of curriculum, academic standards, research, student admissions, and conduct of the cooperative program in veterinary medicine;

(2) Clinical training at facilities of the University of Nebraska shall be available to all students enrolled in the cooperative program; and

(3) The University of Nebraska shall receive financial consideration for each nonresident student who receives clinical training at University of Nebraska facilities.

Source: Laws 1985, LB 204, § 1; Laws 1991, LB 663, § 70.

85-180.14 Cooperative veterinary medicine program; Board of Regents; Coordinating Commission for Postsecondary Education; powers.

The Board of Regents may construct and operate such facilities as shall be approved by the Coordinating Commission for Postsecondary Education pursuant to sections 85-1413 and 85-1414 and funded by the Legislature and may employ necessary faculty and staff to provide the clinical training of students in the cooperative veterinary medicine program pursuant to section 85-180.13. Proposed capital construction projects for veterinary medical facilities shall be reviewed, monitored, and approved or disapproved by the commission pursuant to section 85-1414 under the same standards of review applied by the commission to other capital construction projects.

Source: Laws 1985, LB 204, § 2; Laws 1991, LB 663, § 71; Laws 1994, LB 683, § 1.

85-181 Repealed. Laws 1991, LB 663, § 137.

85-182 Repealed. Laws 1988, LB 802, § 41.

85-183 Repealed. Laws 1988, LB 802, § 41.

85-184 Repealed. Laws 2003, LB 68, § 11.

85-185 Repealed. Laws 2003, LB 68, § 11.

85-186 Repealed. Laws 1988, LB 802, § 41.

85-187 Repealed. Laws 1988, LB 802, § 41.

85-188 Repealed. Laws 1988, LB 802, § 41.

85-189 Repealed. Laws 1988, LB 802, § 41.

85-190 Repealed. Laws 2003, LB 68, § 11.

85-191 Repealed. Laws 1988, LB 802, § 41.

85-192 University of Nebraska at Omaha Cash Fund; University of Nebraska at Omaha Trust Fund; created; purposes; disbursements; investment.

There is hereby created a University of Nebraska at Omaha Cash Fund which shall consist of all fees and other money collected from students at the University of Nebraska at Omaha by authority of the Board of Regents of the University of Nebraska for university purposes, all receipts from all university activities at the University of Nebraska at Omaha collected in connection with the operation of such university, and the money and funds received at the time

the University of Nebraska at Omaha was established. A record shall be kept separating such money and funds into appropriate and convenient accounts. All money and funds accruing to the cash fund shall be used for the maintenance and operation of the University of Nebraska at Omaha and shall at all times be subject to the orders of the Board of Regents. The fund shall be in the custody of the State Treasurer, and any money in such fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act, except that there may be retained at the University of Nebraska at Omaha a sum not to exceed two percent of the fund, which shall be available to make settlement and equitable adjustments to students entitled thereto, to carry on university activities contributing to the fund, and to provide for contingencies. No warrant shall be issued against such fund unless there is money sufficient to pay the same.

There is hereby created a University of Nebraska at Omaha Trust Fund which shall consist of all property, real or personal, now or hereafter acquired by or for the municipal University of Omaha by donation or bequest to it, which property shall be held and applied in the manner and according with the provisions of the will, deed, or instrument making such donation or bequest. All future donations or bequests to or for the University of Nebraska at Omaha shall be a part of such trust fund. Such trust fund shall be held and managed in such manner as the Board of Regents shall determine. Such holdings and management shall be in strict accordance with all terms of the donation or bequest, but in the absence of any investment instructions the funds may be invested by or at the direction of the Board of Regents in such investments as are authorized for trustees, guardians, personal representatives, or administrators under the laws of Nebraska. Any money in such fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1967, c. 620, § 11, p. 2081; Laws 1969, c. 584, § 128, p. 2428; Laws 1985, LB 151, § 2; Laws 1988, LB 802, § 39; Laws 1995, LB 7, § 152; Laws 2011, LB378, § 33.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

85-193 Repealed. Laws 1988, LB 802, § 41.

85-194 University of Nebraska at Omaha; laws applicable.

Chapter 85, articles 1, 4, and 5, relating to the Board of Regents and the University of Nebraska shall be applicable to the University of Nebraska at Omaha except as modified or limited by section 85-192.

Source: Laws 1967, c. 620, § 13, p. 2082; Laws 1978, LB 756, § 53; Laws 1988, LB 802, § 40; Laws 2003, LB 68, § 8.

85-195 Transferred to section 85-606.01.

85-196 Repealed. Laws 1971, LB 208, § 1.

85-197 Repealed. Laws 1971, LB 208, § 1.

85-198 Repealed. Laws 1971, LB 208, § 1.

85-199 Repealed. Laws 1971, LB 208, § 1.

85-1,100 Repealed. Laws 1987, LB 13, § 1.

85-1,101 Repealed. Laws 1972, LB 1433, § 7.

85-1,102 Repealed. Laws 1972, LB 1433, § 7.

85-1,103 University of Nebraska, College of Medicine; travel expense of senior medical students, residents, interns; conditions.

The dean of the College of Medicine of the University of Nebraska may authorize the expenditure of funds when appropriated by the Legislature for travel expenses of senior medical students, medical residents, and interns to communities in Nebraska for the purpose of locating in Nebraska to practice their profession. Payments shall be limited to one hundred dollars for a round trip visit and not more than three such visits shall be approved for any one student, medical resident, or intern. The College of Medicine shall keep records to show the result of such expenditures. The expenses paid shall be in accordance with expense practices of the state government and as provided in sections 81-1174 to 81-1177 for state employees.

Source: Laws 1972, LB 1489, § 1; Laws 1981, LB 204, § 218.

85-1,104 University of Nebraska Institute of Agriculture and Natural Resources; established; administration.

A University of Nebraska Institute of Agriculture and Natural Resources shall be established at the University of Nebraska-Lincoln which shall embrace but not be limited to the following divisions or administrative units: (1) College of Agricultural Sciences and Natural Resources; (2) Agricultural Research Division; (3) Cooperative Extension Service; (4) Conservation and Survey Division; and (5) a veterinary medicine and surgery program as a cooperative program only as provided in section 85-180.13. The University of Nebraska Institute of Agriculture and Natural Resources shall be headed by a vice chancellor and each division or administrative unit shall have a dean, director, or other chief administrative officer.

Source: Laws 1973, LB 149, § 3; Laws 1987, LB 656, § 5; Laws 1991, LB 663, § 72.

85-1,104.01 Repealed. Laws 2011, LB 334, § 11.

85-1,105 University of Nebraska Institute of Agriculture and Natural Resources; vice chancellor; duties.

The vice chancellor for the University of Nebraska Institute of Agriculture and Natural Resources shall be responsible for providing leadership for all agricultural and natural resources affairs in the University of Nebraska as they involve the office of chancellor of the University of Nebraska-Lincoln and the President and the Board of Regents of the University of Nebraska. He shall coordinate agricultural, natural resources, and related matters of the University of Nebraska-Lincoln. As senior agricultural and natural resources administrator in the University of Nebraska, he and the chancellor of the University of Nebraska-Lincoln shall together provide advice and counsel to and assist the President and Board of Regents of the University of Nebraska in agricultural, natural resources, and related matters.

Source: Laws 1973, LB 149, § 4.

85-1,106 Board of Regents; lands in Lancaster County; power to sell; Agricultural Field Laboratory Fund; created; use.

The Board of Regents of the University of Nebraska is hereby authorized to sell, on terms and conditions to be prescribed by the board, lands in Lincoln and immediate vicinity located in sections 2, 3, 9, 10, 11, 15, and 27, township 10 north, range 7 east, Lancaster County, Nebraska, which have been used for agricultural research by the University of Nebraska Institute of Agriculture and Natural Resources and which function is being transferred to the Agricultural Research and Development Center and to other locations suitable for agricultural research. These lands are more particularly described as follows:

(1) The southwest quarter and that part of the west half of the southeast quarter lying west of the centerline of Stevens Creek and that part of the east half of the northwest quarter lying south of the centerline of Stevens Creek and that part of the west half of the northeast quarter lying southwest of the centerline of Stevens Creek, all in said section 2.

(2) The southeast quarter and the east half of the southwest quarter of said section 3.

(3) Lot 31 of irregular tracts in the southeast quarter of said section 9.

(4) Lots 15, 23, 25, 29, 30, 31, 32, 33, 34, 35, 38, and 39, of irregular tracts, all in said section 10.

(5) The north half of the northwest quarter, and the north half of the northeast quarter and irregular tract lots 1, 2, 4, 6, and 8, all in said section 11.

(6) Lot 51 of irregular tracts in the northeast quarter, and lots 1 through 16, Castleton, except for a parcel described as follows: A tract in lots 7, 8, 9, and 10, Castleton, beginning at the southwest corner of said lot 9, Castleton, thence north along the west line of said lots 8 and 9, a distance of seven hundred twenty-seven feet, thence east along a line perpendicular to the west line of said lot 9, a distance of one hundred nineteen and nine-tenths feet, thence southeast to the right on a curve having a radius of three hundred twenty-two and thirteen-hundredths feet through a central angle of eighty degrees thirty-two minutes a distance of four hundred fifty-four and seventy-five-hundredths feet, thence southeasterly a distance of four hundred fifty-six and six-tenths feet, more or less, to the south line of said lot 10, thence west along the south line of said lots 9 and 10 to the point of beginning; and lots 1 to 11, block 1, lots 1, 2, 17, 18, and 19, block 3, lots 1 and 2, block 4 and outlot A, Rosemont Fourth Addition, all in said section 15.

(7) Lot 56 of irregular tracts in the northwest quarter of said section 27.

There is hereby created a fund to be known as the Agricultural Field Laboratory Fund to which shall be credited all proceeds from the sale of such real estate. All money received from time to time pursuant to the sale of such real estate and which is credited to such fund is hereby appropriated to the Board of Regents of the University of Nebraska to be used exclusively for the development and improvement of the University of Nebraska Agricultural Research and Development Center at Mead, Nebraska, or for acquisition, development, and improvement of replacement real estate to replace the real estate described in subdivisions (1) through (7) of this section to be used for agricultural research. Money credited to the Agricultural Field Laboratory Fund shall be expended prior to the expenditure of any other legislative

appropriation for the development and improvement of such center or replacement real estate.

Source: Laws 1974, LB 938, § 1; Laws 1991, LB 663, § 73; Laws 1997, LB 13, § 1.

85-1,107 Animal Research and Diagnosis Revolving Fund; created.

There is hereby created a fund to be known as the Animal Research and Diagnosis Revolving Fund.

Source: Laws 1976, LB 869, § 2.

85-1,108 Animal Research and Diagnosis Revolving Fund; how funded.

Fees for diagnostic and testing services performed for individuals, corporations, and agencies of government shall be paid into the Animal Research and Diagnosis Revolving Fund.

Source: Laws 1976, LB 869, § 3.

85-1,109 Animal Research and Diagnosis Revolving Fund; uses.

The Animal Research and Diagnosis Revolving Fund shall be used to provide financial support for research and other service functions performed by the diagnostic laboratory of the University of Nebraska Animal Health Research Center.

Source: Laws 1976, LB 869, § 4.

85-1,110 Diagnostic laboratory of Animal Health Research Center; fee schedule for services.

The diagnostic laboratory of the University of Nebraska Animal Health Research Center shall establish a fee schedule showing fees to be charged for various diagnostic and testing services performed by the laboratory.

Source: Laws 1976, LB 869, § 5.

85-1,111 Repealed. Laws 2012, LB 710, § 3.

85-1,112 Repealed. Laws 2012, LB 710, § 3.

85-1,113 University Facilities Fund; created; authorized uses.

There is hereby created a University Facilities Fund. All money accruing to the fund is hereby appropriated to the Board of Regents of the University of Nebraska and shall be used exclusively for those construction projects authorized pursuant to this section. No expenditure may be made from such fund without prior approval by a resolution of the Board of Regents.

The Board of Regents is authorized to make expenditures from the University Facilities Fund for the following projects and associated expenses: (1) Renovation of the University of Nebraska at Omaha Arts and Sciences Hall, two million eight hundred forty-six thousand two dollars; (2) an addition to the University of Nebraska at Kearney Copeland Hall, two million two hundred fifty-seven thousand one hundred seventy-four dollars; and (3) University of Nebraska-Lincoln Institute of Agriculture and Natural Resources projects, including (a) construction of a Headquarters Building at the Agricultural Research and Development Center, Mead, Nebraska, two million six hundred

fifteen thousand three hundred seventy-eight dollars, (b) renovation of the Elliot Building at the Panhandle Research and Extension Center, Scottsbluff, Nebraska, four hundred thirty-one thousand eight hundred seven dollars, (c) construction of a Swine Research Growing and Finishing Facility at the West Central Research and Extension Center, North Platte, Nebraska, three hundred eighteen thousand nine hundred forty-nine dollars, (d) construction of a Research and Extension Support Building at the West Central Research and Extension Center, North Platte, Nebraska, two hundred eighty-four thousand six hundred dollars, (e) construction of a Staff/Laboratory/Conference Center at the Gudmundsen Sandhill Laboratory, Whitman, Nebraska, two hundred seventy-six thousand seven hundred forty-nine dollars, and (f) construction of a Swine Research Growing and Finishing Facility at the Northeast Research and Extension Center, Concord, Nebraska, ninety-five thousand one hundred ninety-four dollars. The cost limitations set forth in this section shall be exclusive of sums previously expended from other sources for planning and administrative costs, financing costs, and other costs associated with any contract which the Board of Regents may enter into pursuant to this section and section 85-1,114 to implement the projects listed in this section. The cost limitation set forth in subdivision (3)(a) of this section may be exceeded with private funds not to exceed two hundred twenty-five thousand dollars. The cost limitation set forth in subdivision (3)(f) of this section may be exceeded with private funds not to exceed sixty-six thousand dollars. The Board of Regents shall record and report, on the Nebraska State Accounting System, expenditure of amounts from the University Facilities Fund and expenditure of proceeds arising from any contract entered into pursuant to this section and section 85-1,114 in such manner and format as prescribed by the Department of Administrative Services.

The Board of Regents is authorized to make expenditures for the purposes stated in this section from investment income balances in the University Facilities Fund. Any balance existing in the University Facilities Fund or in any reserve funds created as part of a long-term contract entered into by the Board of Regents pursuant to section 85-1,114 shall be transferred to the General Fund either on July 15, 1997, or when all financial obligations incurred in the contracts entered into by the Board of Regents pursuant to section 85-1,114 are discharged, whichever occurs first. Any balance existing in any reserve funds created as part of a long-term contract entered into by the Board of Regents pursuant to section 85-1,114 in excess of such level as may be required by such contract shall be annually transferred to the General Fund on July 15.

Source: Laws 1986, LB 842, § 3; Laws 1992, Third Spec. Sess., LB 9, § 3; Laws 1993, LB 323, § 1.

85-1,114 University facilities construction projects; Board of Regents; powers.

In order to accomplish any projects authorized by section 85-1,113, the Board of Regents of the University of Nebraska may enter into contracts with any person, firm, or corporation providing for the implementation of any such project of the university and providing for the long-term payment of the cost of such project from the University Facilities Fund. In no case shall any such contract extend for a period beyond July 15, 1997, or obligate payments beyond those which may be satisfied with funds available pursuant to sections 77-2602 and 85-1,113. The Board of Regents shall not pledge the credit of the State of

Nebraska for the payment of any sum owing on account of such contract, except that there may be pledged for the payment of any such contract any appropriations specifically made by the Legislature for such purpose. No contract shall be entered into pursuant to this section without prior approval by a resolution of the Board of Regents. The Board of Regents may also convey or lease and lease back all or any part of the projects authorized by section 85-1,113 and the land on which such projects are situated to such person, firm, or corporation as the Board of Regents may contract with pursuant to this section to facilitate the long-term payment of the cost of such projects. Any such conveyance or lease shall provide that when the cost of such projects has been paid, together with interest and other costs thereon, such projects and the land on which such projects are located shall become the property of the Board of Regents.

Source: Laws 1986, LB 842, § 4; Laws 1992, Third Spec. Sess., LB 9, § 4.

85-1,115 Lied Center for Performing Arts; Board of Regents; powers.

In order to accomplish the construction of the Lied Center for Performing Arts, the Board of Regents of the University of Nebraska may enter into contracts with any person, firm, corporation, or foundation providing for the implementation of such project of the university and providing for the long-term payment of the cost of such project. In no case shall any such contract run for a period longer than twenty years or exceed twenty million dollars, exclusive of administrative costs, credit enhancement costs, financing costs, and reserves dedicated to secure payment of contracts. The Board of Regents shall not pledge the credit of the State of Nebraska for the payment of any sum owing on account of such contract, except that there may be pledged for the payment of any such contract any appropriations specifically made by the Legislature for such purpose. No contract shall be entered into pursuant to this section without prior approval by a resolution of the Board of Regents.

Source: Laws 1986, LB 842, § 7.

85-1,116 University Facility Improvement Fund; created; authorized uses.

There is hereby created the University Facility Improvement Fund. All money accruing to the fund is hereby appropriated to the Board of Regents of the University of Nebraska and shall be used exclusively for those construction projects of the university authorized pursuant to this section. No expenditure may be made from such fund without prior approval by a resolution of the Board of Regents.

The Board of Regents may make expenditures from the University Facility Improvement Fund for the following project: Renovation of Morrill Hall, three million nine hundred thirty-five thousand six hundred forty-five dollars, excluding funds from private donations, sums previously expended for planning, and administrative and financing costs associated with any contract which the Board of Regents may enter into pursuant to this section and section 85-1,117 to implement the project listed in this section.

The Board of Regents may make expenditures for the purposes stated in this section from investment income balances in the University Facility Improvement Fund. The Board of Regents may make expenditures from such fund in amounts which, in combination with interest accrued on any construction funds and reserve funds created as part of a long-term contract entered into by

the Board of Regents pursuant to section 85-1,117, are sufficient to satisfy the financial obligations incurred in such contracts entered into by the Board of Regents. Any balance existing in the University Facility Improvement Fund, any reserve funds, or any other funds created as part of a long-term contract entered into by the Board of Regents pursuant to section 85-1,117 shall be transferred to the General Fund either on June 15, 1998, or when all financial obligations incurred in the contracts entered into by the Board of Regents pursuant to section 85-1,117 are discharged, whichever occurs first.

Source: Laws 1987, LB 218, § 3.

85-1,117 Renovation of Morrill Hall; Board of Regents; powers.

In order to accomplish the project authorized by section 85-1,116, the Board of Regents of the University of Nebraska may enter into contracts with any person, firm, or corporation providing for the implementation of any such project of the university and providing for the long-term payment of the cost of such project from the University Facility Improvement Fund. In no case shall any such contract run for a period longer than eleven years or exceed three million nine hundred thirty-five thousand six hundred forty-five dollars exclusive of administrative costs, credit enhancement costs, financing costs, capitalized interest, and reserves dedicated to secure payment of contracts. The Board of Regents shall not pledge the credit of the State of Nebraska for the payment of any sum owing on account of such contract, except that there may be pledged for the payment of any such contract any appropriations specifically made by the Legislature for such purpose. No contract shall be entered into pursuant to this section without prior approval by a resolution of the Board of Regents. The Board of Regents may also convey or lease and lease back all or any part of the projects authorized by section 85-1,116 and the land on which such projects are situated to such person, firm, or corporation as the Board of Regents may contract with pursuant to this section to facilitate the long-term payment of the cost of such projects. Any such conveyance or lease shall provide that when the cost of such projects has been paid, together with interest and other costs thereon, such projects and the land on which such projects are located shall become the property of the Board of Regents.

Source: Laws 1987, LB 218, § 4.

85-1,118 Repealed. Laws 2003, LB 68, § 11.

85-1,119 Kearney State College; transfer of property, obligations, and employees; collective bargaining.

(1) On July 1, 1991, all property rights, titles, assets, contracts, obligations, and choses in action of any kind existing as of June 30, 1991, owned, held, or controlled by Kearney State College or the Board of Trustees of the Nebraska State Colleges for the benefit of Kearney State College shall be transferred to, assumed by, and carried out by the Board of Regents of the University of Nebraska for the operation and benefit of the University of Nebraska at Kearney subject, however, to the following:

(a)(i) Title to (A) facilities on the campus of Kearney State College and all or any portion of the revenue derived from such facilities which have been pledged to the payment of the principal of and interest on revenue bonds of the board of trustees or (B) facilities on the campus of Kearney State College which

have been constructed, repaired, or renovated with the proceeds of revenue bonds payable from student fees shall remain vested in the board of trustees until the bonds outstanding with respect to such facilities have been discharged. Upon the discharge of the bonds outstanding with respect to any such facility, title to such facility shall be transferred to and vested in the Board of Regents without any further or additional action by the board of trustees or the Board of Regents.

(ii) All facilities specified in subdivision (a)(i) of this subsection shall be leased by the board of trustees to the Board of Regents as of July 1, 1991, upon such terms and conditions as the board of trustees and the Board of Regents shall determine, except that (A) payments from the Board of Regents to the board of trustees pursuant to such leases shall be sufficient to pay the principal of and interest on the bonds outstanding with respect to such facilities and shall include a reasonable fee set by and paid to the board of trustees to cover actual and necessary expenses incurred by the board of trustees for managing the bond program of the University of Nebraska at Kearney until all bonds which are outstanding as of July 1, 1991, and which were issued with respect to the leased facilities have matured and are retired, (B) the Board of Regents shall have the right to establish rents, charges, rates, and fees for the use of such facilities and to receive and collect all revenue, rents, fees, income, profits, and charges of whatever nature and howsoever derived from such facility, and (C) the Board of Regents shall keep, perform, satisfy, and comply with all terms, covenants, conditions, and agreements contained in the documents relating to the issuance of the bonds outstanding with respect to each such facility;

(b) The obligations for the payment of money of the board of trustees incurred pursuant to Laws 1983, LB 410, Laws 1987, LB 218, and Laws 1987, LB 784, shall remain the obligations of the board of trustees. All other obligations of the board of trustees incurred pursuant to such laws shall, upon July 1, 1991, be and become obligations of the Board of Regents. Unless title to the property acquired and the facilities constructed, repaired, remodeled, or renovated pursuant to such laws is required to remain vested with the board of trustees pursuant to subdivision (a)(i) of this subsection, title to such property and facilities shall vest in the Board of Regents on July 1, 1991; and

(c) Prior to July 1, 1991, the board of trustees and the Board of Regents shall enter into such agreements as they deem necessary and appropriate to carry out the provisions of sections 85-1,119 to 85-1,123 for the conveyance and transfer of the properties, rights, and obligations provided under such sections, to make appropriate provisions with respect to existing debt obligations, including revenue bonds, of the board of trustees and the Nebraska State Colleges Facilities Corporation pertaining to Kearney State College, and to provide for an orderly transition and assumption by the Board of Regents of the activities and operations of Kearney State College. The board of trustees, acting as a corporation for the revenue bond program for Kearney State College or the Nebraska State College Facilities Corporation, and its officers and staff shall be reimbursed for any expenses incurred in carrying out any action modifying the revenue bond program pursuant to sections 85-1,119 to 85-1,123.

(2)(a) On July 1, 1991, all employees of Kearney State College shall be transferred to the University of Nebraska. The transferred employees shall retain all benefits and status of employment accrued through June 30, 1991, including retirement benefits not vested.

(b) On July 1, 1991, the transferred employees, except academic, faculty, and teaching employees who are included in a collective-bargaining unit and represented by a certified collective-bargaining agent, shall cease participation in the employee fringe benefit programs of Kearney State College and shall begin participation in the University of Nebraska systemwide fringe benefits program and be entitled to receive the same fringe benefits of employment made available to other employees of the University of Nebraska under such program.

(c) On July 1, 1990, the Board of Regents of the University of Nebraska shall have authority to enter into a collective-bargaining agreement with any certified collective-bargaining agent for academic, faculty, and teaching employees of Kearney State College who are represented by a certified collective-bargaining agent covering any period beginning on or after July 1, 1991. The Board of Regents shall bargain and negotiate in good faith with any such bargaining agent pursuant to the State Employees Collective Bargaining Act. On July 1, 1991, all academic, faculty, and teaching employees of the University of Nebraska at Kearney shall cease participation in the retirement program of Kearney State College and shall begin participation in the systemwide retirement program of the University of Nebraska on the same basis as other academic, faculty, and teaching employees of the University of Nebraska.

Source: Laws 1989, LB 247, § 7; Laws 2003, LB 68, § 9.

Cross References

State Employees Collective Bargaining Act, see section 81-1369.

Since five judges of the court do not hold that this section is unconstitutional, the section is constitutional. State ex rel. Spire v. Beermann, 235 Neb. 384, 455 N.W.2d 749 (1990).

85-1,120 Repealed. Laws 2003, LB 68, § 11.

85-1,121 Repealed. Laws 2003, LB 68, § 11.

85-1,122 University of Nebraska at Kearney; provisions applicable.

The provisions of Chapter 85 relating to the Board of Regents of the University of Nebraska shall be applicable to the University of Nebraska at Kearney except as modified or limited.

Source: Laws 1989, LB 247, § 10.

Since five judges of the court do not hold that this section is unconstitutional, the section is constitutional. State ex rel. Spire v. Beermann, 235 Neb. 384, 455 N.W.2d 749 (1990).

85-1,123 University of Nebraska at Kearney Cash Fund; University of Nebraska at Kearney Trust Fund; created; use; investment.

(1) There is hereby created the University of Nebraska at Kearney Cash Fund. The fund shall consist of all fees and other money collected from students at the University of Nebraska at Kearney by authority of the Board of Regents of the University of Nebraska for university purposes, all receipts from all university activities at the University of Nebraska at Kearney collected in connection with the operation of such university, and the money and funds received at the time the University of Nebraska at Kearney was established. A record shall be kept separating the money and funds into appropriate and convenient accounts. All money and funds accruing to the fund shall be used for the maintenance and

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operation of the University of Nebraska at Kearney and shall at all times be subject to the orders of the Board of Regents. The fund shall be in the custody of the State Treasurer, and any money in such fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act, except that there may be retained at the University of Nebraska at Kearney a sum not to exceed two percent of the fund, which shall be available to make settlement and equitable adjustments to students entitled thereto, to carry on university activities contributing to the fund, and to provide for contingencies. No warrant shall be issued against the fund unless there is money sufficient to pay the same.

(2) There is hereby created the University of Nebraska at Kearney Trust Fund, which fund shall consist of all property, real or personal, acquired as of July 1, 1991, or at any time thereafter by or for Kearney State College by donation or bequest to it, which property shall be held and applied in the manner and according with the provisions of the will, deed, or instrument making such donation or bequest. All future donations or bequests to the University of Nebraska at Kearney shall be a part of such fund. The fund shall be held and managed in such manner as the Board of Regents shall determine. The holdings and management shall be in strict accordance with all terms of the donation or bequest, except that in the absence of any investment instructions, the funds may be invested by or at the direction of the Board of Regents in such investments as are authorized for trustees, guardians, personal representatives, or administrators under the laws of Nebraska.

Source: Laws 1989, LB 247, § 11; Laws 2011, LB378, § 34.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

Since five judges of the court do not hold that this section is unconstitutional, the section is constitutional. *State ex rel. Spire v. Beermann*, 235 Neb. 384, 455 N.W.2d 749 (1990).

85-1,124 Repealed. Laws 2003, LB 68, § 11.

85-1,125 Repealed. Laws 2000, LB 1379, § 7.

85-1,126 Risk-loss trusts authorized; requirements.

The Board of Regents of the University of Nebraska may establish, maintain, and administer one or more risk-loss trusts for the purpose of paying losses and expenses incurred by the university from (1) general and professional liability, including, but not limited to, judgments, awards, and settlements of claims and suits arising under the Nebraska Hospital-Medical Liability Act, the State Contract Claims Act, the State Miscellaneous Claims Act, and the State Tort Claims Act, (2) damage, destruction, or loss of real or personal property, and (3) errors and omissions liability. Any such risk-loss trust shall contain provisions relating to defense and settlement of claims and suits covered by the trust. No risk-loss trust established pursuant to this section shall be a member of the Nebraska Property and Liability Insurance Guaranty Association.

Source: Laws 1990, LB 542, § 1.

Cross References

Nebraska Hospital-Medical Liability Act, see section 44-2855.

State Contract Claims Act, see section 81-8,302.

State Miscellaneous Claims Act, see section 81-8,294.

State Tort Claims Act, see section 81-8,235.

85-1,127 Risk-loss trust; applicability of provisions; Attorney General; State Claims Board; duties.

Whenever any claim or suit against the University of Nebraska or any of its officers, agents, or employees is covered by a risk-loss trust established pursuant to section 85-1,126, the provisions of such trust on defense and settlement of claims and suits covered by the trust shall be applicable notwithstanding any inconsistent provisions of the State Tort Claims Act. The Attorney General and State Claims Board shall cooperate with the university in administering the defense and settlement provisions of any such trust.

Source: Laws 1990, LB 542, § 2.

Cross References

State Tort Claims Act, see section 81-8,235.

85-1,128 University of Nebraska Eppley Science Hall Construction Fund; created; use; investment.

There is hereby created the University of Nebraska Eppley Science Hall Construction Fund. All money accruing to the fund is hereby appropriated to the Board of Regents of the University of Nebraska and shall be used exclusively for the project authorized pursuant to this section. No expenditures shall be made from such fund without prior approval by a resolution of the Board of Regents. 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 Board of Regents may make expenditures from the University of Nebraska Eppley Science Hall Construction Fund for the following project:

University of Nebraska Eppley Science Hall construction project, four hundred seventy-five thousand dollars, excluding federal funds, institutional cash funds, and private donations. The total cost of the project is currently estimated at eight million seven hundred forty thousand dollars, which amount also includes five million dollars of federal funds and two million dollars of private donations. Any unexpended balance existing in the University of Nebraska Eppley Science Hall Construction Fund shall be transferred to the General Fund either on June 15, 1993, or when any financial obligations incurred in the contracts entered into by the Board of Regents for the completion of the University of Nebraska Eppley Science Hall construction project are discharged, whichever occurs first.

Source: Laws 1990, LB 1220, § 3; Laws 1994, LB 1066, § 136.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

85-1,129 University of Nebraska Eppley Science Hall Construction Fund; legislative intent.

It is the intent of the Legislature that four hundred seventy-five thousand dollars be appropriated from the University of Nebraska Eppley Science Hall Construction Fund for fiscal year 1991-92, for the University of Nebraska

Eppley Science Hall construction project, which project shall include the addition of five floors in the existing Eppley Science Hall to expand research and related activities at the University of Nebraska Medical Center.

Source: Laws 1990, LB 1220, § 4.

85-1,130 Repealed. Laws 2012, LB 782, § 253.

85-1,131 Legislative findings.

The Legislature finds and declares that:

(1) Scandals are rampant throughout college football as evidenced by schools placed on probation by the National Collegiate Athletic Association, coaches dismissed or forced to resign for improprieties, and players being declared ineligible to compete for violating rules against receiving fair financial compensation;

(2) Many players are recruited from impoverished families and the rules of the National Collegiate Athletic Association prohibiting reasonable financial compensation render such players vulnerable to inducements, benefits, and other types of compensation which are defined as illicit by the National Collegiate Athletic Association rules;

(3) A fair rate of financial compensation would give players a choice when offered illicit inducements, compensation, or assistance;

(4) Rules of the National Collegiate Athletic Association prohibiting compensation are unduly restrictive and unreasonable, promote unfairness, encourage dishonesty in recruiting and retaining players, and would not be tolerated if applied to all students; and

(5) Players at United States service academies are compensated while in attendance and are eligible to compete against schools which are members of the National Collegiate Athletic Association.

Source: Laws 2003, LB 688, § 1.

Note: For the operative date for this section, see section 85-1,136.

85-1,132 Findings and declarations.

The Legislature further finds and declares that:

(1) The University of Nebraska-Lincoln participates in a national intercollegiate football program which produces millions of dollars through ticket sales, lucrative national television and other electronic broadcast contracts, and participation in postseason bowl games;

(2) The football program promotes the university and generates valuable intangible benefits such as enhancement of image;

(3) The exertion of players and the revenue they generate produce employment and salaries for many others, subsidize other sports programs at the university, and underwrite travel expenses of numerous university officials, staff, and others who attend postseason bowl games in which the team participates;

(4) The university employs a large athletic department to administer its intercollegiate athletic program and a sizable football coaching staff charged primarily with the responsibility of producing a team capable of competing successfully against the best teams in their conference and in the nation and of generating as much revenue as possible;

(5) Maintaining a winning football team has become an integral aspect of the overall business or occupation of the university as an institution;

(6) The football program of the university could not exist without the athletes who play that arduous and dangerous game;

(7) Such athletes do not appear at the university by accident or happenstance but are actively recruited by university personnel at considerable expense;

(8) Such athletes are not recruited nor are scholarships awarded on the basis of need or academic achievement but for athletic prowess, the recipients having been recruited to be football players and not scholars;

(9) Many players spend more time on football-related activities than academics; and

(10) Because a sound academic program for football players may be difficult to develop due to the demands of the sport, football players are entitled to some tangible return for the strenuous work they perform and the revenue they generate for the benefit of the university.

Source: Laws 2003, LB 688, § 2.

Note: For the operative date for this section, see section 85-1,136.

85-1,133 Football players; compensation.

The Legislature further finds and declares that, in the same manner that nonathlete students are compensated for performing various tasks while a student, football players shall be entitled to fair financial compensation for playing football.

Source: Laws 2003, LB 688, § 3.

Note: For the operative date for this section, see section 85-1,136.

85-1,134 Stipends authorized.

Any person who competes in the sport of football for the University of Nebraska-Lincoln may be granted a stipend, the amount of which shall be determined by the university. In addition, the university may in its discretion grant a stipend to persons who compete in sports other than football which participate in Big Ten Conference competition.

Source: Laws 2003, LB 688, § 4; Laws 2019, LB102, § 1.

Note: For the operative date for this section, see section 85-1,136.

85-1,135 Construction of sections.

Nothing in sections 85-1,131 to 85-1,137 shall be construed to make a person a professional athlete.

Source: Laws 2003, LB 688, § 5.

Note: For the operative date for this section, see section 85-1,136.

85-1,136 Sections; when operative.

Sections 85-1,131 to 85-1,137 shall become operative whenever laws granting a similar stipend or similarly restricting hours of participation are enacted in at least four other states which have teams that compete in the Big Ten Conference or its successor.

Source: Laws 2003, LB 688, § 6; Laws 2019, LB102, § 2.

85-1,137 Alternative to stipend; requirement.

As a preferable alternative to the requirement of section 85-1,134, the University of Nebraska-Lincoln may limit the number of hours required to participate in intercollegiate athletics to such number that participation in a sport would not impede the student athlete's ability to carry a regular academic workload which will allow such student athlete to graduate in four years, will allow the student athlete adequate time to participate in the intellectual and cultural activities on campus, and further will allow the student athlete to work an average of at least twelve hours per week during the academic school year.

Source: Laws 2003, LB 688, § 7.

Note: For the operative date for this section, see section 85-1,136.

85-1,138 Transferred to section 68-962.

85-1,139 Transferred to section 68-963.

85-1,140 Transferred to section 68-964.

85-1,141 Transferred to section 68-965.

85-1,142 Transferred to section 68-966.

**ARTICLE 2
RESEARCH FACILITIES**

Section	
85-201.	Research and extension center west of 100th meridian; purpose; management.
85-202.	Research and extension center west of 100th meridian; object.
85-203.	Repealed. Laws 1951, c. 346, § 3.
85-204.	Repealed. Laws 1951, c. 346, § 3.
85-205.	Repealed. Laws 1951, c. 346, § 3.
85-205.01.	Repealed. Laws 1961, c. 284, § 1.
85-205.02.	Repealed. Laws 1961, c. 284, § 1.
85-206.	Research and extension center west of 102nd meridian; purpose; management.
85-207.	Research and extension center west of 102nd meridian; object.
85-208.	Research and extension center west of 102nd meridian; federal cooperation.
85-209.	Repealed. Laws 2011, LB 334, § 11.
85-210.	Repealed. Laws 2011, LB 334, § 11.
85-211.	Repealed. Laws 2011, LB 334, § 11.
85-212.	Repealed. Laws 2011, LB 334, § 11.
85-213.	Experiment stations; expenditures; powers of Board of Regents.
85-214.	Research and extension centers; control; employees; compensation.
85-215.	Research and extension centers; income; use.
85-216.	Testing centers; Board of Regents; control; distribution.
85-217.	Testing centers; equipment; employees; salaries; regulations.
85-218.	Testing centers; general purposes.
85-219.	Testing centers; year-to-year leases from farm owners; area; crops to be planted; renewal lease.
85-220.	Board of Regents; authority to expend money.
85-221.	Repealed. Laws 1959, c. 264, § 1.
85-222.	Repealed. Laws 1959, c. 264, § 1.

85-201 Research and extension center west of 100th meridian; purpose; management.

For the furtherance and promotion of agricultural, horticultural, and forestry interests of this state, a research and extension center shall be established west

of the one hundredth meridian in Nebraska, which center shall be under the control and management of the Board of Regents of the University of Nebraska.

Source: Laws 1903, c. 114, § 1, p. 591; R.S.1913, § 7135; C.S.1922, § 6785; C.S.1929, § 85-201; R.S.1943, § 85-201; Laws 1991, LB 663, § 74.

Experiment stations are a component part of the College of Agriculture of the University of Nebraska. State ex rel. Bushee v. Whitmore, 86 Neb. 399, 125 N.W. 606 (1910), modifying 85 Neb. 566, 123 N.W. 1051 (1909).

85-202 Research and extension center west of 100th meridian; object.

The object of the research and extension center referred to in section 85-201 shall be to determine the adaptability of the arid and semiarid portions of Nebraska to agriculture, horticulture, and forest-tree growing, such as the producing of grain, grasses, root crops, and fruits of kinds commonly grown in the same latitude in other states, and the most economical methods of producing such crops without irrigation.

Source: Laws 1903, c. 114, § 4, p. 591; R.S.1913, § 7137; C.S.1922, § 6787; C.S.1929, § 85-203; R.S.1943, § 85-202; Laws 1991, LB 663, § 75.

85-203 Repealed. Laws 1951, c. 346, § 3.

85-204 Repealed. Laws 1951, c. 346, § 3.

85-205 Repealed. Laws 1951, c. 346, § 3.

85-205.01 Repealed. Laws 1961, c. 284, § 1.

85-205.02 Repealed. Laws 1961, c. 284, § 1.

85-206 Research and extension center west of 102nd meridian; purpose; management.

For the furtherance and promotion of agricultural, horticultural, and forestry interests of this state, a research and extension center shall be established west of the one hundred second meridian in Nebraska, which center shall be under the control and management of the Board of Regents of the University of Nebraska.

Source: Laws 1909, c. 144, § 1, p. 502; R.S.1913, § 7138; C.S.1922, § 6788; C.S.1929, § 85-204; R.S.1943, § 85-206; Laws 1991, LB 663, § 76.

85-207 Research and extension center west of 102nd meridian; object.

The object of the research and extension center referred to in section 85-206 shall be to determine the adaptability of the arid and semiarid portions of Nebraska to agriculture, horticulture, and forestry, such as the producing of grain, grasses, root crops, and fruits of kinds commonly grown in the same latitude in other states, and the most economical methods of producing such crops with and without irrigation.

Source: Laws 1909, c. 144, § 4, p. 503; R.S.1913, § 7140; C.S.1922, § 6790; C.S.1929, § 85-206; R.S.1943, § 85-207; Laws 1991, LB 663, § 77.

85-208 Research and extension center west of 102nd meridian; federal cooperation.

The Board of Regents is hereby authorized and empowered to take such steps in conjunction with the authorities of the United States as it deems necessary to successfully establish the research and extension center mentioned in section 85-206.

Source: Laws 1909, c. 144, § 2, p. 503; R.S.1913, § 7139; C.S.1922, § 6789; C.S.1929, § 85-205; R.S.1943, § 85-208; Laws 1991, LB 663, § 78.

85-209 Repealed. Laws 2011, LB 334, § 11.**85-210 Repealed. Laws 2011, LB 334, § 11.****85-211 Repealed. Laws 2011, LB 334, § 11.****85-212 Repealed. Laws 2011, LB 334, § 11.****85-213 Experiment stations; expenditures; powers of Board of Regents.**

To enable the Board of Regents to carry out the provisions of sections 85-201 to 85-215, it is hereby authorized to expend such amounts as it may deem necessary from any money hereafter appropriated for each station, to carry out the spirit and intent of said sections, either by the State of Nebraska or the United States, as the case might be.

Source: Laws 1903, c. 114, § 6, p. 592; Laws 1909, c. 143, § 6, p. 502; Laws 1909, c. 144, § 6, p. 503; R.S.1913, § 7144; C.S.1922, § 6794; Laws 1929, c. 15, § 5, p. 96; C.S.1929, § 85-210; R.S. 1943, § 85-213.

85-214 Research and extension centers; control; employees; compensation.

The Board of Regents shall have control and supervision of the research and extension centers established by sections 85-201 and 85-206 and shall appoint skillful superintendents and such other employees as to it appears necessary to obtain the best results. The board shall fix the salaries and compensation of employees and establish such rules and regulations as it may from time to time deem best.

Source: Laws 1903, c. 114, § 3, p. 591; Laws 1909, c. 143, § 3, p. 501; Laws 1909, c. 144, § 3, p. 503; R.S.1913, § 7145; C.S.1922, § 6795; Laws 1929, c. 15, § 2, p. 96; C.S.1929, § 85-211; R.S. 1943, § 85-214; Laws 1959, c. 461, § 1, p. 1529; Laws 1991, LB 663, § 82; Laws 2011, LB334, § 7.

85-215 Research and extension centers; income; use.

The proceeds arising from the sale of products of the research and extension centers provided for in sections 85-201 and 85-206 shall be applied to the liquidation of the running expenses of the research and extension centers from which they are sold, and all money so accruing shall be credited as coming from the state and be applied as a part or whole payment of any amount which

may be appropriated from the funds of the state for the maintenance of such research and extension centers.

Source: Laws 1903, c. 114, § 5, p. 591; Laws 1909, c. 143, § 5, p. 502; Laws 1909, c. 144, § 5, p. 503; R.S.1913, § 7146; C.S.1922, § 6796; Laws 1929, c. 15, § 4, p. 96; C.S.1929, § 85-212; R.S. 1943, § 85-215; Laws 1959, c. 461, § 2, p. 1529; Laws 1991, LB 663, § 83; Laws 2011, LB334, § 8.

85-216 Testing centers; Board of Regents; control; distribution.

For the promotion and furtherance of the agricultural interests in the different areas of this state, experimental testing centers may be established for the purpose of carrying out a crops-and-soil testing program. Such testing centers shall be under the control and management of the Board of Regents of the University of Nebraska and shall be distributed throughout the state in order to determine the effect that variation in soils, rainfall, temperature, growing season, altitude and other factors have in the production of crops in all portions of the state.

Source: Laws 1943, c. 5, § 1, p. 60; R.S.1943, § 85-216.

85-217 Testing centers; equipment; employees; salaries; regulations.

The Board of Regents of the University of Nebraska, through the Director of the Agricultural Experimental Station, shall have control and supervision of such testing centers and shall appoint such employees and purchase such equipment as shall appear to it to be necessary to obtain the best results. The board shall fix the salaries and compensation of employees, and establish such rules and regulations as it may, from time to time, deem necessary.

Source: Laws 1943, c. 5, § 2, p. 60; R.S.1943, § 85-217.

85-218 Testing centers; general purposes.

The object of such experimental testing stations shall be to study and demonstrate, both without and under irrigation, cropping systems suitable to the area, fertilization practices, methods of water distribution, the production of new crops, crop variety tests and such other matters as may be deemed best to develop the agricultural interests of the state.

Source: Laws 1943, c. 5, § 3, p. 60; R.S.1943, § 85-218.

85-219 Testing centers; year-to-year leases from farm owners; area; crops to be planted; renewal lease.

The Board of Regents of the University of Nebraska is authorized to enter into agreements with the owners of farms in this state for the leasing of testing centers. The farms chosen shall each be typical of the area selected as a location for such a testing center. The total area of each of such testing centers shall not be more than is adequate and necessary to best carry out the interest and purpose of sections 85-216 to 85-220. Upon such testing centers there shall be planted, cultivated and harvested, under the supervision and direction of the Department of Agronomy of the University of Nebraska, such crops as will, through experimentation, develop and demonstrate the best crops to be grown in such area and the best farm practices for use in connection therewith. Such agreements for the leasing of testing centers may provide for the performance

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of such work by the farm owner, in connection therewith, as may be deemed essential. They shall be entered into upon a year-to-year basis and contain a provision for renewal at the option of the Board of Regents.

Source: Laws 1943, c. 5, § 4, p. 60; R.S.1943, § 85-219.

85-220 Board of Regents; authority to expend money.

To enable the Board of Regents to carry out the provisions of sections 85-216 to 85-219, it is hereby authorized to expend such amount of money as it deems necessary from any money hereafter appropriated to carry out the spirit and intent of said sections.

Source: Laws 1943, c. 5, § 5, p. 61; R.S.1943, § 85-220.

85-221 Repealed. Laws 1959, c. 264, § 1.

85-222 Repealed. Laws 1959, c. 264, § 1.

ARTICLE 3
STATE COLLEGES

Cross References

Constitutional provisions:

Governing board:

Appointment, confirmation, terms, no compensation, see Article VII, section 13, Constitution of Nebraska.

Commissioner of Education, member ex officio, see Article VII, section 13, Constitution of Nebraska.

High school equivalency diploma, acceptance, see section 79-733.

Retirement annuity contracts, authority to purchase, see section 85-606.01.

State Department of Education, loans to needy students, source, limitations, see section 79-2,106.

Section

- 85-301. State colleges; official names; board of trustees; appointment; expenses.
85-302. Board of trustees; officers; body corporate; audit.
85-303. Repealed. Laws 2022, LB887, § 13.
85-304. Board of trustees; powers and duties, enumerated.
85-304.01. Nebraska State Colleges; new capital construction; appropriation; percentage used for works of art; when.
85-304.02. Board of trustees; works of art; duties.
85-304.03. Board of trustees; insure compliance with sections; manner.
85-305. Board of trustees; meetings.
85-306. State colleges; president; duties.
85-307. State colleges; president; collection of fees.
85-308. State colleges; purpose; courses.
85-308.01. State colleges; degree of bachelor of arts or bachelor of science; confer.
85-309. Board of trustees; memorandum of understanding with State Board of Education; policy to share student data.
85-310. State colleges; students; admission.
85-311. Repealed. Laws 2022, LB887, § 13.
85-312. Repealed. Laws 2022, LB887, § 13.
85-313. Repealed. Laws 1963, c. 491, § 13.
85-314. Board of trustees; rules and regulations.
85-315. Board of trustees; utilities service; sale or lease.
85-316. State colleges; funds; contingencies; disbursements; travel expense.
85-317. State colleges; endowment fund; source; investment.
85-317.01. State colleges; endowments and gifts; acceptance.
85-318. State colleges; dormitory funds; use.
85-319. Eminent domain; powers of board of trustees; procedure.
85-320. State colleges; retirement plan; establishment; terms; investment of funds.
85-321. Repealed. Laws 1987, LB 31, § 6.
85-322. State College Buildings Renovation and Land Acquisition Fund; created; authorized uses.

Section	
85-323.	Building renovation and land acquisition projects; board of trustees; powers.
85-324.	State College Facilities Improvement Fund; created; authorized uses.
85-325.	Construction projects; board of trustees; powers.
85-326.	State College Facility Fund; created; authorized uses.
85-327.	Wayne State College construction project; board of trustees; powers.
85-328.	State College Capital Improvement Fee Fund; created; use; investment.
85-329.	State Colleges Sport Facilities Cash Fund; created; use; investment.
85-330.	Risk-loss trusts authorized; requirements; applicability of provisions; Attorney General; State Claims Board; duties.
85-331.	Wayne State College; Legislative intent to appropriate funds for cooperative programs.

85-301 State colleges; official names; board of trustees; appointment; expenses.

The existing institutions known as the state colleges located at Chadron, Peru, and Wayne shall hereafter be known and designated as Chadron State College, Peru State College, and Wayne State College, respectively. The general government thereof shall be vested, under the direction of the Legislature, in a board of seven members, to be known as the Board of Trustees of the Nebraska State Colleges, six of whom shall be appointed by the Governor, with the advice and consent of the Legislature, two each for terms of two, four, and six years and two each biennium thereafter for terms of six years, and the Commissioner of Education shall be a member ex officio. The duties and powers of the board shall be prescribed by law, and the members thereof shall receive no compensation for the performance of their duties but may be reimbursed for actual expenses incurred therein.

Source: Laws 1881, c. 78, sub. XIII, § 1, p. 372; R.S.1913, § 7057; Laws 1921, c. 67, § 1, p. 257; C.S.1922, § 6692; C.S.1929, § 85-301; Laws 1933, c. 96, § 25, p. 402; Laws 1941, c. 180, § 13, p. 708; C.S.Supp.,1941, § 85-301; R.S.1943, § 85-301; Laws 1949, c. 315, § 1, p. 1035; Laws 1963, c. 542, § 1, p. 1689; Laws 1969, c. 852, § 2, p. 3200; Laws 1988, LB 864, § 69; Laws 1989, LB 247, § 22; Laws 2020, LB381, § 138; Laws 2022, LB887, § 1.

Terms of office are established for members of board. State ex rel. Johnson v. Hagemeister, 161 Neb. 475, 73 N.W.2d 625 (1955).

85-302 Board of trustees; officers; body corporate; audit.

The members of the Board of Trustees of the Nebraska State Colleges shall annually elect a president and vice president from among their own number. The board shall constitute a body corporate to be known as the Board of Trustees of the Nebraska State Colleges, and as such may sue and be sued, and may make and use a common seal and alter the same at its pleasure. The board shall also select a secretary who shall keep an exact and detailed account of the activities of the board. The State Treasurer shall be treasurer of the board by virtue of the office. A complete and comprehensive annual audit shall be made of the books, accounts, funds, records, and affairs of the board and each of the state colleges.

Source: Laws 1881, c. 78, sub. XIII, § 2, p. 373; R.S.1913, § 7058; C.S.1922, § 6693; C.S.1929, § 85-302; Laws 1943, c. 229, § 1, p.

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776; R.S.1943, § 85-302; Laws 1969, c. 852, § 3, p. 3200; Laws 1969, c. 845, § 2, p. 3184; Laws 1973, LB 130, § 1; Laws 2005, LB 426, § 21; Laws 2022, LB887, § 2.

85-303 Repealed. Laws 2022, LB887, § 13.

85-304 Board of trustees; powers and duties, enumerated.

(1) The Board of Trustees of the Nebraska State Colleges shall have the power:

(a) To appoint a president and such other persons as may be required for each state college;

(b) To fix their compensation and prescribe their duties;

(c) To remove all persons appointed, but the affirmative votes of four members of the board shall be necessary to remove a president or an assistant during the time for which such persons were appointed;

(d) Through an extension division, to provide for holding of classes at various localities throughout the state, avoiding unnecessary duplication of courses offered by other educational institutions in such localities;

(e) To acquire real and personal property and dispose of the same whenever any of the state colleges will be benefited thereby, but no grounds upon which any buildings of any of the state colleges are located shall be disposed of without the consent of the Legislature;

(f) To pay expenses for recruitment of academic, administrative, professional, and managerial personnel; and

(g) To provide benefits for all present and future employees, including group life insurance, group hospital-medical insurance, and group long-term disability income insurance.

(2) The board shall have the duty:

(a) To institute a continuing program of preventive maintenance and a program of deferred maintenance consistent with the provisions of the Deferred Building Renewal Act; and

(b) To consult with the Nebraska Arts Council and acquire works of art for the original construction of any public building under its supervision consistent with sections 82-317 to 82-329 and 85-304 to 85-304.03.

Source: Laws 1881, c. 78, sub. XIII, § 4, p. 373; R.S.1913, § 7060; C.S.1922, § 6695; C.S.1929, § 85-304; Laws 1937, c. 212, § 1, p. 849; C.S.Supp.,1941, § 85-304; R.S.1943, § 85-304; Laws 1959, c. 462, § 1, p. 1530; Laws 1963, c. 542, § 2, p. 1690; Laws 1969, c. 852, § 4, p. 3201; Laws 1973, LB 248, § 3; Laws 1973, LB 423, § 2; Laws 1977, LB 309, § 21; Laws 1978, LB 664, § 13; Laws 2022, LB887, § 3.

Cross References

Deferred Building Renewal Act, see section 81-190.

Where teacher was dismissed by letter from president of state normal school, quo warranto was a proper remedy to test whether dismissal was effective. *Eason v. Majors*, 111 Neb. 288, 196 N.W. 133 (1923).

Upon showing that college administrative body acted from honest conviction upon belief facts showed it was for best

interests of the school, and there was no showing that act was arbitrary or generated by ill will, fraud, coercion, or other such motives, court will not interfere. *Levitt v. Board of Trustees of Nebraska State Colleges*, 376 F.Supp. 945 (D. Neb. 1974).

85-304.01 Nebraska State Colleges; new capital construction; appropriation; percentage used for works of art; when.

After January 1, 1979, at least one percent of any appropriation for the original construction of any public building under the supervision of the Board of Trustees of the Nebraska State Colleges shall be spent for the acquisition of works of art. The works of art may be an integral part of the structure, attached to the structure, detached within or outside of the structure, or may be exhibited by the Board of Trustees of the Nebraska State Colleges in other public facilities.

Source: Laws 1978, LB 664, § 14.

85-304.02 Board of trustees; works of art; duties.

The Board of Trustees of the Nebraska State Colleges, in consultation with the Nebraska Arts Council, shall determine the amount of money to be made available for the purchases of art for each project under its supervision. The selection of, commissioning of artists for, reviewing of design, execution and placement of, and the acceptance of works of art for each project shall be the responsibility of the Board of Trustees of the Nebraska State Colleges in consultation with the Nebraska Arts Council.

Source: Laws 1978, LB 664, § 15.

85-304.03 Board of trustees; insure compliance with sections; manner.

The Board of Trustees of the Nebraska State Colleges shall inform the Director of Administrative Services that sections 82-317 to 82-329 and 85-304 to 85-304.03 have been complied with for projects under its supervision before a warrant may be issued for payment.

Source: Laws 1978, LB 664, § 16; Laws 2022, LB887, § 4.

85-305 Board of trustees; meetings.

The Board of Trustees of the Nebraska State Colleges shall hold regular meetings and such special meetings as may be found necessary.

Source: Laws 1881, c. 78, sub. XIII, § 6, p. 374; R.S.1913, § 7062; C.S.1922, § 6697; C.S.1929, § 85-306; R.S.1943, § 85-305; Laws 2022, LB887, § 5.

85-306 State colleges; president; duties.

The president of each state college shall be the chief executive officer thereof and shall be responsible to the Board of Trustees of the Nebraska State Colleges for the control and management of the same. All faculty and other employees of each state college shall be under the direction of the president thereof, subject to the general regulations of the board.

Source: Laws 1881, c. 78, sub. XIII, § 8, p. 374; R.S.1913, § 7065; C.S.1922, § 6700; C.S.1929, § 85-309; Laws 1937, c. 212, § 2, p. 849; C.S.Supp.,1941, § 85-309; R.S.1943, § 85-306; Laws 1969, c. 852, § 5, p. 3201; Laws 2022, LB887, § 6.

85-307 State colleges; president; collection of fees.

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The president of each state college shall receive and collect fees for board and room and such other fees as may be payable to such state college and shall disburse the same under direction of the Board of Trustees of the Nebraska State Colleges and according to law.

Source: Laws 1937, c. 212, § 3, p. 850; C.S.Supp.,1941, § 85-320; R.S. 1943, § 85-307; Laws 1967, c. 36, § 9, p. 165; Laws 1969, c. 852, § 6, p. 3201; Laws 2022, LB887, § 7.

85-308 State colleges; purpose; courses.

The purpose of the state colleges is the training and instruction of persons in the arts of teaching and managing schools, the principles and practice of the various branches of learning taught in our public schools, and the arts and sciences generally. The Board of Trustees of the Nebraska State Colleges shall have power to prescribe, for the state colleges, such courses of instruction as will best fit such persons for teaching and managing the public schools and their instruction in the arts and sciences generally as provided in sections 85-308 and 85-917 to 85-966.

Source: Laws 1881, c. 78, sub. XIII, § 15, p. 376; R.S.1913, § 7072; Laws 1921, c. 65, § 1, p. 252; C.S.1922, § 6707; C.S.1929, § 85-316; Laws 1937, c. 212, § 5, p. 850; C.S.Supp.,1941, § 85-316; R.S. 1943, § 85-308; Laws 1949, c. 315, § 2(1), p. 1035; Laws 1969, c. 852, § 7, p. 3202; Laws 1978, LB 756, § 55; Laws 1996, LB 900, § 1078; Laws 2017, LB512, § 23; Laws 2022, LB887, § 8.

85-308.01 State colleges; degree of bachelor of arts or bachelor of science; confer.

The Board of Trustees of the Nebraska State Colleges shall have power to confer, upon completion of a four-year course in liberal arts prescribed by such board, a degree of bachelor of arts or bachelor of science.

Source: Laws 1949, c. 315, § 2(2), p. 1036; Laws 1965, c. 579, § 1, p. 1870; Laws 2022, LB887, § 9.

85-309 Board of trustees; memorandum of understanding with State Board of Education; policy to share student data.

The Board of Trustees of the Nebraska State Colleges shall enter into a memorandum of understanding on or before September 1, 2010, with the State Board of Education to adopt a policy to share student data. At a minimum, the policy shall ensure that the exchange of information is conducted in conformance with the requirements of the federal Family Educational Rights and Privacy Act of 1974, as amended, 20 U.S.C. 1232g, and all federal regulations and applicable guidelines adopted in accordance with such act, as such act, regulations, and guidelines existed on January 1, 2010.

Source: Laws 2010, LB1071, § 35.

85-310 State colleges; students; admission.

The board shall make such rules and regulations for the admission of students to the state colleges as may seem to be best for the interest of the state

colleges and not inconsistent with the purpose for which they have been established.

Source: Laws 1881, c. 78, sub. XIII, § 16, p. 376; Laws 1907, c. 127, § 1, p. 423; Laws 1911, c. 121, § 1, p. 423; R.S.1913, § 7073; C.S. 1922, § 6708; C.S.1929, § 85-317; Laws 1937, c. 212, § 6, p. 850; C.S.Supp.,1941, § 85-317; R.S.1943, § 85-310; Laws 1969, c. 852, § 8, p. 3202.

Board cannot arbitrarily refuse admission to or continuance in normal school. Jackson v. State ex rel. Majors, 57 Neb. 183, 77 N.W. 662 (1898).

85-311 Repealed. Laws 2022, LB887, § 13.

85-312 Repealed. Laws 2022, LB887, § 13.

85-313 Repealed. Laws 1963, c. 491, § 13.

85-314 Board of trustees; rules and regulations.

The board shall adopt all needful rules and regulations for the careful preservation of the buildings, furniture, apparatus, grounds, timber, shrubbery, and other property belonging to the state college.

Source: Laws 1881, c. 78, sub. XIII, § 7, p. 374; R.S.1913, § 7063; C.S.1922, § 6698; C.S.1929, § 85-307; R.S.1943, § 85-314; Laws 1969, c. 852, § 10, p. 3202.

85-315 Board of trustees; utilities service; sale or lease.

The board of trustees is hereby empowered and authorized to make such contract of sale or lease of the whole or part of any water, light or heat plant now or hereafter constructed at any state college, and the purchase of water, heat and light, with any city, village or corporation at or near which is located any state college, as shall in the judgment of the board be to the best interest of said state college.

Source: Laws 1913, c. 194, § 1, p. 572; R.S.1913, § 7064; C.S.1922, § 6699; C.S.1929, § 85-308; R.S.1943, § 85-315; Laws 1969, c. 852, § 11, p. 3202.

85-316 State colleges; funds; contingencies; disbursements; travel expense.

All funds appropriated for the use and benefit of the state colleges together with the income arising from the lease and sale of endowment lands belonging to such colleges shall be under the direction and control of the board of trustees, subject to the provisions contained in this section, except that each college may retain in its possession a sum not to exceed fifty thousand dollars out of which to make settlement and equitable adjustments with students entitled thereto, to make payments for day-to-day operations calling for immediate payment, and to provide for contingencies. The State Treasurer shall pay out of the proper funds all warrants for money to be expended under sections 85-301 to 85-318, such warrants to be drawn by the Director of Administrative Services on certificates by the president of the state college. All requests for payment or reimbursement for mileage or other traveling expense shall be audited and allowed on the basis of the provisions set forth in sections 81-1174 to 81-1177. No expenditure for traveling expenses to other states shall be

authorized by the board for any college employee unless approval for such trip is first granted by the president or his or her designee. The request shall be submitted to the president of such state college or his or her designee and approved in writing by him or her.

Source: Laws 1881, c. 78, sub. XIII, § 11, p. 375; R.S.1913, § 7068; C.S.1922, § 6703; C.S.1929, § 85-312; Laws 1933, c. 96, § 26, p. 402; Laws 1941, c. 180, § 14, p. 709; C.S.Supp.,1941, § 85-312; R.S.1943, § 85-316; Laws 1951, c. 347, § 1, p. 1136; Laws 1957, c. 399, § 1, p. 1366; Laws 1963, c. 542, § 3, p. 1690; Laws 1965, c. 580, § 1, p. 1871; Laws 1969, c. 852, § 12, p. 3203; Laws 1986, LB 912, § 1; Laws 1988, LB 864, § 70; Laws 1989, LB 398, § 1; Laws 2005, LB 426, § 22.

85-317 State colleges; endowment fund; source; investment.

All the lands remaining unsold of the twenty sections appropriated as an endowment fund for the state colleges and all the endowment fund derived from the sale of such lands are hereby confirmed as such endowment, to be forever used for this purpose. All such money derived from federal grants shall be invested in the manner provided by law for the investment of the permanent school fund of the state, in the same kind of securities and by the same officers charged with that duty pursuant to section 72-202 as may from time to time be amended by the Legislature.

Source: Laws 1881, c. 78, sub. XIII, § 12, p. 375; R.S.1913, § 7069; C.S.1922, § 6704; C.S.1929, § 85-315; R.S.1943, § 85-317; Laws 1947, c. 354, § 1(1), p. 1105; Laws 1969, c. 852, § 13, p. 3203; Laws 1983, LB 238, § 3.

85-317.01 State colleges; endowments and gifts; acceptance.

The Board of Trustees of the Nebraska State Colleges is authorized to receive, upon behalf of any of such state colleges and upon such terms and conditions as may be imposed, such gifts and endowments as the board may decide to accept. Such board shall be trustees of any such gifts and endowments.

Source: Laws 1947, c. 354, § 1(2), p. 1105; Laws 1969, c. 852, § 14, p. 3204.

85-318 State colleges; dormitory funds; use.

All money received for the use of rooms in the dormitories of any of the state colleges, shall be expended by the board in repairs of such dormitory and the furniture of the same, whenever such repairs are needed.

Source: Laws 1881, c. 78, sub. XIII, § 14, p. 376; R.S.1913, § 7071; C.S.1922, § 6706; C.S.1929, § 85-315; R.S.1943, § 85-318; Laws 1969, c. 852, § 15, p. 3204.

85-319 Eminent domain; powers of board of trustees; procedure.

The Board of Trustees of the Nebraska State Colleges is hereby given power and authority to acquire by condemnation lands necessary for state colleges. The procedure to condemn such property shall be exercised in the manner set forth in Chapter 76, article 7.

Source: Laws 1953, c. 365, § 1, p. 1144; Laws 1969, c. 852, § 16, p. 3204.

85-320 State colleges; retirement plan; establishment; terms; investment of funds.

The Board of Trustees of the Nebraska State Colleges shall have power, in its discretion, to provide retirement benefits for present and future employees of the board, subject to the following: (1) The cost of such retirement benefits shall be funded in accordance with sound actuarial principles with the necessary contributions for both past service and future service being treated in the budgets in the same way as any other operating expense, (2) the state contribution under such retirement plan shall be (a) the amount established by the board before any agreement for reduction of salary or wage earnings, and (b) pursuant to an agreement for reduction of salary or wage earnings, the amount of the reduction of salary or wage earnings, (3) each employee's contribution shall be the amount established by the board and shall not be required to exceed the state's contribution under subdivision (2)(a) of this section, except that in lieu of making such contribution, each such employee may enter into an agreement for reduction of salary or wages for the purchase by the board of annuity contracts for such employee, under the provisions of the Internal Revenue Code, but the amount of the reduction of salary or wages allowable under this subdivision may not include credit for service prior to January 1, 1973, (4) continued contributions to the system shall be made until the date of retirement as provided in section 85-606, and (5) the retirement benefits of any employee for service prior to the effective date of any retirement plan established under the provisions of this section shall be those provided under the retirement plan then in force which benefits shall not be abridged. The investment for such a retirement plan shall be made by the state investment officer, but the state investment officer shall not change the type of investment for such retirement plan without the approval of the Board of Trustees of the Nebraska State Colleges.

Source: Laws 1963, c. 539, § 1, p. 1685; Laws 1967, c. 621, § 2, p. 2084; Laws 1969, c. 852, § 17, p. 3204; Laws 1969, c. 849, § 4, p. 3194; Laws 1969, c. 584, § 130, p. 2430; Laws 1973, LB 423, § 3; Laws 1980, LB 817, § 3; Laws 1981, LB 463, § 3; Laws 1995, LB 574, § 90.

85-321 Repealed. Laws 1987, LB 31, § 6.**85-322 State College Buildings Renovation and Land Acquisition Fund; created; authorized uses.**

(1) There is hereby created a State College Buildings Renovation and Land Acquisition Fund. All money accruing to this fund is hereby appropriated to the Board of Trustees of the Nebraska State Colleges and shall be used exclusively for those projects of repair, remodeling, and renovation of buildings belonging to the state colleges and for those land acquisition projects of the state colleges pursuant to this section as long as no such repair, remodeling, or renovation project specified in subsection (2) of this section provides for construction of an addition to any building, unless required by any federal law or law of this state relating to building safety or relating to building access for handicapped persons. No expenditure may be made from such fund without prior approval by a resolution of the Board of Trustees of the Nebraska State Colleges.

(2) The Board of Trustees of the Nebraska State Colleges is authorized to make expenditures from the State College Buildings Renovation and Land

Acquisition Fund for the following projects and associated expenses: (a) Repair, remodel, and renovate the east wing of the West Center Main Building at Kearney State College, one million one hundred three thousand one hundred four dollars; (b) repair, remodel, and renovate the Fine Arts Building at Chadron State College, nine hundred ninety thousand dollars; (c) acquire certain real property for public use by Kearney State College, three hundred seventy thousand dollars; and (d) administrative and financing costs associated with any contract which the board of trustees may enter into pursuant to this section to implement any of the projects listed in subdivisions (a) through (c) of this subsection, not to exceed eighteen thousand dollars.

(3) In addition to those building repair, remodeling, or renovation projects and land acquisition projects specifically listed in this section, the Board of Trustees of the Nebraska State Colleges is further authorized to make expenditures from the State College Buildings Renovation and Land Acquisition Fund, which shall include any investment income received from the investment of such fund, for other building repair, remodeling, or renovation project or land acquisition project which shall be specifically approved by the Legislature.

Source: Laws 1983, LB 410, § 6; Laws 1991, LB 693, § 1.

85-323 Building renovation and land acquisition projects; board of trustees; powers.

(1) In order to accomplish any projects authorized by section 85-322, the Board of Trustees of the Nebraska State Colleges may enter into contracts with any person, firm, or corporation providing for the implementation of any such project of the state colleges and providing for the long-term payment of the cost of such project from the State College Buildings Renovation and Land Acquisition Fund. In no case shall any such contract for the projects specified in subsection (2) of section 85-322 run for a period longer than ten years or exceed two million four hundred eighty-one thousand one hundred four dollars. The board of trustees shall not pledge the credit of the State of Nebraska for the payment of any sum owing on account of such contract, except that there may be pledged for the payment of any such contract any appropriations specifically made by the Legislature for such purpose. No contract shall be entered into pursuant to this section without prior approval by a resolution of the board of trustees.

(2) The Board of Trustees of the Nebraska State Colleges may also convey or lease and lease back all or any part of the projects authorized by section 85-322 and the land on which such projects are situated to such person, firm, or corporation as the board of trustees may contract with pursuant to this section to facilitate the long-term payment of the costs of such projects. Any such conveyance or lease shall provide that when the cost of such projects has been paid, together with interest and other costs thereon, such projects and the land on which such projects are located shall become the property of the board of trustees.

Source: Laws 1983, LB 410, § 7; Laws 1991, LB 693, § 2.

85-324 State College Facilities Improvement Fund; created; authorized uses.

There is hereby created the State College Facilities Improvement Fund. All money accruing to the fund is hereby appropriated to the Board of Trustees of the Nebraska State Colleges and shall be used exclusively for those construction

projects of the state colleges authorized pursuant to this section. No expenditure may be made from such fund without prior approval by a resolution of the board of trustees.

The board of trustees may make expenditures from the State College Facilities Improvement Fund for the following projects: (1) Renovation of the T.J. Majors Education Building at Peru State College, two million twenty-five thousand dollars; and (2) renovation of, and construction of an addition to, Cushing Coliseum at Kearney State College, eight million five hundred and ninety-eight thousand ninety-eight dollars. The board of trustees may make additional expenditures for the project listed in subdivision (2) of this section in an amount not to exceed two million two hundred and ninety-five thousand dollars from private sources and non-state-aided institutional sources. The cost for each project listed in this section shall be exclusive of sums previously expended for planning and any administrative costs and financing costs associated with any contract which the board of trustees may enter into pursuant to this section and section 85-325 to implement any of the projects listed in this section.

The board of trustees may make expenditures for the purposes stated in this section from investment income balances in the State College Facilities Improvement Fund. The board of trustees may make expenditures from such fund in amounts which, in combination with interest accrued on any construction funds and reserve funds created as part of a long-term contract entered into by the board of trustees pursuant to section 85-325, are sufficient to satisfy the financial obligations incurred in such contracts entered into by the board of trustees. Any balance existing in the State College Facilities Improvement Fund, any reserve funds, or any other funds created as part of a long-term contract entered into by the board of trustees pursuant to section 85-325 shall be transferred to the General Fund either on June 15, 1998, or when all financial obligations incurred in the contracts entered into by the board of trustees pursuant to section 85-325 are discharged, whichever occurs first.

Source: Laws 1987, LB 218, § 5; Laws 1988, LB 38, § 3.

85-325 Construction projects; board of trustees; powers.

In order to accomplish any projects authorized by section 85-324, the Board of Trustees of the Nebraska State Colleges may enter into contracts with any person, firm, or corporation providing for the implementation of any such project of the state colleges and providing for the long-term payment of the cost of such project from the State College Facilities Improvement Fund. In no case shall any such contract run for a period longer than eleven years or exceed twelve million six hundred twenty-three thousand ninety-eight dollars exclusive of administrative costs, credit enhancement costs, financing costs, capitalized interest, and reserves dedicated to secure payment of contracts. The board of trustees shall not pledge the credit of the State of Nebraska for the payment of any sum owing on account of such contract, except that there may be pledged for the payment of any such contract any appropriations specifically made by the Legislature for such purpose. No contract shall be entered into pursuant to this section without prior approval by a resolution of the board of trustees. The board of trustees may also convey or lease and lease back all or any part of the projects authorized by section 85-324 and the land on which such projects are situated to such person, firm, or corporation as the board of trustees may

contract with pursuant to this section to facilitate the long-term payment of the cost of such projects. Any such conveyance or lease shall provide that when the cost of such projects has been paid, together with interest and other costs thereon, such projects and the land on which such projects are located shall become the property of the board of trustees.

Source: Laws 1987, LB 218, § 6.

85-326 State College Facility Fund; created; authorized uses.

There is hereby created a State College Facility Fund. All money accruing to the fund is hereby appropriated to the Board of Trustees of the Nebraska State Colleges and shall be used exclusively for the construction project authorized in this section. No expenditures may be made from such fund without prior approval by a resolution of the Board of Trustees.

The Board of Trustees is authorized to make expenditures from the State College Facility Fund for the following project and associated expenses: Construction of a classroom and laboratory facility to house the Division of Business at Wayne State College, three million nine hundred twenty-five thousand five hundred twenty dollars. The cost limitation set forth in this section shall be exclusive of sums previously expended from other sources for planning and administrative costs, financing costs, and other costs associated with any contract which the Board of Trustees may enter into pursuant to this section and section 85-327 to implement the project listed in this section. The Board of Trustees shall record and report, on the Nebraska State Accounting System, expenditure of amounts from the State College Facility Fund and expenditure of proceeds arising from any contract entered into pursuant to this section and section 85-327 in such manner and format as prescribed by the Department of Administrative Services.

The Board of Trustees is authorized to make expenditures for the purposes stated in this section from investment income balances in the State College Facility Fund. Any balance existing in the State College Facility Fund or in any reserve funds created as part of a long-term contract entered into by the Board of Trustees pursuant to section 85-327 shall be transferred to the General Fund either on July 15, 1997, or when all financial obligations incurred in the contracts entered into by the Board of Trustees pursuant to section 85-327 are discharged, whichever occurs first. Any balance existing in any reserve funds created as part of a long-term contract entered into by the Board of Trustees pursuant to section 85-327 in excess of such level as may be required by such contract shall be annually transferred to the General Fund on July 15.

Source: Laws 1992, Third Spec. Sess., LB 9, § 5.

85-327 Wayne State College construction project; board of trustees; powers.

In order to accomplish the project authorized by section 85-326, the Board of Trustees of the Nebraska State Colleges may enter into contracts with any person, firm, or corporation providing for the long-term payment of the cost of such project from the State College Facility Fund. In no case shall any such contract extend for a period beyond July 15, 1997, or obligate payments beyond those which may be satisfied with funds available pursuant to sections 77-2602 and 85-326. The Board of Trustees shall not pledge the credit of the State of Nebraska for the payment of any sum owing on account of such contract, except that there may be pledged for the payment of any such contract any

appropriations specifically made by the Legislature for such purpose. No contract shall be entered into pursuant to this section without prior approval by a resolution of the Board of Trustees. The Board of Trustees may also convey or lease and lease back all or any part of the project authorized by section 85-326 and the land on which such project is situated to such person, firm, or corporation as the Board of Trustees may contract with pursuant to this section to facilitate the long-term payment of the cost of such project. Any such conveyance or lease shall provide that when the cost of such project has been paid, together with interest and other costs thereon, such project and the land on which such project is located shall become the property of the Board of Trustees.

Source: Laws 1992, Third Spec. Sess., LB 9, § 6.

85-328 State College Capital Improvement Fee Fund; created; use; investment.

The State College Capital Improvement Fee Fund is created. Revenue credited to the fund shall include amounts generated through assessment of a capital improvement fee under the authority of the Board of Trustees of the Nebraska State Colleges. Amounts accumulated in the fund are authorized to be expended for the purpose of paying the cost of capital improvement projects approved by the board of trustees for any facilities on campuses or lands owned or controlled by the board, except that no such amounts shall be expended for capital improvement projects relating to facilities from which revenue is derived and pledged for the retirement of revenue bonds issued under sections 85-403 to 85-411. All money accruing to the fund is appropriated to the board of trustees and shall be used for capital improvement projects authorized by the board. No expenditure may be made from the fund without prior approval by a resolution of the board of trustees. 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. All revenue, fund balances, and expenditures shall be recorded in the Nebraska State Accounting System.

Source: Laws 1998, LB 1129, § 34; Laws 2023, LB705, § 110.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

85-329 State Colleges Sport Facilities Cash Fund; created; use; investment.

The State Colleges Sport Facilities Cash Fund is created. The fund shall be administered by the Board of Trustees of the Nebraska State Colleges. The fund shall include transfers from the Civic and Community Center Financing Fund, revenue received from gifts, grants, bequests, donations, other similar donation arrangements, or other contributions from public or private sources, and such other revenue as may accrue to the State Colleges Sport Facilities Cash Fund. Expenditures from the fund are authorized to support renovation and construction of or improvements to facilities for intercollegiate athletics and student fitness, recreation, and sport activities at the Nebraska state colleges. Any money in the fund available for investment shall be invested by the state

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investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2012, LB969, § 3.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

85-330 Risk-loss trusts authorized; requirements; applicability of provisions; Attorney General; State Claims Board; duties.

(1) The Board of Trustees of the Nebraska State Colleges may establish, maintain, and administer one or more risk-loss trusts for the purpose of paying losses and expenses incurred by the state colleges from (a) general and professional liability, including, but not limited to, judgments, awards, and settlements of claims and suits arising under state or federal law, including, but not limited to, the State Contract Claims Act, the State Miscellaneous Claims Act, and the State Tort Claims Act, (b) damage, destruction, or loss of real or personal property, and (c) errors and omissions liability. Any such risk-loss trust shall contain provisions relating to defense and settlement of claims and suits covered by the trust. No risk-loss trust established pursuant to this section shall be a member of the Nebraska Property and Liability Insurance Guaranty Association.

(2) Whenever any claim or suit against the state colleges or any of the officers, agents, or employees of the state colleges is covered by a risk-loss trust established pursuant to this section, the provisions of such trust on defense and settlement of claims and suits covered by the trust shall be applicable notwithstanding any inconsistent provisions of the State Tort Claims Act. The Attorney General and State Claims Board shall cooperate with the state colleges in administering the defense and settlement provisions of any such trust.

Source: Laws 2022, LB1092, § 1.

Cross References

State Contract Claims Act, see section 81-8,302.

State Miscellaneous Claims Act, see section 81-8,294.

State Tort Claims Act, see section 81-8,235.

85-331 Wayne State College; Legislative intent to appropriate funds for cooperative programs.

It is the intent of the Legislature to appropriate fifty thousand dollars for fiscal year 2022-23 from the General Fund to the Board of Trustees of the Nebraska State Colleges for cooperative programs with Wayne State College.

Source: Laws 2022, LB902, § 7.

ARTICLE 4

CAMPUS BUILDINGS AND FACILITIES

- Section 85-401. Board of Regents; Board of Trustees; campus buildings and facilities; lease-purchase agreements authorized; conditions.
- 85-402. Campus buildings and facilities; pledge of income and appropriations authorized; limitations.
- 85-403. Campus buildings and facilities; construction, purchase, or repair; revenue bonds; authorized; not obligation of state or governing board; investment of proceeds.

- Section
- 85-403.01. Legislative findings.
- 85-403.02. Repealed. Laws 1988, LB 802, § 41.
- 85-404. Dormitories; housing facilities; parking facilities; other facilities; revenue bonds; issuance; approval by Legislature.
- 85-405. Campus buildings and facilities; revenue bonds; registration; place of payment.
- 85-406. Campus buildings and facilities; revenue bonds; proceeds; use.
- 85-407. Campus buildings and facilities; refunding bonds; authorized.
- 85-408. Dormitories; housing facilities; other facilities; rates, fees, or charges; pledge for payment of bonds; surplus; approval by Legislature.
- 85-409. Campus buildings and facilities; utilities; board furnish.
- 85-410. Campus buildings and facilities; revenue bonds; issuance; public purpose; exempt from taxation.
- 85-411. Campus buildings and facilities; board; powers.
- 85-412. Repealed. Laws 2021, LB384, § 30.
- 85-413. Repealed. Laws 2021, LB384, § 30.
- 85-414. Repealed. Laws 2021, LB384, § 30.
- 85-415. Repealed. Laws 2021, LB384, § 30.
- 85-416. Repealed. Laws 2021, LB384, § 30.
- 85-417. Repealed. Laws 2021, LB384, § 30.
- 85-418. Repealed. Laws 2021, LB384, § 30.
- 85-419. Renewal, renovation, replacement, or repair projects; financing; legislative findings.
- 85-420. University of Nebraska Facilities Program; created; use of appropriations.
- 85-421. University of Nebraska Facilities Program; appropriations; legislative intent; projects enumerated; accounting; reports; long-term capital plan; fund for renewal, renovation, replacement, or repair projects.
- 85-422. Board of Regents of the University of Nebraska; contracts authorized; limitations; powers.
- 85-423. State College Facilities Program; created; use of appropriations.
- 85-424. State College Facilities Program; appropriations; legislative intent; projects enumerated; accounting; reports; long-term capital plan.
- 85-425. Board of Trustees of the Nebraska State Colleges; contracts authorized; limitations; powers.
- 85-426. Capital construction projects; nonprofit corporation; approval by Legislature; when.

85-401 Board of Regents; Board of Trustees; campus buildings and facilities; lease-purchase agreements authorized; conditions.

Subject to subsection (10) of section 85-1414, the Board of Regents of the University of Nebraska and the Board of Trustees of the Nebraska State Colleges are authorized to lease to any person, firm, or corporation such portions of the campus of the respective institutions under their control as may be necessary to be used as sites for the construction of fireproof buildings for dormitories and for boarding, housing, and student activity purposes, for athletic structures, and for parking or as sites for the establishment of parking facilities, and they may acquire lands adjacent to the campus of any such institution by donation or purchase with any funds they may have available for that purpose to be leased as sites for such buildings and facilities. Subject to subsection (10) of section 85-1414, the Board of Regents of the University of Nebraska and the Board of Trustees of the Nebraska State Colleges may also lease from any person, firm, or corporation an athletic structure or structures constructed on a site or sites owned by the State of Nebraska when the person, firm, or corporation has the permission of the Legislature to construct on such site or sites.

The State of Nebraska shall incur no liability by reason of the exercise of the authority granted in this section to the Board of Regents of the University of

Nebraska and the Board of Trustees of the Nebraska State Colleges other than is hereinafter specifically set forth. The buildings and facilities so erected or established shall be used solely for dormitories and for boarding, housing, and student activity purposes, for athletic structures, and for parking, as the case may be.

Subject to subsection (10) of section 85-1414, the Board of Regents of the University of Nebraska and the Board of Trustees of the Nebraska State Colleges are hereby authorized to contract with the owners of the buildings and facilities so erected or established on the leased grounds or state sites to pay as rental or otherwise for the use of the buildings and facilities a sum sufficient to pay, on the amortization plan, the principal and interest thereon of the cost of construction or establishment of the buildings and facilities, such contracts to run not over forty years.

The rate of interest allowed on the cost of construction or establishment shall be fixed by the Board of Regents of the University of Nebraska or Board of Trustees of the Nebraska State Colleges, payable annually or semiannually as may be determined by the Board of Regents of the University of Nebraska or the Board of Trustees of the Nebraska State Colleges. The contract shall provide that when the cost of construction or establishment has been paid, together with interest thereon, the buildings and facilities so constructed or established shall become the property of the State of Nebraska.

Source: Laws 1929, c. 199, § 1, p. 687; C.S.1929, § 85-401; R.S.1943, § 85-401; Laws 1965, c. 581, § 1, p. 1872; Laws 1969, c. 852, § 18, p. 3205; Laws 1971, LB 1, § 4; Laws 1972, LB 1433, § 3; Laws 1991, LB 663, § 84; Laws 1994, LB 683, § 2.

85-402 Campus buildings and facilities; pledge of income and appropriations authorized; limitations.

The Board of Regents of the University of Nebraska and the Board of Trustees of the Nebraska State Colleges are hereby authorized:

(1) To expend on the amortization plan any part of the rentals on any and all rooms, dormitories, dining rooms, and housing or student activity facility buildings or parking buildings or facilities constructed or established pursuant to section 85-401 and any part of the revenue of any athletic structure so constructed or established;

(2) In the case of the construction of buildings for dormitories and for boarding and housing purposes, to expend any part of the net rentals received from other buildings, theretofore constructed on the same campus for dormitories and for boarding and housing purposes, connected with the respective institutions under their control;

(3) In the case of the construction or establishment of buildings or facilities for parking, to expend any part of the net revenue received from other parking buildings and facilities, including parking registration fees, theretofore constructed or established on the same campus, connected with respective institutions under their control, in the payment of the construction or establishment charges and interest thereon; and

(4) To pledge on behalf of the respective institutions the net income from the rentals for the payment of such construction or establishment charges and interest.

In no case shall the contracts run for a longer period than forty years, and in no case is the Board of Regents of the University of Nebraska or the Board of Trustees of the Nebraska State Colleges authorized to pledge the credit of the State of Nebraska for the payment of any sum or sums over and above the net income derived from the use of the building or buildings or facility or facilities, except that there may be pledged for the payment of such contracts any appropriations specifically made for such purposes by the Legislature.

Source: Laws 1929, c. 199, § 2, p. 688; C.S.1929, § 85-402; Laws 1941, c. 192, § 1, p. 761; C.S.Supp.,1941, § 85-402; R.S.1943, § 85-402; Laws 1965, c. 561, § 2, p. 1845; Laws 1969, c. 852, § 19, p. 3206; Laws 1972, LB 1433, § 4; Laws 1991, LB 663, § 85; Laws 1994, LB 683, § 3.

85-403 Campus buildings and facilities; construction, purchase, or repair; revenue bonds; authorized; not obligation of state or governing board; investment of proceeds.

Supplemental to any existing law on the subject, the Board of Regents of the University of Nebraska and the Board of Trustees of the Nebraska State Colleges, respectively, may construct, purchase, or otherwise acquire, remodel, repair, furnish, and equip dormitories, residence halls, single-dwelling or multiple-dwelling units, or other facilities for the housing and boarding of students, single or married, faculties, or other employees of the institutions under their control, buildings and structures for athletic purposes, for student and faculty unions or centers, and for the medical care and physical development and other activities of the students of the institutions, and buildings or other facilities for parking on real estate then owned or controlled by either of such boards or on real estate purchased, leased, or otherwise acquired for such purposes and pay the cost thereof, including such real estate, by issuing revenue bonds payable solely out of their revenue other than funds derived from taxation, except that any building or facility for parking shall be located on or adjacent to campuses controlled by such boards.

Bonds issued under the provisions of sections 85-403 to 85-411 are not an obligation of the State of Nebraska, and no tax shall ever be levied to raise funds for the payment thereof or interest thereon. The bonds shall not constitute a debt of the board issuing the same and shall be paid solely out of money derived from their revenue and earnings as provided in sections 85-403 to 85-411. If any proceeds from such bonds are available for investment, such investment shall be by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1955, c. 352, § 1, p. 1075; Laws 1965, c. 581, § 3, p. 1874; Laws 1969, c. 852, § 20, p. 3207; Laws 1969, c. 584, § 131, p. 2431; Laws 1991, LB 663, § 86; Laws 1994, LB 683, § 4; Laws 1994, LB 1066, § 137.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

85-403.01 Legislative findings.

The Legislature hereby finds and determines: It has been the experience of both the Board of Regents of the University of Nebraska and the Board of

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Trustees of the Nebraska State Colleges that the lack of facilities of the types authorized by section 85-403, to be constructed, purchased, or otherwise acquired, remodeled, repaired, furnished and equipped by such boards, has deterred many individuals from attending the institutions under the control of the boards or added increased burdens upon many individuals in attending such institutions. With the continuation of the trend of more high school graduates enrolling and remaining in the institutions under the control of the boards and the normal population growth of the state, the lack of such facilities may continue to deter many individuals from attending such institutions or may add additional burdens upon those who do attend. The powers granted to both boards under sections 85-401 to 85-411, and the exercise by the boards of such powers, are for educational purposes, being not only directly related to the carrying out by the boards of their functions in supplying higher education but in fact necessary to the carrying out of such functions to the greatest possible benefit of the people of the state. In connection with certain grants or contributions to the Board of Regents of the University of Nebraska, that board heretofore has been created a public corporation for educational purposes. It is necessary, advisable and desirable that its status as a public corporation organized for educational purposes specifically include the exercise by it of the powers granted to it under sections 85-401 to 85-411 and that the Board of Trustees of the Nebraska State Colleges also be created a public corporation organized for educational purposes for the exercise of the powers granted to it under such sections.

Source: Laws 1969, c. 845, § 1, p. 3183.

85-403.02 Repealed. Laws 1988, LB 802, § 41.

85-404 Dormitories; housing facilities; parking facilities; other facilities; revenue bonds; issuance; approval by Legislature.

Either of the boards referred to in section 85-403 is hereby specifically authorized and empowered, by resolution or agreement, to pledge all or any part of the revenue and fees derived from the operation of the dormitories, residence halls, single-dwelling or multiple-dwelling units, buildings, and facilities for parking and other facilities for housing, boarding, athletic purposes, medical care, and physical development and other activities of students, faculties, or employees of such institutions referred to in section 85-403, or any of them, erected or acquired, or previously erected or acquired by such board, and contract as to the care, insurance, management, and operation of such buildings and facilities and the charges to be made and the rights of the holders of the revenue bonds. When the board contracts that the operation of any building or facility or part thereof shall be performed other than by the board itself, the board shall at all times maintain supervision thereof and control over the fees and charges imposed for the use thereof.

When such board proposes to pledge all or any part of the revenue and fees from buildings and facilities other than the building or facility to be constructed, the plans for such building or facility to be constructed, including financing plans, shall be reviewed and approved or disapproved by the Legislature or, if the Legislature is not in session, the Executive Board of the Legislative Council.

Source: Laws 1955, c. 352, § 2, p. 1076; Laws 1965, c. 581, § 4, p. 1875; Laws 1986, LB 995, § 2; Laws 1991, LB 663, § 87; Laws 1994, LB 683, § 5; Laws 2014, LB546, § 1.

85-405 Campus buildings and facilities; revenue bonds; registration; place of payment.

All revenue bonds issued under the provisions of sections 85-403 to 85-411, shall be registered in the office of the Director of Administrative Services of the State of Nebraska. The revenue bonds may be payable at the office of the State Treasurer of Nebraska or such bank or trust company, either within or without the State of Nebraska, or such other place as may be determined by the board.

Source: Laws 1955, c. 352, § 3, p. 1076; Laws 1969, c. 851, § 2, p. 3198.

85-406 Campus buildings and facilities; revenue bonds; proceeds; use.

The proceeds of bonds provided for in sections 85-403 to 85-411, shall be used solely for the purpose for which they are issued and the expense of issuance of the revenue bonds in connection therewith.

Source: Laws 1955, c. 352, § 4, p. 1077.

85-407 Campus buildings and facilities; refunding bonds; authorized.

For the purpose of refunding any revenue bonds which may have been issued under the provisions of sections 85-403 to 85-411 and then outstanding, or for the purpose of refunding any indebtedness on the parking buildings and facilities of such institutions or on dormitories or other facilities for the housing, boarding, and activities of students, faculties, and employees of the institutions under the control of the boards issued under the provisions of Chapter 85, article 4, the boards are authorized to issue revenue refunding bonds in the same manner as herein provided for the issuance of revenue bonds.

Source: Laws 1955, c. 352, § 5, p. 1077; Laws 1965, c. 581, § 5, p. 1876.

85-408 Dormitories; housing facilities; other facilities; rates, fees, or charges; pledge for payment of bonds; surplus; approval by Legislature.

The boards are authorized and directed to establish and maintain such schedule of rates, fees, or charges for the use of the facilities afforded by the buildings constructed or acquired under sections 85-401 to 85-411 and other facilities controlled by such board, the revenue of which in whole or in part is pledged to the holder of the bonds, which shall be in an amount at least sufficient on the amortization plan to pay the operating and maintenance charges thereof and the principal and interest representing the indebtedness against the income and revenue therefrom and may be sufficient in amount to provide for such bond reserve, replacement, and surplus funds as the boards in their discretion shall determine. The amounts in such funds shall be expended for such purposes in connection with the facilities as the boards shall determine, and any amount in any surplus or replacement fund and any amounts received through the sale, condemnation, or destruction of any facilities may be used to construct, repair, or replace any of the types of facilities described in section 85-403. Any amounts in such funds are specifically appropriated to the purposes of such funds and shall at all times be subject to the orders of the boards accordingly.

Before any single expenditure in excess of five hundred thousand dollars is made from any such surplus or replacement fund, the board concerned shall first submit such proposed expenditure to and secure the approval or disap-

proval of the Legislature or, if the Legislature is not in session, of the Executive Board of the Legislative Council.

Source: Laws 1955, c. 352, § 6, p. 1077; Laws 1969, c. 853, § 1, p. 3208; Laws 1986, LB 912, § 2; Laws 1991, LB 663, § 88; Laws 1994, LB 683, § 6; Laws 1999, LB 816, § 1; Laws 2006, LB 196, § 1; Laws 2014, LB546, § 2.

85-409 Campus buildings and facilities; utilities; board furnish.

The respective boards, referred to in section 85-403, in their discretion may furnish heat, light, power, and other similar utilities to any building or structure, or for any activities covered by the provisions of sections 85-403 to 85-411, without charging the same against the revenue derived therefrom.

Source: Laws 1955, c. 352, § 7, p. 1077.

85-410 Campus buildings and facilities; revenue bonds; issuance; public purpose; exempt from taxation.

In exercising the powers granted it under sections 85-401 to 85-411, and in issuing revenue bonds as provided in sections 85-403 to 85-411, the board exercising such powers or issuing the bonds shall constitute and be and is hereby created as a public corporation organized for educational purposes and is declared to be a governmental subdivision and instrumentality of the State of Nebraska, and all bonds issued under the authority of sections 85-403 to 85-411, together with interest thereon, shall be wholly exempt from taxation.

Source: Laws 1955, c. 352, § 8, p. 1077; Laws 1969, c. 845, § 3, p. 3185.

85-411 Campus buildings and facilities; board; powers.

The boards are hereby authorized and empowered to do any and all things necessary and convenient to carry out the purposes and intent of sections 85-403 to 85-411.

Source: Laws 1955, c. 352, § 9, p. 1078.

85-412 Repealed. Laws 2021, LB384, § 30.

85-413 Repealed. Laws 2021, LB384, § 30.

85-414 Repealed. Laws 2021, LB384, § 30.

85-415 Repealed. Laws 2021, LB384, § 30.

85-416 Repealed. Laws 2021, LB384, § 30.

85-417 Repealed. Laws 2021, LB384, § 30.

85-418 Repealed. Laws 2021, LB384, § 30.

85-419 Renewal, renovation, replacement, or repair projects; financing; legislative findings.

(1) The Legislature finds and determines that protecting investments in buildings through the completion of renewal, renovation, replacement, or repair projects is of critical importance to the State of Nebraska. The Legislature further recognizes that arresting the continued deterioration of buildings and limiting the effects of inflation on the costs of such renewal, renovation,

replacement, or repair of such facilities at the earliest possible time is necessary for protecting such investment in the buildings of the State of Nebraska. The state, the University of Nebraska, and the Nebraska state colleges have a shared goal of protecting the assets of the state and maintaining them at a level which will attract and retain students and serve Nebraskans effectively. In order to further this critical goal, it is necessary, desirable, and advisable that the Legislature extend the University of Nebraska Facilities Program, the State College Facilities Program, and the other capital appropriations referenced in sections 85-419 to 85-425 and provide the University of Nebraska and the Nebraska state colleges the necessary authority to efficiently pursue prevailing financing strategies and achieve cost savings by authorizing the Board of Regents of the University of Nebraska and the Board of Trustees of the Nebraska State Colleges to enter into long-term financing contracts to finance the facilities referenced in sections 85-419 to 85-425. In order to accomplish these goals, it is necessary, desirable, and advisable that the Legislature confirm and extend such programs to provide funds for such purposes to the University of Nebraska and the Nebraska state colleges over a period of years.

(2) The Legislature recognizes the commitment of the Board of Regents of the University of Nebraska to provide matching funds (a) up to eleven million dollars per year for the period beginning with the fiscal year commencing July 1, 2009, and continuing through the fiscal year ending June 30, 2030, (b) up to two million five hundred thousand dollars per year for the period beginning with the fiscal year commencing July 1, 2021, and continuing through the fiscal year ending June 30, 2030, and (c) up to thirteen million five hundred thousand dollars per year for the period beginning with the fiscal year commencing July 1, 2030, and continuing through the fiscal year ending June 30, 2062, to supplement amounts appropriated from the General Fund pursuant to section 85-421 to be applied for the purposes described in section 85-421.

(3) The Legislature recognizes the commitment of the Board of Trustees of the Nebraska State Colleges to provide matching funds up to one million four hundred forty thousand dollars per year for the period beginning with the fiscal year commencing July 1, 2006, and continuing through the fiscal year ending June 30, 2040, to supplement amounts appropriated from the General Fund pursuant to section 85-424 to be applied for the purposes described in section 85-424.

(4) The Legislature further acknowledges and reaffirms the directive made by Laws 2019, LB297, section 38, which sets forth the intent of the Legislature to continue the appropriations set forth in Laws 2017, LB330, section 35, in the amount of eight hundred twenty thousand dollars per year through 2050; in Laws 2017, LB330, section 36, in the amount of two million one hundred sixty-five thousand nine hundred twenty-eight dollars per year through 2050; and in Laws 2017, LB330, section 37, in the amount of one million four hundred seventy-seven thousand dollars per year through 2050.

(5) The Legislature further acknowledges and affirms the directive made by Laws 2019, LB297, section 37, which sets forth the intent of the Legislature to continue the appropriations set forth in Laws 2013, LB198, section 37, in the amount of two million two hundred sixteen thousand dollars per year through 2035.

(6) Sections 85-419 to 85-425 do not modify, reduce, or eliminate any provision of subsection (10) of section 85-1414 requiring the approval of the

Coordinating Commission for Postsecondary Education for any renewal, renovation, replacement, or repair project authorized by section 85-421 or 85-424 and undertaken by the Board of Regents of the University of Nebraska or the Board of Trustees of the Nebraska State Colleges.

Source: Laws 2006, LB 605, § 1; Laws 2016, LB957, § 15; Laws 2021, LB384, § 16.

85-420 University of Nebraska Facilities Program; created; use of appropriations.

The University of Nebraska Facilities Program is created. All funds appropriated to the program by the Legislature shall be used exclusively for the projects listed in section 85-421 or for renewal, renovation, replacement, or repair projects authorized pursuant to section 85-421.

Source: Laws 2006, LB 605, § 2; Laws 2021, LB384, § 17.

85-421 University of Nebraska Facilities Program; appropriations; legislative intent; projects enumerated; accounting; reports; long-term capital plan; fund for renewal, renovation, replacement, or repair projects.

(1) The Legislature shall appropriate from the General Fund (a) an amount not less than five million five hundred thousand dollars for each fiscal year for the period beginning with the fiscal year commencing July 1, 2006, and continuing through the fiscal year ending June 30, 2009, (b) an amount not less than eleven million dollars for each fiscal year for the period beginning with the fiscal year commencing July 1, 2009, and continuing through the fiscal year ending June 30, 2030, (c) an amount not less than two million five hundred thousand dollars for each fiscal year for the period beginning with the fiscal year commencing July 1, 2021, and continuing through the fiscal year ending June 30, 2030, (d) an amount not less than thirteen million five hundred thousand dollars for each fiscal year for the period beginning with the fiscal year commencing July 1, 2030, and continuing through the fiscal year ending June 30, 2062, and (e) an amount not less than four million four hundred sixty-two thousand nine hundred twenty-eight dollars in each fiscal year for the appropriations referred to in subsection (4) of section 85-419, which shall be continued through the fiscal year ending June 30, 2062, to the University of Nebraska Facilities Program to be used by the Board of Regents of the University of Nebraska to accomplish projects as provided in this section. Through the allotment process established in section 81-1113, the Department of Administrative Services shall make appropriated funds available. Undisbursed appropriations balances existing in the University of Nebraska Facilities Program at the end of each fiscal year until June 30, 2063, shall be and are hereby reappropriated.

(2) The Legislature finds and determines that the projects funded through the University of Nebraska Facilities Program are of critical importance to the State of Nebraska. It is the intent of the Legislature that the appropriations to the program shall 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 but in no case shall such appropriations extend beyond the fiscal year ending June 30, 2062.

(3) Subject to the receipt of project approval from the Coordinating Commission for Postsecondary Education as required by subsection (10) of section

85-1414 for each of the following University of Nebraska projects, the Board of Regents of the University of Nebraska is authorized to make expenditures from the University of Nebraska Facilities Program for the following projects: (a) Deferred maintenance, repair, and renovation of University of Nebraska at Kearney Bruner Hall; (b) construction of University of Nebraska at Kearney campus-wide central utilities plant and system; (c) construction of facilities to replace University of Nebraska-Lincoln Behlen, Brace, and Ferguson Halls or deferred maintenance, repair, and renovation of University of Nebraska-Lincoln Behlen, Brace, and Ferguson Halls; (d) construction of a facility to replace University of Nebraska-Lincoln Keim Hall or deferred maintenance, repair, and renovation of University of Nebraska-Lincoln Keim Hall; (e) deferred maintenance, repair, and renovation of University of Nebraska-Lincoln Sheldon Memorial Art Gallery; (f) deferred maintenance, repair, and renovation of University of Nebraska-Lincoln Animal Science Complex; (g) deferred maintenance, repair, and renovation of University of Nebraska Medical Center Poynter, Bennet, and Wittson Halls; (h) deferred maintenance, repair, and renovation of University of Nebraska Medical Center Eppley Institute for Research in Cancer and Allied Diseases or replacement if additional federal or private funds are received; (i) deferred maintenance, repair, and renovation of University of Nebraska Medical Center College of Dentistry; (j) deferred maintenance, repair, and renovation of University of Nebraska at Omaha Library; (k) deferred maintenance, repair, and renovation of University of Nebraska at Omaha utilities infrastructure; (l) University of Nebraska-Lincoln Scott Engineering Center; (m) University of Nebraska-Lincoln Nebraska Hall; (n) University of Nebraska-Lincoln Mabel Lee Hall/Henzlik Hall; (o) University of Nebraska Medical Center Wittson Hall-Phase I; (p) University of Nebraska Medical Center Joseph D. & Millie E. Williams Science Hall (College of Pharmacy); (q) renovation of a privately funded acquisition at the University of Nebraska at Omaha; (r) University of Nebraska at Omaha Strauss Performing Arts Center; (s) University of Nebraska at Omaha Arts and Sciences Hall; (t) University of Nebraska at Kearney Otto C. Olsen Building; (u) the facilities financed with the appropriations referred to in subsection (4) of section 85-419, including the Nebraska College of Technical Agriculture at Curtis Education Center and the College of Nursing Building on the campus of the University of Nebraska-Lincoln; and (v) any renewal, renovation, replacement, or repair of existing University of Nebraska facilities.

(4) Expenditures of matching funds provided for the projects listed in this section by the Board of Regents of the University of Nebraska as provided for in section 85-419 shall be accounted for in the Nebraska State Accounting System through the University of Nebraska Facilities Program or according to some other reporting process mutually agreed upon by the University of Nebraska and the Department of Administrative Services.

(5) The Board of Regents of the University of Nebraska shall record and report, on the Nebraska State Accounting System, expenditure of amounts from the University of Nebraska Facilities Program and expenditure of proceeds arising from any contract entered into pursuant to this section and section 85-422 in such manner and format as prescribed by the Department of Administrative Services or according to some other reporting process mutually agreed upon by the University of Nebraska and the Department of Administrative Services.

(6) At least once every two fiscal years beginning in the fiscal year 2023-24 for the biennial period from fiscal years 2023-25, the Board of Regents of the University of Nebraska shall report to the Legislature (a) the projects expected to be constructed or newly financed in the next biennium from the University of Nebraska Facilities Program and (b) the projects that were constructed or newly financed in the previous biennium from the University of Nebraska Facilities Program. In addition, at least once every five fiscal years beginning in the fiscal year 2024-25 for the fiscal years 2026-30, the Board of Regents shall provide to the Legislature a copy of its current long-term capital plan for projects to be constructed or newly financed from the University of Nebraska Facilities Program.

(7) The Board of Regents of the University of Nebraska shall establish a program to deposit annually, beginning with the fiscal year commencing July 1, 2025, an amount equal to two percent of the total project costs of new renewal, renovation, replacement, or repair projects expended during the immediately preceding fiscal year and financed with the University of Nebraska Facilities Program. Such funds may be held by a bank or trust company in trust, and amounts deposited therein shall be invested as the Board of Regents determines in accordance with its investment policies. The Board of Regents shall apply amounts in such fund, together with investment earnings thereon, to pay for renewal, renovation, replacement, or repair projects for university facilities as the Board of Regents shall determine.

Source: Laws 2006, LB 605, § 3; Laws 2009, LB316, § 27; Laws 2016, LB957, § 16; Laws 2021, LB384, § 18.

85-422 Board of Regents of the University of Nebraska; contracts authorized; limitations; powers.

(1) In order to accomplish any projects authorized by section 85-421, the Board of Regents of the University of Nebraska may enter into contracts with any person, firm, or corporation providing for the implementation of any such project of the University of Nebraska and providing for the long-term payment of the cost of such project from the University of Nebraska Facilities Program. In no case shall any such contract extend for a period beyond December 31, 2063, nor shall any such contract exceed the repayment capabilities implicit in the funding streams authorized in sections 85-419 to 85-422.

(2) The Board of Regents of the University of Nebraska shall not pledge the credit of the State of Nebraska for the payment of any sum owing on account of such contract, except that there may be pledged for the payment of any such contract any appropriation specifically made by the Legislature for such purpose, together with such funds of the Board of Regents of the University of Nebraska as the board determines. No contract shall be entered into pursuant to this section without prior approval by the Board of Regents. The Board of Regents may also convey, lease, or lease back all or any part of the projects authorized by section 85-421 and the land on which such projects are situated to such person, firm, or corporation as the Board of Regents may contract with pursuant to this section to facilitate the long-term payment of the cost of such projects. Any such conveyance or lease shall provide that when the cost of such projects has been paid, together with interest and other costs thereon, such projects and the land on which such projects are located shall become the property of the Board of Regents.

(3) The Board of Regents of the University of Nebraska is authorized to make expenditures for the purposes stated in this section and section 85-421 from investment income balances in any fund created under the authority provided for in any contract or contracts authorized by this section. Any balance existing in the University of Nebraska Facilities Program, whether from appropriations or the designated amounts identified in section 85-419, in excess of amounts required to meet debt service and any interest thereon for any related financing contract, and excluding amounts on deposit in the trust fund established pursuant to subsection (7) of section 85-421, shall be distributed proportionally between the Board of Regents and the Department of Administrative Services as to the total amount contributed to the program by the Board of Regents pursuant to section 85-419 and by the state, beginning in the fiscal year commencing July 1, 2009, through and including the fiscal year ending June 30, 2062, on December 31, 2063, or when all financial obligations incurred in the contracts entered into by the Board of Regents pursuant to this section are discharged, whichever occurs first.

Source: Laws 2006, LB 605, § 4; Laws 2016, LB957, § 17; Laws 2021, LB384, § 19.

85-423 State College Facilities Program; created; use of appropriations.

The State College Facilities Program is created. All funds appropriated to the program by the Legislature shall be used exclusively for the projects listed in section 85-424 or for renewal, renovation, replacement, or repair projects authorized pursuant to section 85-424.

Source: Laws 2006, LB 605, § 5; Laws 2016, LB957, § 18; Laws 2021, LB384, § 20.

85-424 State College Facilities Program; appropriations; legislative intent; projects enumerated; accounting; reports; long-term capital plan.

(1) The Legislature shall appropriate from the General Fund (a) an amount not less than one million one hundred twenty-five thousand dollars to the State College Facilities Program for each fiscal year for the period commencing July 1, 2006, and continuing through the fiscal year ending June 30, 2040, and (b) an amount not less than two million two hundred sixteen thousand dollars in each fiscal year for the appropriations referred to in subsection (5) of section 85-419, which shall be continued through the fiscal year ending June 30, 2040, to the State College Facilities Program to be used by the Board of Trustees of the Nebraska State Colleges to accomplish projects as provided in this section. Through the allotment process established in section 81-1113 the Department of Administrative Services shall make appropriated funds available. Undisbursed appropriations balances existing in the State College Facilities Program at the end of each fiscal year until June 30, 2041, shall be and are hereby reappropriated.

(2) The Legislature finds and determines that the projects funded through the State College Facilities Program are of critical importance to the State of Nebraska. It is the intent of the Legislature that the appropriations to the program shall 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 but in no case shall such appropriations extend beyond the fiscal year ending June 30, 2040.

(3) Subject to the receipt of project approval from the Coordinating Commission for Postsecondary Education as required by subsection (10) of section 85-1414 for each of the following state college projects, the Board of Trustees of the Nebraska State Colleges is authorized to make expenditures from the State College Facilities Program for the following state college projects: (a) Deferred maintenance, repair, and renovation of Chadron State College Academic/Administration Building; (b) design and placement of a new Peru State College emergency power generator; (c) replacement of existing Peru State College Al Wheeler Activity Center bleachers; (d) addition to and deferred maintenance, repair, and renovation of Peru State College Al Wheeler Activity Center; (e) addition to and deferred maintenance, repair, and renovation of Wayne State College Campus Services Building; (f) deferred maintenance, repair, and renovation of Wayne State College Rice Auditorium; (g) deferred maintenance, repair, and renovation of Wayne State College Memorial Stadium; (h) replacement of or deferred maintenance, repair, and renovation of Chadron State College stadium; (i) addition to and deferred maintenance, repair, and renovation of Peru State College Theatre/Event Center; (j) construction of a facility to replace Wayne State College Benthack Hall applied technology programmatic space; (k) systemwide miscellaneous fire and life safety, energy conservation, deferred repair, federal Americans with Disabilities Act of 1990, and asbestos removal projects; (l) construction of the Math Science Facility at Chadron State College; (m) construction and renovation of the Indoor/Outdoor Recreation Complex at Peru State College; (n) addition to and renovation of Wayne State College Rice Auditorium and Kirk Gardner Indoor Athletic Complex; and (o) any renewal, renovation, replacement, or repair of existing state college facilities.

(4) Expenditures of matching funds provided for the projects listed in this section by the Board of Trustees of the Nebraska State Colleges as provided for in section 85-419 shall be accounted for in the Nebraska State Accounting System through the State College Facilities Program or according to some other reporting process mutually agreed upon by the state colleges and the Department of Administrative Services.

(5) The Board of Trustees of the Nebraska State Colleges shall record and report, on the Nebraska State Accounting System, expenditure of amounts from the State College Facilities Program and expenditure of proceeds arising from any contract entered into pursuant to this section and section 85-425 in such manner and format as prescribed by the Department of Administrative Services or according to some other reporting process mutually agreed upon by the state colleges and the Department of Administrative Services.

(6) At least once every two fiscal years beginning with fiscal year 2023-24 for the biennial period from fiscal years 2023-25, the Board of Trustees of the Nebraska State Colleges shall report to the Legislature (a) the projects expected to be constructed or newly financed in the next biennium from the State College Facilities Program and (b) the projects that were constructed or newly financed in the previous biennium from the State College Facilities Program. In addition, at least once every ten fiscal years beginning with fiscal year 2022-23, the Board of Trustees shall provide to the Legislature a copy of its current long-term capital plan for projects to be constructed or newly financed from the State College Facilities Program.

Source: Laws 2006, LB 605, § 6; Laws 2016, LB957, § 19; Laws 2021, LB384, § 21; Laws 2022, LB1012, § 30.

85-425 Board of Trustees of the Nebraska State Colleges; contracts authorized; limitations; powers.

(1) In order to accomplish any projects authorized by section 85-424, the Board of Trustees of the Nebraska State Colleges may enter into contracts with any person, firm, or corporation providing for the implementation of any such project of the Nebraska state colleges and providing for the long-term payment of the cost of such project from the State College Facilities Program. In no case shall any such contract extend for a period beyond December 31, 2041, nor shall any such contract exceed the repayment capabilities implicit in the funding streams authorized in sections 85-419 and 85-424.

(2) The Board of Trustees of the Nebraska State Colleges shall not pledge the credit of the State of Nebraska for the payment of any sum owing on account of such contract, except that there may be pledged for the payment of any such contract any appropriation specifically made by the Legislature for such purpose, together with such funds of the Board of Trustees as the board determines. No contract shall be entered into pursuant to this section without prior approval by the Board of Trustees. The Board of Trustees may also convey, lease, or lease back all or any part of the projects authorized by section 85-424 and the land on which such projects are situated to such person, firm, or corporation as the Board of Trustees may contract with pursuant to this section to facilitate the long-term payment of the cost of such projects. Any such conveyance or lease shall provide that when the cost of such projects has been paid, together with interest and other costs thereon, such projects and the land on which such projects are located shall become the property of the Board of Trustees.

(3) The Board of Trustees of the Nebraska State Colleges is authorized to make expenditures for the purposes stated in this section and section 85-424 from investment income balances in any fund created under the authority provided for in any contract or contracts authorized by this section. Any balance existing in the State College Facilities Program, whether from appropriations or the designated amounts identified in section 85-419, in excess of amounts required to meet debt service and any interest thereon for any related financing contract, shall be distributed proportionally between the Board of Trustees and the Department of Administrative Services as to the total amount contributed to the program by the Board of Trustees pursuant to section 85-419 and by the state, beginning in the fiscal year commencing July 1, 2006, through and including the fiscal year ending June 30, 2040, on December 31, 2041, or when all financial obligations incurred in the contracts entered into by the Board of Trustees pursuant to this section are discharged, whichever occurs first.

Source: Laws 2006, LB 605, § 7; Laws 2016, LB957, § 20; Laws 2021, LB384, § 22.

85-426 Capital construction projects; nonprofit corporation; approval by Legislature; when.

All capital construction projects, including applicable financing plans, proposed by any nonprofit corporation created by the Board of Regents of the University of Nebraska or the Board of Trustees of the Nebraska State Colleges shall be submitted to the Legislature for review and approval or disapproval by the Legislature, or if the Legislature is not in session, the Executive Board of

the Legislative Council, when (1) state general funds, (2) funds received by the University of Nebraska or any state college for the purposes of reimbursing overhead costs and expenses in connection with any federal or other grant or contract, (3) tuition, or (4) the state's operating investment pool investment income constitutes all or any part of the funds used for the repayment of all or any part of the bonds of such nonprofit corporation. This section does not apply to any construction project or financing plan comprising part of the University of Nebraska Facilities Program or the State College Facilities Program to the extent that subsection (6) of section 85-421 and subsection (6) of section 85-424 have been complied with by the respective boards referenced in such sections.

Source: Laws 2014, LB546, § 3; Laws 2021, LB384, § 23.

ARTICLE 5

TUITION AND FEES AT STATE EDUCATIONAL INSTITUTIONS

Cross References

State Department of Education, loans to needy students, source, limitations, see section 79-2,106.

Section

- 85-501. State educational institutions; nonresident fees.
- 85-502. State postsecondary educational institution; residence requirements.
- 85-502.01. Public college or university; veteran; spouse or dependent of veteran; eligible recipient under federal law; person entitled to rehabilitation under federal law; resident student; requirements.
- 85-502.02. Repealed. Laws 1980, LB 304, § 3.
- 85-503. State educational institutions; tuition.
- 85-504. State educational institutions; fees; waiver.
- 85-505. Nebraska National Guard; member; tuition; credit; limitations.
- 85-505.01. Nebraska National Guard; tuition assistance program; limitations; conditions.
- 85-506. Nebraska National Guard; member; certificate as to guard performance; tuition credit.
- 85-507. Nebraska National Guard; spouse and children of deceased member; tuition; credit; conditions.
- 85-508. Nebraska National Guard; tuition; credits; educational institution; reimbursement.

85-501 State educational institutions; nonresident fees.

All state educational institutions shall charge nonresident fees to be paid by nonresidents of Nebraska who shall matriculate at any such institution, and the governing board of each institution may fix and collect such fees. Subject to the minimum standards provided by section 85-502, resident status shall be determined at the time of each registration according to rules and regulations which the governing board of each institution shall establish.

Source: Laws 1923, c. 57, § 1, p. 178; C.S.1929, § 85-501; R.S.1943, § 85-501; Laws 1947, c. 355, § 1, p. 1106; Laws 1980, LB 304, § 1.

85-502 State postsecondary educational institution; residence requirements.

Rules and regulations established by the governing board of each state postsecondary educational institution shall require as a minimum that a person is not deemed to have established a residence in this state, for purposes of sections 85-501 to 85-504, unless:

(1) Such person is of legal age or is an emancipated minor and has established a home in Nebraska where he or she is habitually present for a minimum period of one hundred eighty days, with the bona fide intention of making this state his or her permanent residence, supported by documentary proof;

(2) The parents, parent, or guardian having custody of a minor registering in the educational institution have established a home in Nebraska where such parents, parent, or guardian are or is habitually present with the bona fide intention to make this state their, his, or her permanent residence, supported by documentary proof. If a student has matriculated in any state postsecondary educational institution while his or her parents, parent, or guardian had an established home in this state, and the parents, parent, or guardian ceases to reside in the state, such student shall not thereby lose his or her resident status if such student has the bona fide intention to make this state his or her permanent residence, supported by documentary proof;

(3) Such student is of legal age and is a dependent for federal income tax purposes of a parent or former guardian who has established a home in Nebraska where he or she is habitually present with the bona fide intention of making this state his or her permanent residence, supported by documentary proof;

(4) Such student is a nonresident of this state prior to marriage and marries a person who has established a home in Nebraska where he or she is habitually present with the bona fide intention of making this state his or her permanent residence, supported by documentary proof;

(5) Except as provided in subdivision (9) of this section, such student, if an alien, has applied to or has a petition pending with the United States Immigration and Naturalization Service to attain lawful status under federal immigration law and has established a home in Nebraska for a period of at least one hundred eighty days where he or she is habitually present with the bona fide intention to make this state his or her permanent residence, supported by documentary proof;

(6) Such student is a staff member or a dependent of a staff member of the University of Nebraska, one of the Nebraska state colleges, or one of the community college areas who joins the staff immediately prior to the beginning of a term from an out-of-state location;

(7)(a) Such student is on active duty with the armed services of the United States and has been assigned a permanent duty station in Nebraska; or

(b) Such student is a spouse or legal dependent of a person who was on active duty with the armed services of the United States assigned to a permanent duty station in Nebraska at the time such student was accepted for admission to the state postsecondary educational institution and such student remains continually enrolled at such state postsecondary educational institution;

(8) Such student is currently serving in the Nebraska National Guard;

(9)(a) Such student resided with his or her parent, guardian, or conservator while attending a public, private, denominational, or parochial high school in this state or a school in this state which elects pursuant to section 79-1601 not to meet accreditation or approval requirements and:

(i) Graduated from a public, private, denominational, or parochial high school in this state, completed the program of instruction offered by a school in this state which elects pursuant to section 79-1601 not to meet accreditation or approval requirements, or received a diploma of high school equivalency issued pursuant to section 79-730;

(ii) Resided in this state for at least three years before the date the student graduated from the high school, completed the program of instruction, or received the diploma of high school equivalency;

(iii) Registered as an entering student in a state postsecondary educational institution not earlier than the 2006 fall semester; and

(iv) Provided to the state postsecondary educational institution an affidavit stating that he or she will file an application to become a permanent resident at the earliest opportunity he or she is eligible to do so.

(b) If the parent, guardian, or conservator with whom the student resided ceases to reside in the state, such student shall not lose his or her resident status under this subdivision if the student has the bona fide intention to make this state his or her permanent residence, supported by documentary proof; or

(10) Such student is qualified for a national service educational award or summer of service educational award from the National Service Trust pursuant to 42 U.S.C. 12602, as such section existed on January 1, 2021.

Source: Laws 1923, c. 57, § 4, p. 179; C.S.1929, § 85-504; R.S.1943, § 85-502; Laws 1951, c. 348, § 1, p. 1137; Laws 1961, c. 458, § 1, p. 1397; Laws 1965, c. 582, § 1, p. 1877; Laws 1971, LB 408, § 1; Laws 1980, LB 304, § 2; Laws 1982, LB 796, § 1; Laws 2006, LB 239, § 1; Laws 2016, LB734, § 1; Laws 2019, LB6, § 1; Laws 2021, LB92, § 1; Laws 2021, LB197, § 1.

Requirement of continuous residency of four months independent of school attendance to establish residence for tuition purposes does not infringe on one's constitutional rights. *Thompson v. Board of Regents of University of Nebraska*, 187 Neb. 252, 188 N.W.2d 840 (1971).

85-502.01 Public college or university; veteran; spouse or dependent of veteran; eligible recipient under federal law; person entitled to rehabilitation under federal law; resident student; requirements.

(1) A person who enrolls in a public college or university in this state and who is (a) a veteran as defined in Title 38 of the United States Code and was discharged or released from a period of not fewer than ninety days of service in the active military, naval, air, or space service, (b) a spouse or dependent of such a veteran, or (c) an eligible recipient entitled to (i) educational assistance as provided in 38 U.S.C. 3319 while the transferor is on active duty in the uniformed services, (ii) educational assistance as provided in 38 U.S.C. 3311(b)(8), (iii) rehabilitation as provided in 38 U.S.C. 3102(a), or (iv) educational assistance as provided in 38 U.S.C. 3510, as such sections existed on January 1, 2023, shall be considered a resident student notwithstanding section 85-502 if the person is registered to vote in Nebraska and demonstrates objective evidence of intent to be a resident of Nebraska, except that a person who is under eighteen years of age is not required to register to vote in Nebraska.

(2) For purposes of this section, objective evidence of intent to be a resident of Nebraska includes a Nebraska driver's license, a Nebraska state identifica-

tion card, a Nebraska motor vehicle registration, or documentation that the individual is registered to vote in Nebraska.

Source: Laws 2014, LB740, § 1; Laws 2015, LB109, § 1; Laws 2017, LB512, § 24; Laws 2019, LB122, § 1; Laws 2021, LB669, § 6; Laws 2023, LB705, § 111.

85-502.02 Repealed. Laws 1980, LB 304, § 3.

85-503 State educational institutions; tuition.

All state institutions are empowered to fix tuition and other fees to be paid by students residing in Nebraska.

Source: Laws 1923, c. 57, § 2, p. 178; C.S.1929, § 85-502; R.S.1943, § 85-503.

85-504 State educational institutions; fees; waiver.

Rules may be made by each institution for waiving or refunding fees to students maintaining high scholarship, or to those who, maintaining satisfactory scholarship, are in need of financial assistance.

Source: Laws 1923, c. 57, § 3, p. 178; C.S.1929, § 85-503; R.S.1943, § 85-504.

85-505 Nebraska National Guard; member; tuition; credit; limitations.

Any member of the Nebraska National Guard who enrolls in any state-supported university, college, or community college or any independent, not-for-profit, accredited college or university in this state shall be entitled to a credit of one hundred percent of the resident tuition charges of such school for a diploma, certificate, associate degree, or baccalaureate degree program or fifty percent of the resident tuition charges of such school for a graduate or professional degree program, except that any member who attends an independent, not-for-profit, accredited college or university in this state shall receive a credit in an amount no higher than such member would receive if attending the University of Nebraska-Lincoln. Such entitlement shall, subject to the requirements of sections 85-505 to 85-508, continue for as long as the member maintains satisfactory performance with the guard and pursues a course of study in such institution in a manner which satisfies the normal requirements of the institution. The number of individuals granted tuition credit shall not exceed the number specified in section 85-505.01 during any fiscal year. When determining to whom such tuition credit shall be awarded, priority shall be given to those individuals who have previously received tuition credits while a National Guard member, and the Nebraska National Guard shall apply those program qualifications and limitations consistent with efficient and effective program management as determined by the Adjutant General.

Source: Laws 1974, LB 982, § 1; Laws 1978, LB 564, § 1; Laws 1983, LB 267, § 1; Laws 1986, LB 931, § 1; Laws 1988, LB 866, § 1; Laws 1992, Third Spec. Sess., LB 10, § 1; Laws 1996, LB 1139, § 1; Laws 1999, LB 243, § 1; Laws 2008, LB746, § 1; Laws 2014, LB766, § 1; Laws 2020, LB450, § 1; Laws 2021, LB528, § 52; Laws 2022, LB779, § 1; Laws 2024, LB52, § 1.
Effective date April 17, 2024.

85-505.01 Nebraska National Guard; tuition assistance program; limitations; conditions.

(1) The tuition assistance program prescribed in sections 85-505 to 85-508 shall not be available to:

(a) More than one thousand two hundred members during any fiscal year; and

(b) Any member who has not exhausted any available federal tuition assistance benefits.

(2) Only credit-bearing courses which meet program requirements shall be approved for tuition assistance under sections 85-505 to 85-508. Members shall not receive tuition assistance for any noncredit courses.

(3) If a member of the Nebraska National Guard voluntarily withdraws from a course for which tuition assistance is being received, the member shall be liable for all costs relating to such withdrawal, including, but not limited to, all of the costs billed by the educational institution to the Nebraska National Guard. Reimbursement shall be in accordance with section 72-1601.

(4) Any member of the Nebraska National Guard who receives tuition assistance shall agree in writing to serve in the Nebraska National Guard for three years after the completion of the courses for which tuition assistance was given. Any member who receives tuition assistance may be asked to reimburse the State of Nebraska if any such member leaves the Nebraska National Guard during such three-year period. Reimbursement shall be in accordance with section 72-1601.

(5) The Military Department shall retain the responsibility and authority to establish any limitations and controls it deems necessary to ensure maximum fiscal efficiency and productivity of the tuition assistance program prescribed in sections 85-505 to 85-508.

Source: Laws 1986, LB 931, § 2; Laws 1987, LB 436, § 1; Laws 1988, LB 866, § 2; Laws 1989, LB 13, § 4; Laws 2001, LB 286, § 1; Laws 2008, LB746, § 2; Laws 2014, LB766, § 2; Laws 2020, LB450, § 2; Laws 2022, LB779, § 2.

85-506 Nebraska National Guard; member; certificate as to guard performance; tuition credit.

It shall be the responsibility of the individual member of the Nebraska National Guard to obtain a certificate from such member's commanding officer attesting as to the satisfactory guard performance of such member and to present the same to the educational institution in order to obtain tuition credit. Such certification shall be accomplished at the time of enrollment for each semester or academic term for which tuition credit is requested. Such certification shall include a signed agreement by the individual to serve in the National Guard for a minimum of three years from the date of certification.

Source: Laws 1974, LB 982, § 2; Laws 1978, LB 564, § 2; Laws 1986, LB 931, § 3; Laws 2020, LB450, § 3.

85-507 Nebraska National Guard; spouse and children of deceased member; tuition; credit; conditions.

The spouse and children of any member of the Nebraska National Guard who dies while serving in the active service of the state shall be entitled to a credit of

one hundred percent of the tuition charges in any state-supported university, college, or community college or any independent, not-for-profit, accredited college or university in this state, except that any spouse or child who attends an independent, not-for-profit, accredited college or university in this state shall receive a credit in an amount no higher than that spouse or child would receive if attending the University of Nebraska-Lincoln. Such tuition credit shall be for any undergraduate course of education not exceeding four years, except that no credit shall be granted to the spouse after the tenth anniversary of the member's death and no credit shall be granted to a child after such child's twenty-fifth birthday. All persons eligible for tuition credit under this section shall obtain a certificate of eligibility from the Adjutant General of the Nebraska National Guard and present such certificate to the educational institution.

Source: Laws 1978, LB 564, § 3; Laws 1986, LB 931, § 4; Laws 1996, LB 1139, § 2; Laws 2020, LB450, § 4; Laws 2021, LB528, § 53.

85-508 Nebraska National Guard; tuition; credits; educational institution; reimbursement.

Upon receipt of a certificate described in section 85-506, the educational institution shall endorse on the certificate the dollar amount of the tuition credit granted pursuant to such section and return such certificate to the Nebraska National Guard office issuing the certificate. The educational institution shall compile a record of the total dollar amount of the tuition credits granted for the academic term. At the completion of the academic term, the institution shall submit the total amount of such credits together with a request for reimbursement of such amount to the National Guard. Upon receipt of the request, the National Guard shall reimburse the institution.

Source: Laws 1980, LB 526, § 1; Laws 1986, LB 931, § 5.

ARTICLE 6

PUBLIC INSTITUTIONS OF HIGHER EDUCATION

(a) DISMISSAL OR EXPULSION OF FACULTY OR STUDENTS

- | | |
|---------|---|
| Section | |
| 85-601. | University of Nebraska or community college; interference with operation; faculty, administrative staff, student; dismissal or expulsion. |
| 85-602. | University of Nebraska or community college; faculty, administrative staff, student; dismissal or expulsion; procedure. |
| 85-603. | University of Nebraska or community college; faculty, administrative staff, student; dismissal or expulsion; order; contents; service. |
| 85-604. | University of Nebraska or community college; governing body; rules and regulations; adopt. |
| 85-605. | University of Nebraska or community college; interference with operation; terms, defined. |

(b) RETIREMENT

- | | |
|------------|---|
| 85-606. | University of Nebraska, state colleges, community colleges; permissive retirement; compulsory retirement; exceptions; retirement contributions; faculty member; revocation of tenure; rights. |
| 85-606.01. | University of Nebraska; state colleges; community colleges; retirement annuity contracts; purchase. |

(c) ADMISSION

- | | |
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| 85-607. | Denial of admission of or discrimination against certain qualified student; prohibited. |
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§ 85-601 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

Section

85-607.01. Student application and admission process; criminal history or juvenile court record information; inquiry or consideration; prohibited; exceptions.

(d) SEXUAL HARASSMENT AND TITLE IX COMPLIANCE

85-608. Report; contents; hearing.

(e) STUDENT IDENTIFICATION CARDS

85-609. Student identification cards; requirements.

(a) DISMISSAL OR EXPULSION OF FACULTY OR STUDENTS

85-601 University of Nebraska or community college; interference with operation; faculty, administrative staff, student; dismissal or expulsion.

It shall be grounds for the dismissal of any member of the faculty or administrative staff employed by, or the expulsion of any student attending, the University of Nebraska or any community college in this state to use or assist others in any way in the use of force or to counsel, recommend, or urge the use of force or the threat of force or the seizure of property under the control of such institution, or by any act or action not sanctioned by law to prevent the faculty, administrative officers, employees, or students in such institution from engaging in their normal duties in connection with the operation of the institution or pursuing their studies at such institution.

Source: Laws 1971, LB 445, § 1; Laws 2023, LB705, § 112.

85-602 University of Nebraska or community college; faculty, administrative staff, student; dismissal or expulsion; procedure.

No person shall be dismissed or expelled under section 85-601 until such person has been accorded a public hearing under rules and regulations for the administration of sections 85-601 to 85-605 established by the governing body. Notice of such hearing and a formal written statement of the charges against such person shall be served by either registered or certified mail, sent to such person's current address as shown on the records of the University of Nebraska or community college, at least twenty days before the date set for hearing. Such person shall be entitled to file a written response to such charges, to be present in person and by counsel at the hearing, and to testify and produce other witnesses on his or her behalf.

Source: Laws 1971, LB 445, § 2; Laws 2023, LB705, § 113.

85-603 University of Nebraska or community college; faculty, administrative staff, student; dismissal or expulsion; order; contents; service.

Dismissal or expulsion of any person under section 85-601 shall be by written order, which shall contain findings of fact upon which dismissal or expulsion is based, and shall be signed by an authorized agent of the governing body. The order shall be entered within thirty days after the hearing, shall state its effective date, and shall be served by either registered or certified mail, return receipt requested, sent to such person's current address as shown on the records of the University of Nebraska or community college.

Source: Laws 1971, LB 445, § 3; Laws 2023, LB705, § 114.

85-604 University of Nebraska or community college; governing body; rules and regulations; adopt.

Each governing body shall adopt rules and regulations for the administration of sections 85-601 to 85-605.

Source: Laws 1971, LB 445, § 4; Laws 2023, LB705, § 115.

85-605 University of Nebraska or community college; interference with operation; terms, defined.

For purposes of sections 85-601 to 85-605, (1) dismissal does not include the failure to renew a probationary appointment of any faculty member or administrative staff member and (2) governing body means the Board of Regents of the University of Nebraska or the Community College Board of Governors, as applicable.

Source: Laws 1971, LB 445, § 5; Laws 1993, LB 239, § 7; Laws 2023, LB705, § 116.

(b) RETIREMENT**85-606 University of Nebraska, state colleges, community colleges; permissive retirement; compulsory retirement; exceptions; retirement contributions; faculty member; revocation of tenure; rights.**

(1) Employees of the state colleges, community colleges, and the University of Nebraska may retire upon reaching the age of sixty-five. Any law enforcement personnel reaching the age of seventy shall retire, except that, with the annual approval of the governing board of the institution and the employee, such employee may continue his or her employment beyond the attainment of age seventy.

(2) Any employee continuing to work after age sixty-five shall continue to make contributions to the appropriate retirement system until the date of retirement.

(3) No faculty member of the University of Nebraska, the Nebraska State Colleges, or the community colleges shall have his or her tenure status revoked without due process.

Source: Laws 1979, LB 15, § 1; Laws 1981, LB 463, § 4; Laws 1982, LB 287, § 6; Laws 1987, LB 296, § 5; Laws 1997, LB 623, § 52.

85-606.01 University of Nebraska; state colleges; community colleges; retirement annuity contracts; purchase.

The Board of Trustees of the Nebraska State Colleges, any community college area board, and the Board of Regents of the University of Nebraska shall have the authority to purchase retirement annuity contracts for any or all of their employees at the direction of the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act and may enter into contracts with their employees providing for the purchase of such retirement annuity contracts under the provisions of the Internal Revenue Code. Such employment contracts may provide that the amounts contributed by the employer for such annuity contracts shall be the result of an agreement of the employee to take a reduction in salary or to forego an increase in salary, but only to the extent such amounts are earned by the

§ 85-606.01 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

employee after the agreement becomes effective. Such an agreement must be legally binding and irrevocable with respect to amounts earned while the agreement is in effect. The right of an employee to such an annuity contract is nonforfeitable, except for failure to pay future premiums. Such an annuity contract is nontransferable.

Source: Laws 1967, c. 256, § 1, p. 677; Laws 1969, c. 851, § 1, p. 3198; Laws 1969, c. 852, § 1, p. 3199; Laws 1969, c. 849, § 3, p. 3194; Laws 1969, c. 584, § 129, p. 2429; Laws 1975, LB 54, § 1; Laws 1978, LB 756, § 54; Laws 1980, LB 817, § 2; R.S.1943, (1981), § 85-195; Laws 1995, LB 7, § 153; Laws 1995, LB 574, § 91.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

(c) ADMISSION

85-607 Denial of admission of or discrimination against certain qualified student; prohibited.

No publicly funded college or university in this state shall prohibit the admission of any student, or discriminate against any student with regard to determinations of residency status or scholarship eligibility, on the basis that such student was educated in a school which elects to meet the requirements of subsections (2) through (6) of section 79-1601 if the student is qualified for admission as shown by testing results.

Source: Laws 1984, LB 928, § 5; Laws 1996, LB 900, § 1079; Laws 1999, LB 813, § 58; Laws 2009, LB549, § 51; Laws 2021, LB92, § 2.

85-607.01 Student application and admission process; criminal history or juvenile court record information; inquiry or consideration; prohibited; exceptions.

(1) Except as provided in subsection (2) of this section, no publicly funded college or university in this state shall, as part of the student application and admission process for disciplines not requiring licensure or clinical or field placements, inquire about or consider any applicant's criminal history or juvenile court record information.

(2)(a) Subsection (1) of this section does not prohibit an inquiry regarding an applicant's criminal history or juvenile court record information or consideration of such matters to the extent required by state or federal law or when such matters are voluntarily submitted by an applicant.

(b) Any inquiry regarding an applicant's criminal history or juvenile court record information and any consideration of such matters shall be strictly limited to the extent permitted by this subsection.

(3) This section does not apply to inquiries or consideration of criminal history or juvenile court record information (a) occurring subsequent to the student application and admission process as part of a professional licensure process or an academically required clinical or field placement, (b) in any application or other process relating to student housing, or (c) in any application or other process relating to any athletic program.

(4) For purposes of this section, criminal history or juvenile court record information means all records relating to an applicant's criminal history record or juvenile court record, including, but not limited to, any information or other data concerning any proceedings relating to a case, any arrest, being taken into custody, a petition, a complaint, an indictment, an information, a trial, a hearing, an adjudication, any correctional supervision, a dismissal, or any other disposition or sentence.

Source: Laws 2023, LB705, § 123.

(d) SEXUAL HARASSMENT AND TITLE IX COMPLIANCE

85-608 Report; contents; hearing.

(1) On or before September 15, 2021, and September 15 of each odd-numbered year thereafter, each public postsecondary institution shall electronically submit a report regarding sexual harassment and Title IX compliance to the Clerk of the Legislature and the Education Committee of the Legislature. The report shall include:

- (a) Results of any campus climate survey related to sexual harassment;
- (b) Information related to the training provided to Title IX coordinators, investigators, and decisionmakers regarding sexual harassment;
- (c) Any policies, initiatives, or grievance procedures the postsecondary institution has adopted to address sexual harassment;
- (d) Information on where the postsecondary institution's students and employees may receive immediate emergency assistance to address instances of sexual harassment;
- (e) Information on how the postsecondary institution's students and employees may report concerns of sexual harassment to the postsecondary institution;
- (f) Information on resources, programs, and support available to the postsecondary institution's students and employees to address concerns of sexual harassment;
- (g) Information on any of the postsecondary institution's student or employee-led organizations engaged in supporting victims of sexual harassment; and
- (h) Any agreement between the postsecondary institution and a local law enforcement agency or the county attorney related to addressing instances of sexual harassment.

(2) The report shall not include any personally identifiable information, information that is subject to a privilege arising under state or federal law, or records that may be withheld from disclosure under section 84-712.05.

(3) On or before December 15, 2021, and on or before December 15 of each odd-numbered year thereafter, the Education Committee of the Legislature shall hold a public hearing to review all reports submitted under this section.

(4) For purposes of this section:

- (a) Postsecondary institution has the same meaning as in section 85-2403;
- (b) Sexual harassment means conduct that satisfies one or more of the following:
 - (i) An employee conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct;

(ii) Unwelcome conduct on the basis of sex determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the education program or activity;

(iii) Sexual assault as defined in 20 U.S.C. 1092(f)(6)(A)(v);

(iv) Dating violence as defined in 34 U.S.C. 12291(a)(10);

(v) Domestic violence as defined in 34 U.S.C. 12291(a)(8); or

(vi) Stalking as defined in 34 U.S.C. 12291(a)(30); and

(c) Title IX means Title IX of the Education Amendments of 1972, Public Law 92-318, 20 U.S.C. 1681 to 1688, and its accompanying regulations and guidance documents, as amended.

Source: Laws 2020, LB534, § 1.

(e) STUDENT IDENTIFICATION CARDS

85-609 Student identification cards; requirements.

Beginning with the 2022-23 academic year, each public postsecondary institution authorized to operate in this state shall require that the telephone number for a national suicide prevention hotline, a local suicide prevention hotline, or a crisis text line is printed on each new student identification card issued to a student enrolled in such public postsecondary institution. Nothing in this section shall be construed to require the issuance of student identification cards to students in any postsecondary institution.

Source: Laws 2021, LB528, § 69.

ARTICLE 7

INDEPENDENT INSTITUTIONS OF HIGHER EDUCATION

Section

85-701.	Unconstitutional.
85-702.	Unconstitutional.
85-703.	Unconstitutional.
85-704.	Unconstitutional.
85-705.	Unconstitutional.
85-706.	Unconstitutional.
85-707.	Unconstitutional.
85-708.	Unconstitutional.
85-709.	Unconstitutional.
85-710.	Unconstitutional.
85-711.	Unconstitutional.
85-712.	Unconstitutional.
85-713.	Unconstitutional.
85-714.	Unconstitutional.
85-715.	Unconstitutional.
85-716.	Unconstitutional.
85-717.	Unconstitutional.
85-718.	Unconstitutional.
85-719.	Unconstitutional.
85-720.	Unconstitutional.
85-721.	Unconstitutional.

85-701 Unconstitutional.

Note: The Revisor of Statutes, as authorized by section 49-705, has omitted sections 85-701 to 85-721, which the Supreme Court has held to be unconstitutional. State ex rel. Rogers v. Swanson, 192 Neb. 125, 219 N.W.2d 726 (1974).

85-702 Unconstitutional.

Note: The Revisor of Statutes, as authorized by section 49-705, has omitted sections 85-701 to 85-721, which the Supreme Court has held to be unconstitutional. State ex rel. Rogers v. Swanson, 192 Neb. 125, 219 N.W.2d 726 (1974).

85-703 Unconstitutional.

Note: The Revisor of Statutes, as authorized by section 49-705, has omitted sections 85-701 to 85-721, which the Supreme Court has held to be unconstitutional. State ex rel. Rogers v. Swanson, 192 Neb. 125, 219 N.W.2d 726 (1974).

85-704 Unconstitutional.

Note: The Revisor of Statutes, as authorized by section 49-705, has omitted sections 85-701 to 85-721, which the Supreme Court has held to be unconstitutional. State ex rel. Rogers v. Swanson, 192 Neb. 125, 219 N.W.2d 726 (1974).

85-705 Unconstitutional.

Note: The Revisor of Statutes, as authorized by section 49-705, has omitted sections 85-701 to 85-721, which the Supreme Court has held to be unconstitutional. State ex rel. Rogers v. Swanson, 192 Neb. 125, 219 N.W.2d 726 (1974).

85-706 Unconstitutional.

Note: The Revisor of Statutes, as authorized by section 49-705, has omitted sections 85-701 to 85-721, which the Supreme Court has held to be unconstitutional. State ex rel. Rogers v. Swanson, 192 Neb. 125, 219 N.W.2d 726 (1974).

85-707 Unconstitutional.

Note: The Revisor of Statutes, as authorized by section 49-705, has omitted sections 85-701 to 85-721, which the Supreme Court has held to be unconstitutional. State ex rel. Rogers v. Swanson, 192 Neb. 125, 219 N.W.2d 726 (1974).

85-708 Unconstitutional.

Note: The Revisor of Statutes, as authorized by section 49-705, has omitted sections 85-701 to 85-721, which the Supreme Court has held to be unconstitutional. State ex rel. Rogers v. Swanson, 192 Neb. 125, 219 N.W.2d 726 (1974).

85-709 Unconstitutional.

Note: The Revisor of Statutes, as authorized by section 49-705, has omitted sections 85-701 to 85-721, which the Supreme Court has held to be unconstitutional. State ex rel. Rogers v. Swanson, 192 Neb. 125, 219 N.W.2d 726 (1974).

85-710 Unconstitutional.

Note: The Revisor of Statutes, as authorized by section 49-705, has omitted sections 85-701 to 85-721, which the Supreme Court has held to be unconstitutional. State ex rel. Rogers v. Swanson, 192 Neb. 125, 219 N.W.2d 726 (1974).

85-711 Unconstitutional.

Note: The Revisor of Statutes, as authorized by section 49-705, has omitted sections 85-701 to 85-721, which the Supreme Court has held to be unconstitutional. State ex rel. Rogers v. Swanson, 192 Neb. 125, 219 N.W.2d 726 (1974).

85-712 Unconstitutional.

Note: The Revisor of Statutes, as authorized by section 49-705, has omitted sections 85-701 to 85-721, which the Supreme Court has held to be unconstitutional. State ex rel. Rogers v. Swanson, 192 Neb. 125, 219 N.W.2d 726 (1974).

85-713 Unconstitutional.

Note: The Revisor of Statutes, as authorized by section 49-705, has omitted sections 85-701 to 85-721, which the Supreme Court has held to be unconstitutional. State ex rel. Rogers v. Swanson, 192 Neb. 125, 219 N.W.2d 726 (1974).

85-714 Unconstitutional.

Note: The Revisor of Statutes, as authorized by section 49-705, has omitted sections 85-701 to 85-721, which the Supreme Court has held to be unconstitutional. State ex rel. Rogers v. Swanson, 192 Neb. 125, 219 N.W.2d 726 (1974).

85-715 Unconstitutional.

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Note: The Revisor of Statutes, as authorized by section 49-705, has omitted sections 85-701 to 85-721, which the Supreme Court has held to be unconstitutional. State ex rel. Rogers v. Swanson, 192 Neb. 125, 219 N.W.2d 726 (1974).

85-716 Unconstitutional.

Note: The Revisor of Statutes, as authorized by section 49-705, has omitted sections 85-701 to 85-721, which the Supreme Court has held to be unconstitutional. State ex rel. Rogers v. Swanson, 192 Neb. 125, 219 N.W.2d 726 (1974).

85-717 Unconstitutional.

Note: The Revisor of Statutes, as authorized by section 49-705, has omitted sections 85-701 to 85-721, which the Supreme Court has held to be unconstitutional. State ex rel. Rogers v. Swanson, 192 Neb. 125, 219 N.W.2d 726 (1974).

85-718 Unconstitutional.

Note: The Revisor of Statutes, as authorized by section 49-705, has omitted sections 85-701 to 85-721, which the Supreme Court has held to be unconstitutional. State ex rel. Rogers v. Swanson, 192 Neb. 125, 219 N.W.2d 726 (1974).

85-719 Unconstitutional.

Note: The Revisor of Statutes, as authorized by section 49-705, has omitted sections 85-701 to 85-721, which the Supreme Court has held to be unconstitutional. State ex rel. Rogers v. Swanson, 192 Neb. 125, 219 N.W.2d 726 (1974).

85-720 Unconstitutional.

Note: The Revisor of Statutes, as authorized by section 49-705, has omitted sections 85-701 to 85-721, which the Supreme Court has held to be unconstitutional. State ex rel. Rogers v. Swanson, 192 Neb. 125, 219 N.W.2d 726 (1974).

85-721 Unconstitutional.

Note: The Revisor of Statutes, as authorized by section 49-705, has omitted sections 85-701 to 85-721, which the Supreme Court has held to be unconstitutional. State ex rel. Rogers v. Swanson, 192 Neb. 125, 219 N.W.2d 726 (1974).

**ARTICLE 8
RESEARCH CENTERS**

**(a) EUGENE C. EPPLEY INSTITUTE FOR RESEARCH
IN CANCER AND ALLIED DISEASES**

Section

- 85-801. Eugene C. Eppley Institute for Research in Cancer and Allied Diseases; established; location.
- 85-802. Institute; Board of Regents; operate; regulate.
- 85-803. Institute; director; appointment; qualifications; responsibilities.
- 85-804. Institute; purpose; function; grants; gifts.

(b) REGIONAL RADIATION HEALTH CENTER

- 85-805. Regional Radiation Health Center; created; purpose.
- 85-806. Regional Radiation Health Center; duties.
- 85-807. Regional Radiation Health Center; public power district; payments to center; benefits; requirements.

**(a) EUGENE C. EPPLEY INSTITUTE FOR RESEARCH
IN CANCER AND ALLIED DISEASES**

85-801 Eugene C. Eppley Institute for Research in Cancer and Allied Diseases; established; location.

There is hereby established the Eugene C. Eppley Institute for Research in Cancer and Allied Diseases, to be located on the campus of the University of Nebraska Medical Center in Omaha, Nebraska.

Source: Laws 1972, LB 1374, § 1.

85-802 Institute; Board of Regents; operate; regulate.

The institute shall operate in accordance with the policies and regulations of the Board of Regents of the University of Nebraska.

Source: Laws 1972, LB 1374, § 2.

85-803 Institute; director; appointment; qualifications; responsibilities.

The director of the institute shall be appointed by the Board of Regents of the University of Nebraska. He shall be the chief executive officer and scientific director of the institute, shall hold professorial rank and shall be responsible to the Board of Regents through the Chancellor of the University of Nebraska Medical Center and the president of the university.

Source: Laws 1972, LB 1374, § 3.

85-804 Institute; purpose; function; grants; gifts.

It shall be the purpose and function of the institute to carry on research into the causes, control and cure for cancer and similar disorders and to conduct symposia and lectures and to issue monographs, treatises and reports so that the findings, techniques and discoveries developed or confirmed by the institute may be disseminated to the medical profession, medical schools and research centers to accelerate the conquest of cancer and to relieve those suffering therefrom. To carry out such purpose and function, the institute may receive and accept, through the University of Nebraska, any grants, gifts or other contributions from any governmental or public agency or from any other person, firm or corporation.

Source: Laws 1972, LB 1374, § 4.

(b) REGIONAL RADIATION HEALTH CENTER

85-805 Regional Radiation Health Center; created; purpose.

There is hereby created a Regional Radiation Health Center, to be developed within the University of Nebraska Medical Center Hospital and supervised by the University of Nebraska Medical Center, for the purpose of offering: (1) Specialized medical and related services for evaluation, treatment, and management of radiation casualties; (2) routine medical, radiation protection, consultation, and associated services to nuclear-oriented facilities and industry generally associated with radiation sources; and (3) educational programs for nuclear safety, with emphasis on preventive medical and radiologic protection in industry.

Regional Radiation Health Center facilities and services may also be utilized for the care and treatment of patients other than radiation casualties whenever such facilities are not being fully utilized for radiation casualties.

Source: Laws 1972, LB 1405, § 1.

85-806 Regional Radiation Health Center; duties.

In order to carry out the purposes for which it is established, the Regional Radiation Health Center shall: (1) Employ professional medical and allied health personnel for the diagnosis and treatment of radiation casualties; (2) acquire appropriate instrumentation and equipment to support the unique aspects of diagnosis and treatment of radiation injury; (3) develop specialized patient care facilities for initial receiving, evaluation, decontamination and

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emergency treatment of radiation casualties; (4) specialized patient care facilities for long-term inpatient management of radiation injury; and (5) any appropriate support facilities to assist the comprehensive management of radiation injury.

Any of the facilities and services provided for in subdivisions (1) to (5) of this section may be applied to the care and treatment of patients other than radiation casualties whenever not being fully utilized for radiation casualties.

Source: Laws 1972, LB 1405, § 2.

85-807 Regional Radiation Health Center; public power district; payments to center; benefits; requirements.

Upon the payment of eighty thousand dollars to the University of Nebraska Medical Center for the development of the Regional Radiation Health Center described in sections 85-805 and 85-806, a public power district owning a nuclear electric generating plant in Nebraska shall have the right to refer patients to the Regional Radiation Health Center and obtain services at cost, and no public power district shall operate a nuclear electric generating plant in Nebraska without obtaining such right.

Source: Laws 1972, LB 1405, § 4.

**ARTICLE 9
POSTSECONDARY EDUCATION**

Cross References

State Department of Education, loans to needy students, see section 79-2,106.

(a) GENERAL PROVISIONS

- Section
- 85-901. Eye protective devices; required; when; term, defined; Commissioner of Education; duties.
- 85-902. Information on meningococcal disease; requirements.
- 85-902.01. Repealed. Laws 1991, LB 663, § 136.
- 85-903. Information on early voting; requirements.
- 85-904. American Sign Language course; credits; how used.
- 85-905. Tribal regalia; permitted; school policy.
- 85-906. Repealed. Laws 1991, LB 663, § 137.
- 85-907. Repealed. Laws 1991, LB 663, § 137.
- 85-908. Repealed. Laws 1991, LB 663, § 137.
- 85-909. Repealed. Laws 1991, LB 663, § 137.
- 85-910. Repealed. Laws 1991, LB 663, § 137.
- 85-910.01. Repealed. Laws 1991, LB 663, § 136.
- 85-911. Repealed. Laws 1991, LB 663, § 136.
- 85-912. Repealed. Laws 1991, LB 663, § 136.
- 85-913. Repealed. Laws 1991, LB 663, § 137.
- 85-914. Repealed. Laws 1987, LB 16, § 2.
- 85-915. Repealed. Laws 1991, LB 663, § 137.
- 85-916. Repealed. Laws 1984, LB 290, § 9.
- 85-916.01. Repealed. Laws 1991, LB 663, § 137.
- 85-916.02. Repealed. Laws 1991, LB 663, § 137.

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- 85-955. Transferred to section 85-947.01.
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- 85-957. Peru State College; programs authorized; approval; required, when.
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85-969. Transferred to section 85-1422.
85-970. Transferred to section 85-1423.
85-971. Repealed. Laws 1994, LB 683, § 33.
85-972. Repealed. Laws 1991, LB 663, § 136.
85-973. Repealed. Laws 1994, LB 683, § 33.
85-974. Transferred to section 85-1424.
85-975. Transferred to section 85-1425.
85-976. Transferred to section 85-1426.
85-977. Repealed. Laws 1994, LB 683, § 33.
85-978. Repealed. Laws 1994, LB 683, § 33.
85-979. Transferred to section 85-1427.

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- 85-980. Repealed. Laws 2003, LB 574, § 45.
85-980.01. Repealed. Laws 2003, LB 574, § 45.
85-981. Repealed. Laws 2003, LB 574, § 45.
85-982. Repealed. Laws 2003, LB 574, § 45.
85-982.01. Repealed. Laws 2003, LB 574, § 45.
85-983. Repealed. Laws 2003, LB 574, § 45.
85-984. Repealed. Laws 2003, LB 574, § 45.
85-985. Repealed. Laws 2003, LB 574, § 45.
85-986. Repealed. Laws 2003, LB 574, § 45.
85-987. Repealed. Laws 2003, LB 574, § 45.
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85-990. Repealed. Laws 2003, LB 574, § 45.
85-991. Repealed. Laws 2003, LB 574, § 45.
85-992. Repealed. Laws 2003, LB 574, § 45.
85-993. Transferred to section 85-982.01.
85-993.01. Repealed. Laws 2003, LB 574, § 45.
85-994. Repealed. Laws 2003, LB 574, § 45.
85-995. Repealed. Laws 2003, LB 574, § 45.
85-996. Repealed. Laws 2003, LB 574, § 45.
85-997. Repealed. Laws 2003, LB 574, § 45.
85-998. Repealed. Laws 1993, LB 505, § 45.
85-999. Repealed. Laws 2003, LB 574, § 45.
85-999.01. Repealed. Laws 2003, LB 574, § 45.
85-9,100. Repealed. Laws 2003, LB 574, § 45.
85-9,101. Repealed. Laws 2003, LB 574, § 45.
85-9,102. Repealed. Laws 2003, LB 574, § 45.
85-9,102.01. Repealed. Laws 2003, LB 574, § 45.

(e) PROGRAM REVIEW

- 85-9,103. Repealed. Laws 1991, LB 663, § 138.
85-9,104. Repealed. Laws 1991, LB 663, § 138.
85-9,105. Repealed. Laws 1991, LB 663, § 138.
85-9,106. Repealed. Laws 1991, LB 663, § 138.
85-9,107. Repealed. Laws 1991, LB 663, § 138.
85-9,108. Repealed. Laws 1991, LB 663, § 138.
85-9,109. Repealed. Laws 1991, LB 663, § 138.

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- 85-9,111. Repealed. Laws 1991, LB 663, § 136.
- 85-9,112. Repealed. Laws 1991, LB 663, § 136.
- 85-9,113. Repealed. Laws 1991, LB 663, § 136.
- 85-9,114. Repealed. Laws 1991, LB 663, § 136.
- 85-9,115. Repealed. Laws 1991, LB 663, § 136.
- 85-9,116. Repealed. Laws 1991, LB 663, § 136.

(h) SCHOLARSHIP ASSISTANCE PROGRAM

- 85-9,117. Repealed. Laws 2003, LB 574, § 45.
- 85-9,118. Repealed. Laws 2003, LB 574, § 45.
- 85-9,119. Repealed. Laws 2003, LB 574, § 45.
- 85-9,119.01. Repealed. Laws 2003, LB 574, § 45.
- 85-9,120. Repealed. Laws 2003, LB 574, § 45.
- 85-9,121. Repealed. Laws 2003, LB 574, § 45.
- 85-9,122. Repealed. Laws 2003, LB 574, § 45.
- 85-9,123. Repealed. Laws 2003, LB 574, § 45.
- 85-9,124. Repealed. Laws 2003, LB 574, § 45.
- 85-9,125. Repealed. Laws 1993, LB 505, § 45.
- 85-9,126. Repealed. Laws 2003, LB 574, § 45.
- 85-9,127. Repealed. Laws 2003, LB 574, § 45.
- 85-9,128. Repealed. Laws 2003, LB 574, § 45.
- 85-9,129. Repealed. Laws 2003, LB 574, § 45.
- 85-9,130. Repealed. Laws 2003, LB 574, § 45.
- 85-9,130.01. Repealed. Laws 2003, LB 574, § 45.
- 85-9,130.02. Repealed. Laws 2003, LB 574, § 45.
- 85-9,131. Repealed. Laws 2003, LB 574, § 45.
- 85-9,132. Repealed. Laws 2003, LB 574, § 45.
- 85-9,132.01. Repealed. Laws 2003, LB 574, § 45.

(i) FINANCIAL AID

- 85-9,133. Legislative findings.
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- 85-9,137. College or university; violation; liability.
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- 85-9,139.01. Federal State Postsecondary Review Program; professional program, defined.
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- 85-9,139.03. Student Loan Default Fee Revolving Fund; created; use; investment.

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- 85-9,140. Repealed. Laws 2021, LB528, § 74.
- 85-9,141. Repealed. Laws 2003, LB 574, § 45.
- 85-9,142. Repealed. Laws 2003, LB 574, § 45.
- 85-9,142.01. Repealed. Laws 2003, LB 574, § 45.
- 85-9,143. Repealed. Laws 2003, LB 574, § 45.
- 85-9,144. Repealed. Laws 2003, LB 574, § 45.
- 85-9,145. Repealed. Laws 2003, LB 574, § 45.
- 85-9,146. Repealed. Laws 2003, LB 574, § 45.
- 85-9,147. Repealed. Laws 2003, LB 574, § 45.
- 85-9,148. Repealed. Laws 2003, LB 574, § 45.
- 85-9,149. Repealed. Laws 2003, LB 574, § 45.
- 85-9,150. Repealed. Laws 2003, LB 574, § 45.
- 85-9,151. Repealed. Laws 2003, LB 574, § 45.
- 85-9,152. Repealed. Laws 2003, LB 574, § 45.
- 85-9,153. Repealed. Laws 2003, LB 574, § 45.
- 85-9,154. Repealed. Laws 2003, LB 574, § 45.

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Section

- 85-9,155. Repealed. Laws 2003, LB 574, § 45.
- 85-9,156. Repealed. Laws 1993, LB 505, § 45.
- 85-9,157. Repealed. Laws 2003, LB 574, § 45.
- 85-9,158. Repealed. Laws 2003, LB 574, § 45.
- 85-9,159. Repealed. Laws 2003, LB 574, § 45.
- 85-9,160. Repealed. Laws 2003, LB 574, § 45.
- 85-9,161. Repealed. Laws 2003, LB 574, § 45.
- 85-9,162. Repealed. Laws 2003, LB 574, § 45.

(k) TRANSITION COORDINATING COMMISSION
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- 85-9,163. Repealed. Laws 1991, LB 663, § 137.
- 85-9,164. Repealed. Laws 1991, LB 663, § 137.
- 85-9,165. Repealed. Laws 1991, LB 663, § 137.

(l) NEBRASKA EQUAL OPPORTUNITY IN POSTSECONDARY EDUCATION ACT

- 85-9,166. Act, how cited.
- 85-9,167. Terms, defined.
- 85-9,168. Legislative findings; discriminatory practices enumerated.
- 85-9,169. Rules and regulations; governing boards; duties.
- 85-9,170. Violation; complaint; filing; disposition; procedure; governing board; duties.
- 85-9,171. Disposition of complaint; claimant; acceptance.
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- 85-9,173. Complaint; failure of governing board to act; claimant's remedies.
- 85-9,174. Violation; complaint; prerequisite to other remedy.
- 85-9,175. Nebraska Fair Employment Practice Act; complaint; applicability.
- 85-9,176. Act; how construed.

(m) STUDENT DIVERSITY SCHOLARSHIP PROGRAM ACT

- 85-9,177. Act, how cited.
- 85-9,178. Legislative findings and intent.
- 85-9,179. Endowed scholarship funds; use; purpose.
- 85-9,180. Appropriations; use.
- 85-9,181. Funds; use; administration; manner.
- 85-9,182. Awards; committee; determination.

(n) EDUCATION ROUNDTABLE

- 85-9,183. Repealed. Laws 2002, Second Spec. Sess., LB 41, § 1.
- 85-9,184. Repealed. Laws 2002, Second Spec. Sess., LB 41, § 1.
- 85-9,185. Repealed. Laws 2002, Second Spec. Sess., LB 41, § 1.
- 85-9,186. Repealed. Laws 2002, Second Spec. Sess., LB 41, § 1.
- 85-9,187. Repealed. Laws 2002, Second Spec. Sess., LB 41, § 1.
- 85-9,188. Repealed. Laws 2002, Second Spec. Sess., LB 41, § 1.
- 85-9,189. Repealed. Laws 2002, Second Spec. Sess., LB 41, § 1.

(a) GENERAL PROVISIONS

85-901 Eye protective devices; required; when; term, defined; Commissioner of Education; duties.

(1) Every student and teacher in colleges, universities, or other postsecondary educational institutions shall wear appropriate industrial-quality eye protective devices at all times while participating in or observing the following courses of instruction:

(a) Vocational, technical, industrial arts, chemical, or chemical-physical, involving exposure to:

(i) Hot molten metals or other molten materials;

(ii) Milling, sawing, turning, shaping, cutting, grinding, or stamping of any solid materials;

- (iii) Heat treatment, tempering, or kiln firing of any metal or other materials;
- (iv) Gas or electric arc welding or other forms of welding processes;
- (v) Repair or servicing of any vehicle; or
- (vi) Caustic or explosive materials; and

(b) Chemical, physical, or combined chemical-physical laboratories involving caustic or explosive materials, hot liquids or solids, injurious radiations, or other hazards not enumerated.

Such devices may be furnished by the postsecondary educational institution for all students and teachers, purchased and sold at cost to students and teachers, or made available for a moderate rental fee and shall be furnished for all visitors to shops and laboratories of such institutions.

(2) For purposes of this section, unless the context otherwise requires, industrial-quality eye protective devices means devices which meet the standard of the American National Standard Practice for Occupational and Educational Eye and Face Protection, Z 87.1(1979) as approved by the American National Standards Institute, Inc.

(3) The Commissioner of Education shall prepare and circulate to each public and private postsecondary educational institution in this state instructions and recommendations for implementing the eye safety provisions of this section.

Source: Laws 1996, LB 900, § 1085.

85-902 Information on meningococcal disease; requirements.

(1) Beginning with school year 2003-04, each postsecondary educational institution shall provide to each newly enrolled student who will reside in oncampus housing and the student's parent or guardian: (a) Detailed information on the risks associated with the potentially fatal meningococcal disease; (b) the availability and effectiveness of a vaccine against the disease; (c) a recommendation that each student receive the meningococcal vaccination; and (d) information on the availability of an indigent patient fund to assist qualified persons with the cost of the vaccine.

(2) Each postsecondary educational institution shall request a confirmation signed by the student, parent, or guardian that the information provided has been received and reviewed.

Source: Laws 2003, LB 513, § 1.

85-902.01 Repealed. Laws 1991, LB 663, § 136.

85-903 Information on early voting; requirements.

In addition to the requirements of 20 U.S.C. 1094(a)(23), the University of Nebraska, each state college, and each community college shall provide information furnished by the Secretary of State on early voting prior to each statewide primary and general election to each student enrolled in a degree or certificate program and physically in attendance at the institution. The information shall include instructions on early voting and an application to request a ballot for early voting. The institution may provide the information electronically.

Source: Laws 2010, LB951, § 7.

85-904 American Sign Language course; credits; how used.

Any postsecondary educational institution may offer an elective course in American Sign Language. Any credits earned in a course in American Sign Language at a postsecondary educational institution may be used for world language credits if recognized as such by the postsecondary educational institution.

Source: Laws 2020, LB965, § 3.

85-905 Tribal regalia; permitted; school policy.

(1) A person who is a member of an indigenous tribe of the United States or another country and is a student attending any Nebraska public postsecondary institution may wear traditional tribal regalia in any public or private location where the person is otherwise authorized to be on such school grounds or at any school function. Nothing in this section limits the authority of administrative and teaching personnel of a Nebraska public postsecondary institution to regulate student behavior to further school purposes or to prevent interference with the educational process.

(2) A Nebraska public postsecondary institution may adopt a policy to accommodate this section. Such policy may specify the characteristics of any garment, jewelry, other adornment, or object that such school finds will endanger the safety of a student or others or interfere with school purposes or the educational process if worn by such student during a specified activity.

(3) For purposes of this section:

(a) Nebraska public postsecondary institution has the same meaning as in section 85-2403; and

(b) Tribal regalia means traditional garments, jewelry, other adornments, or similar objects of cultural significance worn by members of an indigenous tribe of the United States or another country. Tribal regalia does not include any firearm or other dangerous weapon. Tribal regalia also does not include, except in compliance with an appropriate federal permit, any object that is otherwise prohibited by federal law.

Source: Laws 2024, LB43, § 7.

Operative date July 1, 2025.

85-906 Repealed. Laws 1991, LB 663, § 137.

85-907 Repealed. Laws 1991, LB 663, § 137.

85-908 Repealed. Laws 1991, LB 663, § 137.

85-909 Repealed. Laws 1991, LB 663, § 137.

85-910 Repealed. Laws 1991, LB 663, § 137.

85-910.01 Repealed. Laws 1991, LB 663, § 136.

85-911 Repealed. Laws 1991, LB 663, § 136.

85-912 Repealed. Laws 1991, LB 663, § 136.

85-913 Repealed. Laws 1991, LB 663, § 137.

85-914 Repealed. Laws 1987, LB 16, § 2.

85-915 Repealed. Laws 1991, LB 663, § 137.

85-916 Repealed. Laws 1984, LB 290, § 9.

85-916.01 Repealed. Laws 1991, LB 663, § 137.

85-916.02 Repealed. Laws 1991, LB 663, § 137.

(b) ROLE AND MISSION ASSIGNMENTS

85-917 Legislative intent.

The Legislature hereby declares that it is the intent and purpose of sections 85-194, 85-308, 85-606.01, 85-917 to 85-966, and 85-1511 to provide statements of role and mission for the state's systems and institutions of postsecondary education which will:

- (1) Provide for a coordinated state system of postsecondary education;
- (2) Provide for the maintenance and development of quality postsecondary educational programs and services for all citizens in all regions of the state;
- (3) Insure student and community access to comprehensive educational programs;
- (4) Limit unnecessary program and facility duplication through a coordinated planning and review process;
- (5) Encourage statewide long-term academic and fiscal planning for postsecondary education in the state;
- (6) Establish a legislative review process to insure that (a) role and mission statements are updated as necessary and (b) postsecondary institutions are complying with role and mission assignments and are serving a valuable purpose to the state within their current role and mission assignments; and
- (7) Provide a mechanism for (a) implementing an extensive change in the scope, role, and mission of a campus, (b) closing a campus, (c) merging campuses, and (d) changing a campus to serve a completely different public purpose.

Source: Laws 1978, LB 756, § 1; Laws 1984, LB 981, § 18; Laws 1996, LB 900, § 1080; Laws 2017, LB512, § 25.

85-918 Definitions; where found.

For purposes of sections 85-917 to 85-966, unless the context otherwise requires, the definitions found in sections 85-919 to 85-932.01 shall be used.

Source: Laws 1978, LB 756, § 2; Laws 1993, LB 239, § 8.

85-919 Instructional activities, defined.

Instructional activities shall mean those degree-credit and non-degree-credit courses and programs delivered to complete specific degree and nondegree learner objectives.

Source: Laws 1978, LB 756, § 3.

85-920 Research activities, defined.

Research activities shall mean those activities intended to create new knowledge or provide for the application of existing or newly created knowledge. Research activities may be carried out in conjunction with a system or area's instructional program or as a separately identifiable activity.

Source: Laws 1978, LB 756, § 4.

85-921 Public service activities, defined.

Public service activities shall mean those programs established to make available to the public the particular resources of a system, area, or institution for the purpose of responding to a statewide, regional, or community need. Within this category may be included the following activities: (1) Direct patient care; (2) health care supportive services; (3) community services; (4) cooperative agricultural extension; (5) public broadcasting services; (6) cultural, recreational, and personal development activities; (7) economic development activities; and (8) continuing education for occupations and professions. Adult, basic, and continuing education programs or services shall not be included in the subcategory of community services.

Source: Laws 1978, LB 756, § 5; Laws 1991, LB 663, § 89; Laws 1993, LB 239, § 10.

85-922 Program responsibility, defined.

Program responsibility shall mean a system, area, or institution having designated statewide or regional administrative, planning, and academic responsibility for a general or specific program area.

Source: Laws 1978, LB 756, § 6.

85-923 Cooperative program delivery, defined.

Cooperative program delivery shall mean the provision for two or more systems, areas, or institutions to participate in the planning or delivery of a program or service in a specific or general area; with one system, area, or institution having administrative and academic responsibility for the program.

Source: Laws 1978, LB 756, § 7.

85-924 Regional program responsibility, defined.

Regional program responsibility shall mean an identifiable geographic area for service delivery by a system, area, or institution. The intrastate or interstate area or region serves as the base for justifying existing and proposed new or expanded program responsibilities.

Source: Laws 1978, LB 756, § 8.

85-925 Comprehensive degree offerings, defined.

Comprehensive degree offerings shall mean the awarding by a system, area, or institution of degrees, including but not limited to associate, bachelor's, master's, specialist, or doctorate, in a variety of academic or vocational program areas.

Source: Laws 1978, LB 756, § 9.

85-926 General academic transfer programs, defined.

General academic transfer programs shall mean those one-year or two-year degree-credit programs, at the associate degree level or below including liberal arts and sciences degrees or courses, intended by the offering institution for transfer into a baccalaureate program. Programs in this category may include the award of a formal degree upon completion of the program.

Source: Laws 1978, LB 756, § 10; Laws 1993, LB 239, § 11.

85-927 Applied technology and occupational education, defined.

Applied technology and occupational education shall mean those instructional programs at the associate degree level or below including associate of applied science degrees, diplomas, certificates, and course work intended to prepare individuals for immediate entry into a specific occupation or career, to upgrade skills, or to acquire new skills. Programs in this category may include the award of a formal degree, diploma, or certificate upon completion of the program.

Source: Laws 1978, LB 756, § 11; Laws 1993, LB 239, § 12.

85-928 Baccalaureate general academic, defined.

Baccalaureate general academic shall mean those degree programs intended by an institution to prepare an individual to function in a variety of different career areas or to prepare such individual for further academic study. Programs at this level shall allow an individual to acquire a general education at the baccalaureate level in arts, sciences, and humanities.

Source: Laws 1978, LB 756, § 12.

85-929 Baccalaureate occupational, defined.

Baccalaureate occupational shall mean those degree programs intended by an institution to prepare an individual for a specific occupation or career. Such programs include but are not limited to: (1) Agriculture and natural resources; (2) communications; (3) business and management; (4) computer and information sciences; (5) home economics; (6) fine and applied arts; and (7) specific areas in the social sciences.

Source: Laws 1978, LB 756, § 13.

85-930 Baccalaureate professional, defined.

Baccalaureate professional shall mean those degree programs intended by an institution to prepare an individual for certification or licensure by a national-, regional-, or state-level certifying or licensing agency. Such programs include but are not limited to: (1) Engineering; (2) education; (3) allied health professions; (4) nursing; and (5) architecture.

Source: Laws 1978, LB 756, § 14.

85-931 Graduate degree programs, defined.

Graduate degree programs shall mean those programs for which the following degrees are awarded:

(1) First professional degree being the first earned degree in the following fields: (a) Dentistry; (b) medicine, general; (c) optometry; (d) osteopathic

medicine; (e) pharmacy; (f) podiatry; (g) veterinary medicine; (h) chiropractic; (i) law, general; (j) theology, general; and (k) architecture, general;

(2) Master's degree being the earned degree carrying the title Master. The master's degree is the first advanced graduate degree conferred in professional programs and general academic and occupational programs.

Master's degree professional programs include but are not limited to: (a) Engineering; (b) education; (c) allied health professions; (d) nursing; (e) architecture, specialties; (f) community and regional planning; (g) dentistry; (h) medicine, specialties; (i) optometry; (j) osteopathic medicine; (k) pharmacy; (l) podiatry; (m) social work; (n) veterinary medicine; (o) chiropractic; (p) law, specialties; and (q) theology, specialties.

Master's degree programs in general academic and occupational areas include but are not limited to: (a) Mathematics; (b) languages; (c) biological and physical sciences; (d) letters; (e) fine arts; (f) social sciences; (g) agriculture and natural resources; (h) communications; (i) business and management; (j) computer and information sciences; (k) home economics; and (l) fine and applied arts; and

(3) Doctoral degree being an earned academic degree conveying the title of Doctor. Doctoral degrees include but are not limited to: Doctor of Philosophy; Doctor of Education; and Doctor of Arts.

Source: Laws 1978, LB 756, § 15; Laws 1994, LB 683, § 7.

85-932 Continuing education for occupations and professions, defined.

Continuing education for occupations and professions shall mean training or education that is not a part of a terminal degree or certificate program, but is related to an individual's existing or proposed area of occupation or profession.

Source: Laws 1978, LB 756, § 16.

85-932.01 Foundations education, defined.

Foundations education shall mean education which includes remedial and developmental programs, adult basic education, general education development, English as a second language, compensatory education, and refresher courses.

Source: Laws 1993, LB 239, § 9.

85-933 Expenditures in conflict with role and mission assignments; prohibited.

No funds generated or received from a General Fund appropriation, state aid assistance program, or receipts from a tax levy authorized by statute shall be expended in support of programs or activities which are in conflict with the role and mission assignments applicable to the University of Nebraska, state colleges, or community colleges under sections 85-194, 85-308, 85-606.01, 85-917 to 85-966, and 85-1511.

Source: Laws 1978, LB 756, § 17; Laws 1979, LB 187, § 261; Laws 1996, LB 900, § 1081; Laws 2017, LB512, § 26.

85-934 Nondegree recreational and avocational courses; self-supporting; exception.

All direct costs of nondegree recreational and avocational courses shall, on the average, be self-supporting through student tuition and fee charges or designated grants or contracts by July 1, 1979. This section shall not apply to the Cooperative Extension Service of the University of Nebraska.

Source: Laws 1978, LB 756, § 18.

85-935 University of Nebraska system; role and mission assignments; Board of Regents; adopt policies.

The role and mission assignments enumerated in sections 85-936 to 85-948 shall apply to the University of Nebraska system and its campuses. Such assignments shall prohibit, limit, or restrict only those programs or services provided for under such sections. The Board of Regents of the University of Nebraska shall adopt and promulgate policies and procedures necessary to assure compliance with sections 85-917 to 85-966.

Source: Laws 1978, LB 756, § 19; Laws 1989, LB 247, § 23; Laws 1991, LB 663, § 90; Laws 1993, LB 239, § 13.

85-936 University of Nebraska; public service activities; statewide responsibility.

The University of Nebraska shall have statewide responsibility for public service activities.

Source: Laws 1978, LB 756, § 20.

85-937 University of Nebraska; degree programs; sole responsibility.

The University of Nebraska shall have sole responsibility for doctoral degree programs, first professional degree programs, cooperative agricultural extension programs, and other degree programs and services specifically provided for by law. The first professional degrees, as defined by the Integrated Postsecondary Education Data System, offered by the University of Nebraska shall be medicine, law, dentistry, and pharmacy. In addition, the University of Nebraska may, with approval by the Coordinating Commission for Postsecondary Education, offer a first professional degree in architecture.

Source: Laws 1978, LB 756, § 21; Laws 1988, LB 927, § 2; Laws 1994, LB 683, § 8.

Cross References

Integrated Postsecondary Education Data System, see sections 85-1412 and 85-1424.

85-938 University of Nebraska; maintain graduate college and faculty status.

The University of Nebraska is encouraged to maintain its existing single university-wide graduate college and maintain for its graduate faculty all rights, privileges, and responsibilities associated with graduate faculty status.

Source: Laws 1978, LB 756, § 22.

85-939 University of Nebraska; continuing education services; statewide responsibility.

The University of Nebraska shall have statewide responsibility for continuing education services at the baccalaureate, graduate, and professional levels.

Source: Laws 1978, LB 756, § 23.

85-940 Repealed. Laws 1991, LB 663, § 136.**85-941 University of Nebraska; certain graduate programs; baccalaureate professional programs; agriculture and natural resources programs; responsibilities.**

The University of Nebraska shall have sole responsibility for all graduate programs at the specialist and master's degree level and all baccalaureate professional programs throughout the public sector of postsecondary education in Nebraska, with the exception of programs in education and other areas authorized by the Legislature at the state colleges. The University of Nebraska shall have primary responsibility for instruction in agriculture and natural resources and primary statewide responsibility for research and public service in agriculture and natural resources. All baccalaureate and baccalaureate transfer programs in agriculture and natural resources initiated after July 1, 1978, at state colleges and community colleges shall be conducted in cooperation with the University of Nebraska.

Source: Laws 1978, LB 756, § 25; Laws 1984, LB 970, § 1; Laws 1991, LB 6, § 3.

85-942 University of Nebraska; mission; priorities.

It is recognized that as the state's land grant institution the University of Nebraska is engaged in instruction, research, and public service, and that these three parts of the university's mission are interdependent. However, when viewed in its entirety, the university's first priority shall be undergraduate instruction, the university's second priority shall be graduate and professional instruction and research, and the university's third priority shall be public service.

Source: Laws 1978, LB 756, § 26.

85-943 University of Nebraska; associate degree, diploma, and certificate; programs authorized; conditions; exception.

The University of Nebraska may continue to offer the associate degree, diploma, and certificate in agriculturally related fields, radiologic technology, radiation therapy, nuclear medicine technology, and engineering technology if approved by the Coordinating Commission for Postsecondary Education pursuant to sections 85-1413 and 85-1414 upon the demonstration of a compelling need and unique capacity by the university to offer such programs. The University of Nebraska shall not offer associate degrees or less than associate-degree-level diplomas or certificates in other than authorized and approved programs. If approved by the Coordinating Commission for Postsecondary Education pursuant to sections 85-1413 and 85-1414, the University of Nebraska may offer certificates within fields in addition to those specified in this section if the preponderance of courses comprising those certificates are above the associate-degree level.

Source: Laws 1978, LB 756, § 27; Laws 1988, LB 890, § 1; Laws 1991, LB 663, § 91; Laws 2003, LB 7, § 3; Laws 2011, LB637, § 27.

85-944 University of Nebraska; health professions programs; priorities.

The University of Nebraska's programs in the health professions shall serve the health care needs of the State of Nebraska. The University of Nebraska, in

cooperation with state and regional health planning agencies, shall conduct a continuing study of the state's health care needs and adjust program services to reflect changing conditions. The University of Nebraska's health professions programs shall have as their first priority the training of physicians, dentists, nurses, pharmacists, and allied health professionals. Special emphasis and priority shall be placed on education and training of physicians for the primary care specialties of: (1) Family practice; (2) internal medicine; (3) pediatrics; and (4) obstetrics-gynecology. The second priority in the health professions programs shall be the provision of continuing education services for the health professions. The third priority for the health professions programs shall be research and public services in those areas related to the health professions.

Source: Laws 1978, LB 756, § 28.

85-945 University of Nebraska at Omaha; urban-oriented programs; primary responsibility; doctoral programs; authorized; when.

The University of Nebraska at Omaha shall continue to be the primary unit within the University of Nebraska for urban-oriented programs. Subject to approval by the Board of Regents of the University of Nebraska, the University of Nebraska at Omaha may offer doctoral programs upon demonstration of compelling need in disciplines in which it has a demonstrated capacity as authorized and approved by the Coordinating Commission for Postsecondary Education pursuant to sections 85-1413 and 85-1414. There shall be no duplication of administrative responsibility for any urban-oriented program among units of the university.

Source: Laws 1978, LB 756, § 29; Laws 1991, LB 663, § 92.

85-946 University of Nebraska-Lincoln; doctoral and postdoctoral programs; primary responsibility; exception.

The University of Nebraska-Lincoln shall continue to be the primary unit within the University of Nebraska for doctoral and postdoctoral programs except in health-related disciplines. There shall be no duplication of administrative responsibility for any doctoral or postdoctoral program among units of the university.

Source: Laws 1978, LB 756, § 30.

85-946.01 University of Nebraska-Lincoln; research; primary responsibility; other research activities.

The University of Nebraska-Lincoln shall be the primary public institution in the state for research. The research activities of the University of Nebraska at Omaha shall primarily support graduate programs and otherwise be directly related to the enhancement of the instructional programs and to the professional development of the faculty. The research activities of the University of Nebraska at Kearney shall be directly related to the enhancement of the instructional programs and to the professional development of the faculty. The research activities of the University of Nebraska Medical Center shall be health-related.

Source: Laws 1991, LB 663, § 95.

85-947 University of Nebraska Medical Center; health-related programs; primary responsibility.

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The University of Nebraska Medical Center shall continue to be the primary unit within the University of Nebraska for programs in the health-related disciplines. There shall be no duplication of administrative responsibility for any health-related program among units of the university.

Source: Laws 1978, LB 756, § 31.

85-947.01 University of Nebraska at Kearney; programs authorized.

The University of Nebraska at Kearney may maintain the baccalaureate general academic, baccalaureate occupational, and baccalaureate professional degree programs which Kearney State College maintained prior to July 1, 1991. Subject to approval by the Board of Regents of the University of Nebraska, the University of Nebraska at Kearney may award the master's degree in business administration. Subject to approval by the Board of Regents of the University of Nebraska, the University of Nebraska at Kearney may offer other master's degree programs upon demonstration of a compelling need in disciplines in which it has a demonstrated capacity as authorized and approved by the Coordinating Commission for Postsecondary Education pursuant to sections 85-1413 and 85-1414.

Source: Laws 1978, LB 756, § 39; Laws 1984, LB 970, § 4; R.S.1943, (1987), § 85-955; Laws 1989, LB 247, § 26; Laws 1991, LB 663, § 93.

85-948 University of Nebraska; health programs; sole responsibility; exception.

The University of Nebraska shall have sole responsibility for baccalaureate, first professional, master's, and doctoral programs in the health professions to include medicine, dentistry, pharmacy, nursing, and the allied health professions, with the exception of the baccalaureate programs in the allied health professions established at the state colleges prior to June 1, 1977.

Source: Laws 1978, LB 756, § 32; Laws 1981, LB 320, § 3; Laws 1988, LB 890, § 2; Laws 1989, LB 247, § 25; Laws 1991, LB 663, § 94.

85-949 State college system; role and mission assignments; board of trustees; adopt policies.

The role and mission assignments enumerated in sections 85-950 to 85-958 shall apply to the state college system and its institutions. Such assignments shall prohibit, limit, or restrict only those programs or services provided for under such sections. The Board of Trustees of the Nebraska State Colleges shall adopt and promulgate policies and procedures necessary to assure compliance with sections 85-194, 85-308, 85-606.01, 85-917 to 85-966, and 85-1511.

Source: Laws 1978, LB 756, § 33; Laws 1996, LB 900, § 1082; Laws 2017, LB512, § 27.

85-950 State colleges; public service and continuing education activities; regional responsibility; exception.

The state colleges shall have regional responsibility for public service and continuing education activities, except in areas where such colleges have the ability to provide a particular service on a statewide basis.

Source: Laws 1978, LB 756, § 34.

85-951 State colleges; priorities.

The state colleges, collectively and individually, shall have as their first instructional priority the provision of baccalaureate general academic, baccalaureate occupational, and baccalaureate professional degree programs in education. The colleges' second instructional priority shall be master's programs in education and other areas authorized by the Coordinating Commission for Postsecondary Education pursuant to sections 85-1413 and 85-1414. Such colleges' third priority shall be the continuation and development of applied research and public service activities. The colleges' fourth priority shall be the awarding of the specialist degree in education.

Source: Laws 1978, LB 756, § 35; Laws 1984, LB 970, § 2; Laws 2022, LB887, § 10.

85-952 State colleges; programs permitted; limitations.

The state colleges may continue to deliver academic transfer and preprofessional associate degree programs for which a degree may be awarded if approved by the Board of Trustees of the Nebraska State Colleges and the Coordinating Commission for Postsecondary Education pursuant to sections 85-1413 and 85-1414 upon demonstration of compelling need and unique capacity of the state colleges to offer such programs. The state colleges shall not independently award the associate degree, diploma, or certificate for applied technology education programs.

Source: Laws 1978, LB 756, § 36; Laws 1991, LB 663, § 96; Laws 1993, LB 239, § 14.

85-953 State colleges; research activities permitted.

The state colleges may continue to pursue and develop applied research programs related to their instructional and regional responsibilities. Research activities of the state colleges shall be directly related to the enhancement of the instructional programs and to the professional development of the faculty.

Source: Laws 1978, LB 756, § 37; Laws 1991, LB 663, § 97.

85-954 Repealed. Laws 2022, LB887, § 13.**85-955 Transferred to section 85-947.01.****85-956 Chadron State College; programs authorized.**

Chadron State College may maintain its existing baccalaureate general academic, baccalaureate occupational, and baccalaureate professional degree programs and shall limit new baccalaureate degree programs to the needs of its unique service area generally defined as the state's western region. Subject to approval by the Board of Trustees of the Nebraska State Colleges, Chadron State College may independently award the master's degree in business administration. Subject to approval by the Board of Trustees of the Nebraska State Colleges, Chadron State College may offer other master's degree programs upon demonstration of a compelling need in disciplines in which it has a demonstrated capacity as authorized and approved by the Coordinating Com-

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mission for Postsecondary Education pursuant to sections 85-1413 and 85-1414.

Source: Laws 1978, LB 756, § 40; Laws 1984, LB 970, § 5; Laws 1991, LB 663, § 98.

85-957 Peru State College; programs authorized; approval; required, when.

Peru State College may maintain its existing baccalaureate general academic, baccalaureate occupational, and baccalaureate professional degree programs and shall limit new baccalaureate degree programs to the needs of its unique service area generally defined as the state's southeast region. Subject to approval by the Board of Trustees of the Nebraska State Colleges, Peru State College may offer other master's degree programs upon demonstration of a compelling need in disciplines in which it has a demonstrated capacity as authorized and approved by the Coordinating Commission for Postsecondary Education pursuant to sections 85-1413 and 85-1414.

Source: Laws 1978, LB 756, § 41; Laws 2006, LB 962, § 4; Laws 2022, LB887, § 11.

85-958 Wayne State College; programs authorized.

Wayne State College may maintain its existing baccalaureate general academic, baccalaureate occupational, and baccalaureate professional degree programs and shall limit new baccalaureate degree programs to the needs of its unique service area generally defined as the state's northeast region. Subject to approval by the Board of Trustees of the Nebraska State Colleges, Wayne State College may independently award the master's degree in business administration. Subject to approval by the Board of Trustees of the Nebraska State Colleges, Wayne State College may offer other master's degree programs upon demonstration of a compelling need in disciplines in which it has a demonstrated capacity as authorized and approved by the Coordinating Commission for Postsecondary Education pursuant to sections 85-1413 and 85-1414.

Source: Laws 1978, LB 756, § 42; Laws 1984, LB 970, § 6; Laws 1991, LB 663, § 99.

85-959 Community colleges; role and mission assignments.

The role and mission assignments enumerated in sections 85-960 to 85-965 shall apply to the community college system and its areas and campuses. Such assignments shall prohibit, limit, or restrict only those programs or services provided for under such sections.

Source: Laws 1978, LB 756, § 43.

85-960 Community colleges; public service activities; responsibility.

The community colleges shall be responsible for public service activities within each area.

Source: Laws 1978, LB 756, § 44.

85-960.01 Community colleges; applied research activities permitted.

Applied research activities of the community college areas shall be directly related to the enhancement of the instructional programs, student achievement,

institutional effectiveness, public service activities, and the professional development of the faculty.

Source: Laws 1991, LB 663, § 100; Laws 1993, LB 239, § 15.

85-960.02 Community colleges; foundations education.

The community college areas shall serve as the primary public postsecondary institutions for foundations education.

Source: Laws 1991, LB 663, § 101; Laws 1993, LB 239, § 16.

85-961 Community colleges; responsibility for courses at associate-degree level or below.

The community colleges shall have, except in specified program areas authorized by statute and the Coordinating Commission for Postsecondary Education, sole responsibility for the award of associate degrees, diplomas, and certificates comprised of courses at the associate-degree level or below and approved by the commission pursuant to sections 85-1413 and 85-1414.

Source: Laws 1978, LB 756, § 45; Laws 1991, LB 663, § 102; Laws 2011, LB637, § 28.

85-962 Community colleges; legislative intent; instructional and service priorities.

It is the intent of the Legislature that the community colleges shall be student-centered, open-access institutions primarily devoted to quality instruction and public service, providing counseling and other student services intended to promote the success of a diverse student population, particularly those who have been traditionally underserved in other educational settings. The community colleges, individually and collectively, shall have as their first instructional and service priority applied technology and occupational education and, when necessary, foundations education. The second instructional and service priority of the community colleges shall be transfer education, including general academic transfer programs, or applied technology and occupational programs which may be applicable to the first two years of a bachelor's degree program, and, when necessary, foundations education. The third instructional and service priority of the community colleges shall be public service, particularly adult continuing education for occupations and professions, economic and community development focused on customized occupational assessment and job training programs for businesses and communities, and avocational and personal development courses. The fourth instructional and service priority of the community colleges shall be applied research.

Source: Laws 1978, LB 756, § 46; Laws 1991, LB 663, § 103; Laws 1993, LB 239, § 17.

85-963 Community college areas; general academic transfer programs; campuses provided; limitations.

The community college areas may provide general academic transfer programs at the following campuses: Southeast Community College Area at the Fairbury-Beatrice Campus; Central Community College Area at the Columbus Campus; Metropolitan Community College Area at the Fort Omaha Campus; Mid-Plains Community College Area at the McCook and North Platte Campus-

es; Northeast Community College Area at the Norfolk Campus; and Western Community College Area at the Scottsbluff Campus.

In conjunction with and consistent with its determinations regarding transfers of credit, admission standards, and remedial programs pursuant to section 85-1413, the Coordinating Commission for Postsecondary Education may authorize any or all of the campuses of community college areas not listed in this section to also provide general academic transfer programs.

The delivery of general academic transfer program services shall be limited to those areas and campuses specifically provided for by this section or the commission. The community college areas are encouraged to work in cooperation with the University of Nebraska and the state colleges for the articulation of general academic transfer programs of the six community college areas.

Source: Laws 1978, LB 756, § 47; Laws 1981, LB 320, § 4; Laws 1984, LB 993, § 1; Laws 1991, LB 663, § 104; Laws 1994, LB 683, § 9.

85-964 Community colleges; academic course instruction authorized.

The community colleges may provide such academic course instruction as may be necessary to support applied technology education and academic transfer programs.

Source: Laws 1978, LB 756, § 48; Laws 1993, LB 239, § 18.

85-965 Community college area; education programs; contract to provide.

Any community college area or institution may contract to provide for the delivery of education programs within institutions operated by any state agency or within any geographic area administered by a federal agency or tribal authority.

Source: Laws 1978, LB 756, § 49.

85-966 Sections, how construed.

The Legislature acknowledges the provisions of Article VII, sections 10, 13, and 14, of the Constitution of Nebraska. The provisions of sections 85-917 to 85-966.01 reflect the philosophy of the State of Nebraska and shall be acknowledged as such and implemented by the Board of Regents of the University of Nebraska, the Board of Trustees of the Nebraska State Colleges, the board of governors of each community college area, and the Coordinating Commission for Postsecondary Education.

Source: Laws 1978, LB 756, § 56; Laws 1991, LB 663, § 105; Laws 1993, LB 239, § 19; Laws 1994, LB 683, § 10.

85-966.01 Role and mission; legislative change; conditions.

After January 1, 1995, the Legislature shall not change the role and mission provisions in this section and sections 85-917 to 85-966 unless and until a proposal for such change has first been reviewed by the Coordinating Commission for Postsecondary Education and its recommendations on such proposal have been given to the Legislature pursuant to subdivision (2) of section 85-1412, section 85-1414, or otherwise.

Source: Laws 1994, LB 683, § 11; Laws 2003, LB 7, § 4.

85-967 Repealed. Laws 1991, LB 663, § 136.

(c) POSTSECONDARY EDUCATION INFORMATION SYSTEM

85-968 Transferred to section 85-1421.

85-969 Transferred to section 85-1422.

85-970 Transferred to section 85-1423.

85-971 Repealed. Laws 1994, LB 683, § 33.

85-972 Repealed. Laws 1991, LB 663, § 136.

85-973 Repealed. Laws 1994, LB 683, § 33.

85-974 Transferred to section 85-1424.

85-975 Transferred to section 85-1425.

85-976 Transferred to section 85-1426.

85-977 Repealed. Laws 1994, LB 683, § 33.

85-978 Repealed. Laws 1994, LB 683, § 33.

85-979 Transferred to section 85-1427.

(d) STATE SCHOLARSHIP AWARD PROGRAM

85-980 Repealed. Laws 2003, LB 574, § 45.

85-980.01 Repealed. Laws 2003, LB 574, § 45.

85-981 Repealed. Laws 2003, LB 574, § 45.

85-982 Repealed. Laws 2003, LB 574, § 45.

85-982.01 Repealed. Laws 2003, LB 574, § 45.

85-983 Repealed. Laws 2003, LB 574, § 45.

85-984 Repealed. Laws 2003, LB 574, § 45.

85-985 Repealed. Laws 2003, LB 574, § 45.

85-986 Repealed. Laws 2003, LB 574, § 45.

85-987 Repealed. Laws 2003, LB 574, § 45.

85-988 Repealed. Laws 2003, LB 574, § 45.

85-989 Repealed. Laws 2003, LB 574, § 45.

85-990 Repealed. Laws 2003, LB 574, § 45.

85-991 Repealed. Laws 2003, LB 574, § 45.

85-992 Repealed. Laws 2003, LB 574, § 45.

85-993 Transferred to section 85-982.01.

85-993.01 Repealed. Laws 2003, LB 574, § 45.

85-994 Repealed. Laws 2003, LB 574, § 45.

85-995 Repealed. Laws 2003, LB 574, § 45.

85-996 Repealed. Laws 2003, LB 574, § 45.

85-997 Repealed. Laws 2003, LB 574, § 45.

85-998 Repealed. Laws 1993, LB 505, § 45.

85-999 Repealed. Laws 2003, LB 574, § 45.

85-999.01 Repealed. Laws 2003, LB 574, § 45.

85-9,100 Repealed. Laws 2003, LB 574, § 45.

85-9,101 Repealed. Laws 2003, LB 574, § 45.

85-9,102 Repealed. Laws 2003, LB 574, § 45.

85-9,102.01 Repealed. Laws 2003, LB 574, § 45.

(e) PROGRAM REVIEW

85-9,103 Repealed. Laws 1991, LB 663, § 138.

85-9,104 Repealed. Laws 1991, LB 663, § 138.

85-9,105 Repealed. Laws 1991, LB 663, § 138.

85-9,106 Repealed. Laws 1991, LB 663, § 138.

85-9,107 Repealed. Laws 1991, LB 663, § 138.

85-9,108 Repealed. Laws 1991, LB 663, § 138.

85-9,109 Repealed. Laws 1991, LB 663, § 138.

(f) ATHLETIC GRANT-IN-AID

85-9,110 Public postsecondary educational institution; athletic grant-in-aid; prohibited acts.

No public postsecondary educational institution in the State of Nebraska shall, prior to graduation, reduce, cancel, or refuse to renew an athletic grant-in-aid to a student during his or her period of eligibility to compete in intercollegiate athletics solely because of an injury which prevents the student from participating in athletics.

Source: Laws 1984, LB 764, § 1.

(g) LEGISLATIVE STUDY

85-9,111 Repealed. Laws 1991, LB 663, § 136.

85-9,112 Repealed. Laws 1991, LB 663, § 136.

85-9,113 Repealed. Laws 1991, LB 663, § 136.

85-9,114 Repealed. Laws 1991, LB 663, § 136.

85-9,115 Repealed. Laws 1991, LB 663, § 136.

85-9,116 Repealed. Laws 1991, LB 663, § 136.

(h) SCHOLARSHIP ASSISTANCE PROGRAM

85-9,117 Repealed. Laws 2003, LB 574, § 45.

85-9,118 Repealed. Laws 2003, LB 574, § 45.

85-9,119 Repealed. Laws 2003, LB 574, § 45.

85-9,119.01 Repealed. Laws 2003, LB 574, § 45.

85-9,120 Repealed. Laws 2003, LB 574, § 45.

85-9,121 Repealed. Laws 2003, LB 574, § 45.

85-9,122 Repealed. Laws 2003, LB 574, § 45.

85-9,123 Repealed. Laws 2003, LB 574, § 45.

85-9,124 Repealed. Laws 2003, LB 574, § 45.

85-9,125 Repealed. Laws 1993, LB 505, § 45.

85-9,126 Repealed. Laws 2003, LB 574, § 45.

85-9,127 Repealed. Laws 2003, LB 574, § 45.

85-9,128 Repealed. Laws 2003, LB 574, § 45.

85-9,129 Repealed. Laws 2003, LB 574, § 45.

85-9,130 Repealed. Laws 2003, LB 574, § 45.

85-9,130.01 Repealed. Laws 2003, LB 574, § 45.

85-9,130.02 Repealed. Laws 2003, LB 574, § 45.

85-9,131 Repealed. Laws 2003, LB 574, § 45.

85-9,132 Repealed. Laws 2003, LB 574, § 45.

85-9,132.01 Repealed. Laws 2003, LB 574, § 45.

(i) FINANCIAL AID

85-9,133 Legislative findings.

The Legislature hereby finds and declares that:

(1) Various federal and state student financial aid programs were created by federal and state law to aid financially needy students, not colleges and universities, and are not intended to discriminate on the basis of participation by a student in an intercollegiate athletic program or sport;

(2) Eligibility to receive aid under such programs is based on demonstrated need, and no student meeting such criteria should be deprived of such aid by a college or university solely on the basis of participation by such student in an intercollegiate athletic program or sport;

(3) No college or university, solely on the basis of participation in an intercollegiate athletic program or sport or as a condition to such participation, should compel a student to forego any financial aid to which he or she is entitled;

(4) No person should be denied or compelled to relinquish any benefit created by federal or state law as a condition to participation in an activity that is an integral part of the operation, occupation, or business of a college or university as an educational institution; and

(5) The Legislature has the obligation to enact laws that prohibit unjust discrimination of every variety and form and to provide redress for victims of such discrimination.

Source: Laws 1991, LB 69, § 1.

85-9,134 Colleges and universities; prohibited acts.

No college or university shall adopt, promulgate, or enforce any rule or regulation that requires a student to forego, relinquish, waive, or surrender any financial aid made available to financially needy students by federal or state law, solely on the basis of or as a condition to participation by such student in an intercollegiate athletic program or sport. This section is not violated if the rule or regulation pertaining to such financial aid applies equally and in the same manner to every student eligible to receive such financial aid irrespective of participation in an intercollegiate athletic program or sport.

Source: Laws 1991, LB 69, § 2.

85-9,135 Student; right to amount withheld.

Any amounts withheld or obtained from a student by a college or university in violation of sections 85-9,133 to 85-9,139 shall be turned over to such student in accordance with section 85-9,136.

Source: Laws 1991, LB 69, § 3.

85-9,136 Attorney General; duties.

The Attorney General shall investigate and render a finding when a complaint alleging a violation of sections 85-9,133 to 85-9,139 is brought by any person. Any college or university found by the Attorney General to have violated or to be in violation of sections 85-9,133 to 85-9,139 shall cease such violation immediately and permanently upon being directed by the Attorney General to do so. The Attorney General shall issue such directive in writing within three days of making a finding that a violation has occurred or is occurring. The directive shall include notification that any amount withheld or obtained from any student in violation of sections 85-9,133 to 85-9,139 shall be made available to such student for use in accord with the terms of the particular aid program not more than ten days after issuance of the directive. The Attorney General shall take whatever action is necessary to enforce the directive. The duty of the Attorney General under this section is not discretionary but mandatory.

Source: Laws 1991, LB 69, § 4.

85-9,137 College or university; violation; liability.

A college or university which subjects or causes to be subjected any student to a rule or regulation adopted, promulgated, or enforced in violation of section 85-9,134 shall be liable to the aggrieved party in an action at law, a suit in equity, or any other proper proceeding for redress. In addition to any other relief granted, an aggrieved party shall be awarded costs and reasonable attorney's fees.

Source: Laws 1991, LB 69, § 5.

85-9,138 Remedies; cumulative.

The remedies provided in sections 85-9,133 to 85-9,139 shall be cumulative and in addition to any other remedies provided by law.

Source: Laws 1991, LB 69, § 6.

85-9,139 Sections; prospective application.

The provisions of sections 85-9,133 to 85-9,139 shall have prospective application only and shall apply to any violation occurring after June 1, 1992.

Source: Laws 1991, LB 69, § 7.

85-9,139.01 Federal State Postsecondary Review Program; professional program, defined.

For purposes of the State Postsecondary Review Program, 20 U.S.C. 1099a, and all regulations and state review standards adopted and promulgated pursuant thereto, professional program shall have the same meaning as first professional degrees as such term is defined in section 85-937.

Source: Laws 1995, LB 601, § 1.

85-9,139.02 Participants under federal loan programs; default cost fee; reimbursement; procedure; administrative fee.

(1)(a) Each postsecondary educational institution in the State of Nebraska that participates in the Federal Family Education Loan Program or the Federal Direct Student Loan Program, under Title IV of the federal Higher Education Act of 1965, as amended, shall reimburse the state for its proportionate share of any default cost fee charged to the state by the United States Secretary of Education under the federal act.

(b) Each postsecondary educational institution which (i) is currently in operation, (ii) participated in the Federal Family Education Loan Program or the Federal Direct Student Loan Program, and (iii) for the relevant time period had a cohort default rate equal to or in excess of the percentage which directly triggered the relevant default cost fee charged to the state shall be required to remit an excess default rate fee in addition to its proportionate share of the relevant default cost fee charged to the state. Such excess default rate fee shall be two hundred percent of the institution's proportionate share of the relevant default cost fee.

(c) The balance of the relevant default cost fee charged to the state and not assessed pursuant to subdivision (b) of this subsection shall be assessed to postsecondary educational institutions which are currently in operation and which participated in the Federal Family Education Loan Program or the

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Federal Direct Student Loan Program for the relevant time period, excluding those institutions subject to assessment pursuant to such subdivision.

(d) Any postsecondary educational institution subject to assessment pursuant to subdivision (c) of this subsection shall not be assessed an amount exceeding the respective institution's proportionate share of the relevant default cost fee charged to the state. Such proportionate share means an amount which, in proportion to the total of the relevant default cost fee charged to the state by the United States Secretary of Education, is equal to the proportion of Federal Family Education Loan Program and Federal Direct Student Loan Program loan default dollar volume attributable to the respective institution to the total of Federal Family Education Loan Program and Federal Direct Student Loan Program loan default dollar volume for all institutions which participated in the Federal Family Education Loan Program and the Federal Direct Student Loan Program for the relevant time period.

(2) The Coordinating Commission for Postsecondary Education shall adopt and promulgate rules and regulations establishing a fee structure for determining the amount of the reimbursement for each institution as provided in subsection (1) of this section.

(3) Any institution with a valid authorization to operate pursuant to the Private Postsecondary Career School Act which has a cohort default rate which triggers state liability pursuant to section 428(n) of the federal Higher Education Act of 1965, as amended, has violated the Private Postsecondary Career School Act. A hearing to determine whether the institution should have its authorization to operate or its agent's permit revoked shall be held in accordance with section 85-1634.

(4) Unless prohibited by federal law, the commission may charge and collect an administrative fee, not to exceed ten percent of the proportionate share of the relevant default cost fee, from any Nebraska postsecondary educational institution to cover the administrative expenses incurred by the commission in carrying out this section.

(5) Notwithstanding any other provision of law to the contrary, the rules and regulations may provide that a postsecondary educational institution may be exempt from the fees or the commission may adjust the fees of an institution if the institution demonstrates that exceptional mitigating circumstances contributed to its high cohort default rate.

Source: Laws 1996, LB 29, § 1.

Cross References

Private Postsecondary Career School Act, see section 85-1601.

85-9,139.03 Student Loan Default Fee Revolving Fund; created; use; investment.

(1) The Student Loan Default Fee Revolving Fund is created. The fund shall be under the direction of the Coordinating Commission for Postsecondary Education. The commission shall remit all revenue received from fees charged under section 85-9,139.02 to the State Treasurer for credit to the fund. Expenditures may be made from the fund, after appropriation by the Legislature, for payments to the federal government for relevant default cost fees charged to the State of Nebraska by the United States Secretary of Education or to reimburse

the General Fund for any such payments which have been made to the federal government.

(2) If not inconsistent with federal law, up to ten percent of the revenue remitted to the fund may be appropriated and used to defray the administrative expenses of the activities undertaken pursuant to section 85-9,139.02.

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

Source: Laws 1996, LB 29, § 2.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

(j) FEDERAL EDUCATION LOAN

85-9,140 Repealed. Laws 2021, LB528, § 74.

85-9,141 Repealed. Laws 2003, LB 574, § 45.

85-9,142 Repealed. Laws 2003, LB 574, § 45.

85-9,142.01 Repealed. Laws 2003, LB 574, § 45.

85-9,143 Repealed. Laws 2003, LB 574, § 45.

85-9,144 Repealed. Laws 2003, LB 574, § 45.

85-9,145 Repealed. Laws 2003, LB 574, § 45.

85-9,146 Repealed. Laws 2003, LB 574, § 45.

85-9,147 Repealed. Laws 2003, LB 574, § 45.

85-9,148 Repealed. Laws 2003, LB 574, § 45.

85-9,149 Repealed. Laws 2003, LB 574, § 45.

85-9,150 Repealed. Laws 2003, LB 574, § 45.

85-9,151 Repealed. Laws 2003, LB 574, § 45.

85-9,152 Repealed. Laws 2003, LB 574, § 45.

85-9,153 Repealed. Laws 2003, LB 574, § 45.

85-9,154 Repealed. Laws 2003, LB 574, § 45.

85-9,155 Repealed. Laws 2003, LB 574, § 45.

85-9,156 Repealed. Laws 1993, LB 505, § 45.

85-9,157 Repealed. Laws 2003, LB 574, § 45.

85-9,158 Repealed. Laws 2003, LB 574, § 45.

85-9,159 Repealed. Laws 2003, LB 574, § 45.

85-9,160 Repealed. Laws 2003, LB 574, § 45.

§ 85-9,161 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

85-9,161 Repealed. Laws 2003, LB 574, § 45.

85-9,162 Repealed. Laws 2003, LB 574, § 45.

(k) TRANSITION COORDINATING COMMISSION
FOR POSTSECONDARY EDUCATION

85-9,163 Repealed. Laws 1991, LB 663, § 137.

85-9,164 Repealed. Laws 1991, LB 663, § 137.

85-9,165 Repealed. Laws 1991, LB 663, § 137.

(l) NEBRASKA EQUAL OPPORTUNITY IN
POSTSECONDARY EDUCATION ACT

85-9,166 Act, how cited.

Sections 85-9,166 to 85-9,176 shall be known and may be cited as the Nebraska Equal Opportunity in Postsecondary Education Act.

Source: Laws 1996, LB 900, § 1086.

Cross References

For provisions relating to elementary and secondary schools, see sections 79-2,114 to 79-2,124.

85-9,167 Terms, defined.

For purposes of the Nebraska Equal Opportunity in Postsecondary Education Act:

(1) Educational institution means the University of Nebraska, the state colleges, and the community colleges; and

(2) Governing board means the Board of Regents of the University of Nebraska, the Board of Trustees of the Nebraska State Colleges, and the community college boards of governors.

Source: Laws 1996, LB 900, § 1087.

85-9,168 Legislative findings; discriminatory practices enumerated.

The Legislature finds and declares that it is an unfair or discriminatory practice for any educational institution to discriminate on the basis of sex in any program or activity. Such discriminatory practices include, but are not limited to, the following practices:

(1) Exclusion of a person or persons from participation in, denial of the benefits of, or subjection to discrimination in any academic, extracurricular, research, occupational training, or other program or activity, except athletic programs;

(2) Denial of comparable opportunity in intramural and interscholastic athletic programs;

(3) Discrimination among persons in employment and the conditions of such employment; and

(4) The application of any rule which discriminates on the basis of (a) the pregnancy of any person, (b) the marital status of any person, or (c) the condition of being a parent. Rules requiring certification of a physician's

diagnosis and such physician's recommendation as to what activities a pregnant person may participate in are permissible. For purposes of this section marital status shall include the condition of being single, married, widowed, or divorced.

Source: Laws 1996, LB 900, § 1088.

85-9,169 Rules and regulations; governing boards; duties.

The governing boards of educational institutions shall adopt and promulgate rules and regulations needed to carry out the Nebraska Equal Opportunity in Postsecondary Education Act. Governing boards of educational institutions, with the advice of staff, shall formulate activities and programs needed to carry out the act.

Source: Laws 1996, LB 900, § 1089.

85-9,170 Violation; complaint; filing; disposition; procedure; governing board; duties.

(1) Any person aggrieved by a violation of the Nebraska Equal Opportunity in Postsecondary Education Act or any rule, regulation, or procedure adopted pursuant to the act may file a complaint with the governing board of the educational institution committing such violation. Such complaint shall be made in writing, under oath, within one hundred eighty days after such alleged violation, and shall set forth the claimant's address and the facts of such alleged violation with sufficient particularity as to permit the governing board to understand and investigate the conduct complained of.

(2) The governing board may take such action as may be necessary to correct such violation, including, but not limited to, (a) terminating the discriminatory practice or policy complained of and (b) awarding to the aggrieved person or persons such compensatory money damages as the particular facts and circumstances may warrant.

(3) The governing board shall dispose of the complaint and shall notify the claimant of its finding. All dispositions of such complaints shall be in writing and signed by the chief officer of the governing board, and a true copy of such disposition shall be mailed by certified mail, return receipt requested, to the claimant at the address set forth on the complaint or at such other address as may be filed by the claimant with the governing board. The claimant shall notify the governing board of any change of address, and the governing board has no duty to attempt to locate any claimant who has failed to advise such board of a change of address.

Source: Laws 1996, LB 900, § 1090.

85-9,171 Disposition of complaint; claimant; acceptance.

If the claimant under section 85-9,170 elects to accept the written disposition of the complaint made by the governing board under such section, he or she shall notify such board in writing of his or her acceptance within sixty days after receipt of such disposition, at which time such disposition shall be deemed final and conclusive. A failure to notify the board of such acceptance within the time period provided in this section shall be deemed a rejection of such disposition.

Source: Laws 1996, LB 900, § 1091.

85-9,172 Disposition of complaint; claimant; rejection; court action authorized.

If the claimant under section 85-9,170 elects not to accept the written disposition of such complaint made by the governing board under such section, he or she may, within one hundred eighty days after receipt of such disposition, file an original action in the district court of the judicial district where such educational institution is located, for equitable relief and compensatory money damages. If such action includes a claim for money damages, such claimant shall be entitled to a trial by jury as to such claim for damages, unless he or she expressly waives in writing such trial by jury.

Source: Laws 1996, LB 900, § 1092.

85-9,173 Complaint; failure of governing board to act; claimant's remedies.

If the governing board fails to dispose of any written complaint filed pursuant to the Nebraska Equal Opportunity in Postsecondary Education Act within one hundred eighty days after the date of filing, such complaint may be withdrawn by the claimant and he or she may then proceed to file an original action in the district court of the judicial district where such educational institution is located pursuant to section 85-9,172. Such action must be filed within two years of the date of the filing of such complaint.

Source: Laws 1996, LB 900, § 1093.

85-9,174 Violation; complaint; prerequisite to other remedy.

No original action asserting a violation of the Nebraska Equal Opportunity in Postsecondary Education Act may be filed in any district court unless a complaint asserting such violation is first filed with the governing board of the educational institution committing such discriminatory act or practice and disposed of or withdrawn as provided in the act.

Source: Laws 1996, LB 900, § 1094.

85-9,175 Nebraska Fair Employment Practice Act; complaint; applicability.

The Nebraska Equal Opportunity in Postsecondary Education Act does not prohibit a person asserting a claim for discrimination in employment or the conditions thereof from filing a complaint pursuant to the Nebraska Fair Employment Practice Act. Filing a complaint pursuant to the Nebraska Fair Employment Practice Act constitutes a waiver of any right to seek relief pursuant to the Nebraska Equal Opportunity in Postsecondary Education Act, and filing a complaint pursuant to the Nebraska Equal Opportunity in Postsecondary Education Act constitutes a waiver of any right to seek relief pursuant to the Nebraska Fair Employment Practice Act.

Source: Laws 1996, LB 900, § 1095.

Cross References

Nebraska Fair Employment Practice Act, see section 48-1125.

85-9,176 Act; how construed.

The Nebraska Equal Opportunity in Postsecondary Education Act does not prohibit any educational institution from maintaining separate toilet facilities, locker rooms, or living facilities for the different sexes.

Source: Laws 1996, LB 900, § 1096.

(m) STUDENT DIVERSITY SCHOLARSHIP PROGRAM ACT

85-9,177 Act, how cited.

Sections 85-9,177 to 85-9,182 shall be known and may be cited as the Student Diversity Scholarship Program Act.

Source: Laws 2000, LB 1379, § 1; Laws 2007, LB342, § 32.

85-9,178 Legislative findings and intent.

(1) The Legislature finds that the State of Nebraska has a compelling interest to provide access to the University of Nebraska, the state colleges, and the community colleges for students from diverse backgrounds who often find that the financial requirements of postsecondary education are a major obstacle. The Legislature further finds that the State of Nebraska has a compelling interest in attaining greater diversity in the makeup of the student bodies at the University of Nebraska, the state colleges, and the community colleges because of the educational benefits that a diverse educational environment will produce for all students attending the University of Nebraska, the state colleges, and the community colleges.

(2) It is the intent of the Legislature:

(a) To appropriate funds to support a student diversity scholarship program for the purpose of developing more diverse student bodies at the state's public postsecondary educational institutions;

(b) That the student diversity scholarship program be designed and implemented so as to achieve a greater diversity in student populations in fulfillment of the compelling interest found by the Legislature pursuant to subsection (1) of this section; and

(c) That all funds appropriated by the Legislature for student diversity scholarships at the University of Nebraska, the state colleges, and the community colleges shall be used in coordination with private donations for such scholarships and in consultation with the major donors thereof and in coordination with federal grant funds available to students at the University of Nebraska, the state colleges, and the community colleges so as to maximize the level of benefits and accomplish the purposes of the Student Diversity Scholarship Program Act.

Source: Laws 2000, LB 1379, § 2; Laws 2007, LB342, § 33; Laws 2009, LB440, § 1.

85-9,179 Endowed scholarship funds; use; purpose.

(1) All funds appropriated by the Legislature for the Student Diversity Scholarship Program Act shall be used to support endowed scholarship funds which shall be held, managed, and invested as authorized by section 72-1246 with only the income therefrom expended for scholarships.

(2) The purpose of such endowed scholarship funds is to provide total or partial undergraduate scholarships for tuition, fees, board and room, and books

at all campuses of the University of Nebraska, the state colleges, and the community colleges to full-time undergraduate students who fulfill the criteria for award of a student diversity scholarship and who cannot afford such educational expenses due to lack of financial resources available to them.

Source: Laws 2000, LB 1379, § 3; Laws 2007, LB342, § 34.

85-9,180 Appropriations; use.

(1) Funds appropriated for fiscal year 2000-01 and each fiscal year thereafter before fiscal year 2007-08 for the Minority Scholarship Program Act as it existed immediately prior to July 1, 2007, shall be used for the benefit of students pursuant to the Minority Scholarship Program Act at the University of Nebraska, the state colleges, and the community colleges.

(2) Funds appropriated for fiscal year 2007-08 and each fiscal year thereafter for the Student Diversity Scholarship Program Act shall be used for the benefit of students pursuant to the Student Diversity Scholarship Program Act at the University of Nebraska, the state colleges, and the community colleges.

Source: Laws 2000, LB 1379, § 4; Laws 2007, LB342, § 35.

85-9,181 Funds; use; administration; manner.

(1) Funds appropriated for the Student Diversity Scholarship Program Act for the benefit of students at the University of Nebraska and students attending any community colleges who are enrolled in an associate degree program with the intention of transferring to the University of Nebraska shall be used, administered, and invested in such manner as the Board of Regents of the University of Nebraska, in consultation with the board of governors of each participating community college, shall determine.

(2) Funds appropriated for the Student Diversity Scholarship Program Act for the benefit of students at the state colleges and students attending any community colleges who are enrolled in an associate degree program with the intention of transferring to a state college shall be used, administered, and invested in such manner as the Board of Trustees of the Nebraska State Colleges, in consultation with the board of governors of each participating community college, shall determine.

Source: Laws 2000, LB 1379, § 5; Laws 2003, LB 106, § 1; Laws 2007, LB342, § 36.

85-9,182 Awards; committee; determination.

Criteria for the award of scholarships under the Student Diversity Scholarship Program Act shall be determined in accordance with state and federal law by a committee selected by the Board of Regents of the University of Nebraska, the Board of Trustees of the Nebraska State Colleges, and the community college boards of governors. The committee shall include members from diverse groups and private donors to the endowed scholarship funds. Awards shall be consistent with the intent stated in the act and with the constitutions and laws of the United States and the State of Nebraska.

Source: Laws 2000, LB 1379, § 6; Laws 2007, LB342, § 37; Laws 2009, LB440, § 2.

(n) EDUCATION ROUNDTABLE

85-9,183 Repealed. Laws 2002, Second Spec. Sess., LB 41, § 1.

85-9,184 Repealed. Laws 2002, Second Spec. Sess., LB 41, § 1.

85-9,185 Repealed. Laws 2002, Second Spec. Sess., LB 41, § 1.

85-9,186 Repealed. Laws 2002, Second Spec. Sess., LB 41, § 1.

85-9,187 Repealed. Laws 2002, Second Spec. Sess., LB 41, § 1.

85-9,188 Repealed. Laws 2002, Second Spec. Sess., LB 41, § 1.

85-9,189 Repealed. Laws 2002, Second Spec. Sess., LB 41, § 1.

ARTICLE 10

NEBRASKA SAFETY CENTER

Section

- 85-1001. Legislative intent.
- 85-1002. Terms, defined.
- 85-1003. Nebraska Safety Center at the University of Nebraska at Kearney; established.
- 85-1004. Nebraska Safety Center; director; other personnel.
- 85-1005. Nebraska Safety Center; operation; funding.
- 85-1006. Nebraska Safety Center; purposes and functions.
- 85-1007. Nebraska Safety Center; agencies involved in activities relating to safety; cooperation.
- 85-1008. Nebraska Safety Center Advisory Council; membership; appointment.
- 85-1009. Repealed. Laws 1994, LB 683, § 33.
- 85-1010. Repealed. Laws 1994, LB 683, § 33.
- 85-1011. Repealed. Laws 1994, LB 683, § 33.
- 85-1012. Repealed. Laws 1994, LB 683, § 33.
- 85-1013. Repealed. Laws 1994, LB 683, § 33.

85-1001 Legislative intent.

The Legislature finds and declares that there is a vital need for increased training and research activity in the fields of traffic safety, domestic safety, industrial safety, fire safety, and recreational safety and that this activity can best be achieved by utilizing the facilities of an institution of higher education.

The Legislature further declares and assents to the establishment and administration of the Nebraska Safety Center at the University of Nebraska at Kearney.

Source: Laws 1978, LB 693, § 1; Laws 1989, LB 247, § 28.

85-1002 Terms, defined.

For purposes of sections 85-1001 to 85-1008, unless the context otherwise requires, center shall mean the Nebraska Safety Center created under section 85-1003.

Source: Laws 1978, LB 693, § 2; Laws 1994, LB 683, § 12.

85-1003 Nebraska Safety Center at the University of Nebraska at Kearney; established.

(1) The Board of Regents of the University of Nebraska may establish the Nebraska Safety Center at the University of Nebraska at Kearney.

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(2) It is the intent of the Legislature that existing available land and facilities be utilized in the establishment and administration of the center.

Source: Laws 1978, LB 693, § 3; Laws 1989, LB 247, § 29.

85-1004 Nebraska Safety Center; director; other personnel.

The Board of Regents of the University of Nebraska (1) may employ a director of the center who shall be responsible to the chief administrative officer at the University of Nebraska at Kearney and whose qualifications and salary shall be established by the board and (2) may employ or assign to the center such other professors, instructors, tutors, demonstrators, and other personnel as from time to time may be considered necessary for the administration of the center.

Source: Laws 1978, LB 693, § 4; Laws 1989, LB 247, § 30.

85-1005 Nebraska Safety Center; operation; funding.

(1) The Board of Regents of the University of Nebraska may accept and administer, in accordance with proper financial procedures at the University of Nebraska at Kearney, gifts, grants, tuition, fees, and private funds to assist in the operation of the center.

(2) The Board of Regents of the University of Nebraska may request an appropriation from the General Fund to assist in the operation of the center to promote the purposes of sections 85-1001 to 85-1008.

Source: Laws 1978, LB 693, § 5; Laws 1989, LB 247, § 31; Laws 1994, LB 683, § 13; Laws 2011, LB334, § 9.

85-1006 Nebraska Safety Center; purposes and functions.

The purposes and functions of the center shall include (1) instruction, to provide educational courses and coordinated activities relating to all safety and safety education, (2) research, to provide leadership in identifying priorities of safety education and to provide expertise in safety research projects, (3) service, to provide information and workshop opportunities to all interested individuals, and (4) coordination, to provide articulation for development of a statewide system of teacher preparation in safety education programs.

Source: Laws 1978, LB 693, § 6.

85-1007 Nebraska Safety Center; agencies involved in activities relating to safety; cooperation.

Whenever requested or deemed appropriate by the Nebraska Safety Center, the University of Nebraska, the community colleges, the State Department of Education, the Safety Council of Nebraska, Inc., the Coordinating Commission for Postsecondary Education, any agency providing services through city or local governments, and any other agency involved in activities related to safety shall cooperate with and offer expertise to the center to assist it in carrying out its purposes and functions under section 85-1006. It is not the intent of the Legislature to duplicate existing programs but to provide extensions of those programs when deemed necessary by the center and the organizations currently conducting the activity.

Source: Laws 1978, LB 693, § 7; Laws 1991, LB 663, § 123.

85-1008 Nebraska Safety Center Advisory Council; membership; appointment.

(1) To assist the center in carrying out its purposes and functions, the Board of Regents may establish a Nebraska Safety Center Advisory Council composed of the following members:

- (a) One representative from the Department of Transportation;
- (b) One representative from the Department of Motor Vehicles;
- (c) One representative from the State Department of Education;
- (d) One representative from the Game and Parks Commission;
- (e) One representative from the Department of Labor;
- (f) One person representing the community college areas;
- (g) One person representing private business and industry;
- (h) One person representing the University of Nebraska;
- (i) One person representing the medical profession;
- (j) One person representing the area of law enforcement in this state;
- (k) One person representing the Safety Council of Nebraska, Inc.;
- (l) One person representing the area of transportation;
- (m) One person representative of emergency medical services;
- (n) One person representing the judiciary in the State of Nebraska;
- (o) One person representing city government;
- (p) One person representing county government;
- (q) One person representing the area of agriculture;
- (r) One person representing the local public school system;
- (s) One person representing fire safety;
- (t) One representative of the Coordinating Commission for Postsecondary Education;
- (u) One person representing the Red Cross; and
- (v) One person representing the state colleges.

(2) Representatives selected to serve on the council shall have appropriate education, training, and experience in the field of fire safety, industrial safety, recreational safety, domestic safety, or traffic safety.

Source: Laws 1978, LB 693, § 8; Laws 1991, LB 663, § 124; Laws 1994, LB 683, § 14; Laws 2009, LB299, § 1; Laws 2017, LB339, § 295.

85-1009 Repealed. Laws 1994, LB 683, § 33.

85-1010 Repealed. Laws 1994, LB 683, § 33.

85-1011 Repealed. Laws 1994, LB 683, § 33.

85-1012 Repealed. Laws 1994, LB 683, § 33.

85-1013 Repealed. Laws 1994, LB 683, § 33.

**ARTICLE 11
HIGHER EDUCATION**

Section	
85-1101.	Repealed. Laws 2011, LB 637, § 35.
85-1102.	Repealed. Laws 2011, LB 637, § 35.
85-1103.	Repealed. Laws 2011, LB 637, § 35.
85-1103.01.	Repealed. Laws 2011, LB 637, § 35.
85-1103.02.	Repealed. Laws 2011, LB 637, § 35.
85-1104.	Repealed. Laws 2011, LB 637, § 35.
85-1105.	Repealed. Laws 2011, LB 637, § 35.
85-1106.	Repealed. Laws 2011, LB 637, § 35.
85-1107.	Repealed. Laws 2011, LB 637, § 35.
85-1108.	Repealed. Laws 2011, LB 637, § 35.
85-1109.	Repealed. Laws 2011, LB 637, § 35.
85-1110.	Repealed. Laws 2011, LB 637, § 35.
85-1110.01.	Repealed. Laws 2011, LB 637, § 35.
85-1111.	Repealed. Laws 2011, LB 637, § 35.

85-1101 Repealed. Laws 2011, LB 637, § 35.

85-1102 Repealed. Laws 2011, LB 637, § 35.

85-1103 Repealed. Laws 2011, LB 637, § 35.

85-1103.01 Repealed. Laws 2011, LB 637, § 35.

85-1103.02 Repealed. Laws 2011, LB 637, § 35.

85-1104 Repealed. Laws 2011, LB 637, § 35.

85-1105 Repealed. Laws 2011, LB 637, § 35.

85-1106 Repealed. Laws 2011, LB 637, § 35.

85-1107 Repealed. Laws 2011, LB 637, § 35.

85-1108 Repealed. Laws 2011, LB 637, § 35.

85-1109 Repealed. Laws 2011, LB 637, § 35.

85-1110 Repealed. Laws 2011, LB 637, § 35.

85-1110.01 Repealed. Laws 2011, LB 637, § 35.

85-1111 Repealed. Laws 2011, LB 637, § 35.

ARTICLE 12

NEBRASKA COLLEGIATE ATHLETIC ASSOCIATION PROCEDURES ACT

Section	
85-1201.	Act, how cited.
85-1202.	Legislative findings.
85-1203.	Due process required; when.
85-1204.	Imposition of penalty for violation of rule; requirements.
85-1205.	Imposition of penalty for failure to take disciplinary action; requirements.
85-1206.	Violation; proceedings authorized; prohibited acts.
85-1207.	Violation; liability; computation of amount.
85-1208.	Employee or student; proceedings authorized; prohibited acts.

NEBRASKA COLLEGIATE ATHLETIC ASSOCIATION PROCEDURES ACT§ 85-1204

Section

85-1209. Penalty imposed; judicial review.

85-1210. Act; remedies cumulative.

85-1201 Act, how cited.

Sections 85-1201 to 85-1210 shall be known and may be cited as the Nebraska Collegiate Athletic Association Procedures Act.

Source: Laws 1990, LB 397, § 1.

85-1202 Legislative findings.

The Legislature hereby finds and declares that:

(1) The National Collegiate Athletic Association is a national unincorporated association consisting of public and private colleges and universities and is a private monopolist that controls intercollegiate athletics throughout the United States;

(2) The National Collegiate Athletic Association adopts rules governing member institutions' admissions, academic eligibility, and financial aid standards for collegiate athletes;

(3) A member must agree contractually to administer its athletic program in accordance with National Collegiate Athletic Association legislation;

(4) National Collegiate Athletic Association rules provide that association enforcement procedures are an essential part of the intercollegiate athletic program of each member institution;

(5) The National Collegiate Athletic Association exercises great power over member institutions by virtue of its monopolistic control of intercollegiate athletics and its power to prevent a nonconforming institution from competing in intercollegiate athletic events or contests;

(6) Substantial monetary loss, serious disruption of athletic programs, and significant damage to reputation may result from the imposition of penalties on a college or university by the National Collegiate Athletic Association for what the association determines to be a violation of its rules; and

(7) Because of such potentially serious and far reaching consequences, all proceedings which may result in the imposition of any penalty by the National Collegiate Athletic Association should be subject to the requirements of due process of law.

Source: Laws 1990, LB 397, § 2.

85-1203 Due process required; when.

Every stage and facet of all proceedings of a collegiate athletic association, college, or university that may result in the imposition of a penalty for violation of such association's rule or legislation shall comply with due process of law as guaranteed by the Constitution of Nebraska and the laws of Nebraska.

Source: Laws 1990, LB 397, § 3.

85-1204 Imposition of penalty for violation of rule; requirements.

No collegiate athletic association shall impose a penalty on any college or university for violation of such association's rule or legislation in violation of

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the due process requirements of the Nebraska Collegiate Athletic Association Procedures Act.

Source: Laws 1990, LB 397, § 4.

85-1205 Imposition of penalty for failure to take disciplinary action; requirements.

No collegiate athletic association shall impose a penalty on any college or university for failure to take disciplinary action against an employee or student for violation of such association's rule or legislation in violation of the due process requirements of the Nebraska Collegiate Athletic Association Procedures Act.

Source: Laws 1990, LB 397, § 5.

85-1206 Violation; proceedings authorized; prohibited acts.

A collegiate athletic association that violates the Nebraska Collegiate Athletic Association Procedures Act shall be liable to the aggrieved college or university in an action at law, suit in equity, or other proper proceeding for redress. No penalty shall be threatened against or imposed upon an aggrieved college or university for seeking redress pursuant to this section.

Source: Laws 1990, LB 397, § 6.

85-1207 Violation; liability; computation of amount.

In addition to costs and a reasonable attorney's fee, a collegiate athletic association that violates the Nebraska Collegiate Athletic Association Procedures Act shall be liable to the aggrieved college or university for an amount equal to one hundred percent of the monetary loss per year or portion of a year suffered during the period that any monetary loss occurs due to a penalty imposed in violation of the act. For purposes of calculating monetary loss, one hundred percent of the yearly loss shall be equal to the gross amount realized by the affected athletic program during the immediately preceding calendar year.

Source: Laws 1990, LB 397, § 7.

85-1208 Employee or student; proceedings authorized; prohibited acts.

A collegiate athletic association, college, or university which subjects, or causes to be subjected, any employee or student to a penalty in violation of the Nebraska Collegiate Athletic Association Procedures Act shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. No penalty shall be threatened against or imposed upon an aggrieved party for seeking redress pursuant to this section. In addition to any other relief granted, an aggrieved employee or student shall be awarded costs and a reasonable attorney's fee.

Source: Laws 1990, LB 397, § 8.

85-1209 Penalty imposed; judicial review.

Any penalty imposed by any collegiate athletic association, college, or university shall be subject to judicial review in the district court.

Source: Laws 1990, LB 397, § 9.

85-1210 Act; remedies cumulative.

The remedies provided in the Nebraska Collegiate Athletic Association Procedures Act are cumulative and in addition to any other remedies provided by law.

Source: Laws 1990, LB 397, § 10.

ARTICLE 13**MIDWESTERN HIGHER EDUCATION COMPACT**

Section

85-1301. Ratification and approval.

85-1302. Midwestern Higher Education Commission; members; terms; vacancies.

85-1301 Ratification and approval.

The State of Nebraska hereby ratifies and approves the following compact:

MIDWESTERN HIGHER EDUCATION COMPACT**ARTICLE I****PURPOSE**

The purpose of the Midwestern Higher Education Compact shall be to provide greater higher education opportunities and services in the midwestern region with the aim of furthering regional access to, research in, and the choice of higher education for the citizens residing in the several states which are parties to this compact.

ARTICLE II**THE COMMISSION**

A. The compacting states hereby create the Midwestern Higher Education Commission, hereinafter called the Commission. The Commission shall be a body corporate of each compacting state. The Commission shall have all the responsibilities, powers, and duties set forth herein, including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

B. The Commission shall consist of five resident members of each state as follows: The Governor or the Governor's designee who shall serve during the tenure of office of the Governor; two legislators, one from each house (except Nebraska which may appoint two legislators from its Unicameral Legislature), who shall serve two-year terms and be appointed by the appropriate appointing authority in each house of the legislature; and two other at-large members, at least one of whom shall be selected from the field of higher education. The at-large members shall be appointed in a manner provided by the laws of the appointing state. One of the two at-large members initially appointed in each state shall serve a two-year term. The other, and any regularly appointed successor to either at-large member, shall serve a four-year term. All vacancies shall be filled in accordance with the laws of the appointing states. Any commissioner appointed to fill a vacancy shall serve until the end of the incomplete term.

C. The Commission shall select annually, from among its members, a chairperson, a vice-chairperson, and a treasurer.

D. The Commission shall appoint an executive director who shall serve at its pleasure and who shall act as secretary to the Commission. The treasurer, the executive director, and such other personnel as the Commission may determine shall be bonded in such amounts as the Commission may require.

E. The Commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a majority of the Commission members of three or more compacting states, shall call additional meetings. Public notice shall be given of all meetings, and meetings shall be open to the public.

F. Each compacting state represented at any meeting of the Commission shall be entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business unless a larger quorum is required by the bylaws of the Commission.

ARTICLE III

POWERS AND DUTIES OF THE COMMISSION

A. The Commission shall adopt a seal and suitable bylaws governing its management and operations.

B. Irrespective of the civil service, personnel, or other merit system laws of any of the compacting states, the Commission in its bylaws shall provide for the personnel policies and programs of the compact.

C. The Commission shall submit a budget to the governor and legislature of each compacting state at such time and for such period as may be required. The budget shall contain specific recommendations of the amount or amounts to be appropriated by each of the compacting states.

D. The Commission shall report annually to the legislatures and governors of the compacting states, to the Midwestern Governors' Conference, and to the Midwestern Legislative Conference of the Council of State Governments concerning the activities of the Commission during the preceding year. Such reports shall also embody any recommendations that may have been adopted by the Commission.

E. The Commission may borrow, accept, or contract for the services of personnel from any state or the United States or any subdivision or agency thereof, from any interstate agency, or from any institution, foundation, person, firm, or corporation.

F. The Commission may accept for any of its purposes and functions under the compact any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state or the United States or any subdivision or agency thereof or interstate agency, or from any institution, foundation, person, firm, or corporation and may receive, utilize, and dispose of the same.

G. The Commission may enter into agreements with any other interstate education organizations or agencies and with higher education institutions located in nonmember states and with any of the various states of the United States to provide adequate programs and services in higher education for the citizens of the respective compacting states. The Commission shall, after negotiations with interested institutions and interstate organizations or agencies, determine the cost of providing the programs and services in higher education for use in these agreements.

H. The Commission may establish and maintain offices which shall be located within one or more of the compacting states.

I. The Commission may establish committees and hire staff as it deems necessary for the carrying out of its functions.

J. The Commission may provide for actual and necessary expenses for attendance of its members at official meetings of the Commission or its designated committees.

ARTICLE IV

ACTIVITIES OF THE COMMISSION

A. The Commission shall collect data on the long-range effects of the compact on higher education. By the end of the fourth year from the effective date of the compact and every two years thereafter, the Commission shall review its accomplishments and make recommendations to the governors and legislatures of the compacting states on the continuance of the compact.

B. The Commission shall study issues in higher education of particular concern to the midwestern region. The Commission shall also study the needs for higher education programs and services in the compacting states and the resources for meeting such needs. The Commission shall, from time to time, prepare reports on such research for presentation to the governors and legislatures of the compacting states and other interested parties. In conducting such studies, the Commission may confer with any national or regional planning body. The Commission may draft and recommend to the governors and legislatures of the various compacting states suggested legislation dealing with problems of higher education.

C. The Commission shall study the need for provision of adequate programs and services in higher education, such as undergraduate, graduate, or professional student exchanges in the region. If a need for exchange in a field is apparent, the Commission may enter into such agreements with any higher education institution and with any of the compacting states to provide programs and services in higher education for the citizens of the respective compacting states. The Commission shall, after negotiations with interested institutions and the compacting states, determine the cost of providing the programs and services in higher education for use in its agreements. The contracting states shall contribute the funds not otherwise provided, as determined by the Commission, for carrying out the agreements. The Commission may also serve as the administrative and fiscal agent in carrying out agreements for higher education programs and services.

D. The Commission shall serve as a clearinghouse on information regarding higher education activities among institutions and agencies.

E. In addition to the activities of the Commission previously noted, the Commission may provide services and research in other areas of regional concern.

ARTICLE V

FINANCE

A. The monies necessary to finance the general operations of the Commission not otherwise provided for in carrying forth its duties, responsibilities, and powers as stated herein shall be appropriated to the Commission by the

compacting states, when authorized by the respective legislatures, by equal apportionment among the compacting states.

B. The Commission shall not incur any obligations of any kind prior to the making of appropriations adequate to meet the same, nor shall the Commission pledge the credit of any of the compacting states except by and with the authority of the compacting state.

C. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Commission.

D. The accounts of the Commission shall be open at any reasonable time for inspection by duly authorized representatives of the compacting states and persons authorized by the Commission.

ARTICLE VI

ELIGIBLE PARTIES AND ENTRY INTO FORCE

A. The states of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin shall be eligible to become party to this compact.

Additional states will be eligible if approved by the majority of the compacting states.

B. As to any eligible party state, this compact shall become effective when its legislature shall have enacted the same into law, except that it shall not become initially effective until enacted into law by five states prior to December 31, 1995.

C. Amendments to the compact shall become effective upon their enactment by the legislatures of all compacting states.

ARTICLE VII

WITHDRAWAL, DEFAULT AND TERMINATION

A. Any compacting state may withdraw from this compact by enacting a statute repealing the compact, but such withdrawal shall not become effective until two years after the enactment of such statute. A withdrawing state shall be liable for any obligations which it may have incurred on account of its party status up to the effective date of withdrawal, except that if the withdrawing state has specifically undertaken or committed itself to any performance of an obligation extending beyond the effective date of withdrawal, it shall remain liable to the extent of such obligation.

B. If any compacting state shall at any time default in the performance of any of its obligations, assumed or imposed, in accordance with the provisions of this compact, all rights, privileges, and benefits conferred by this compact or agreements hereunder shall be suspended from the effective date of such default as fixed by the Commission, and the Commission shall stipulate the conditions and maximum time for compliance under which the defaulting state may resume its regular status. Unless such default shall be remedied under the stipulations and within the time period set forth by the Commission, this compact may be terminated with respect to such defaulting state by affirmative

vote of a majority of the other member states. Any such defaulting state may be reinstated by performing all acts and obligations as stipulated by the Commission.

ARTICLE VIII

SEVERABILITY AND CONSTRUCTION

The provisions of this compact entered into hereunder shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any compacting state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact entered into hereunder shall be held contrary to the constitution of any compacting state, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. The provisions of this compact entered into pursuant hereto shall be liberally construed to effectuate the purposes thereof.

Source: Laws 1991, LB 209, § 1.

85-1302 **Midwestern Higher Education Commission; members; terms; vacancies.**

Notwithstanding any provision of Article II of the Midwestern Higher Education Compact, members of the Midwestern Higher Education Commission residing in Nebraska shall be as follows: (1) The Governor or his or her designee who shall serve during the tenure of office of the Governor; (2) two members of the Legislature selected by the Executive Board of the Legislative Council; and (3) two members appointed by the Governor representing higher education, at least one of whom shall be a member of the statewide Coordinating Commission for Postsecondary Education. The director of such coordinating commission shall serve as an ex officio member of the Midwestern Higher Education Commission. Length of terms of the members appointed pursuant to subdivision (3) of this section shall be as provided in Article II of the compact for at-large members. Vacancies shall be filled as provided in such article.

Source: Laws 1991, LB 209, § 2.

ARTICLE 14

COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION

(a) COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION ACT

Section	
85-1401.	Act, how cited.
85-1402.	Terms, defined.
85-1403.	Coordinating Commission for Postsecondary Education; established.
85-1404.	Commission; purposes; powers and duties.
85-1405.	Commission; membership; terms.
85-1406.	Commission; vacancies.
85-1407.	Commission; removal of members by Governor; procedure.
85-1408.	Commission; members; expenses.
85-1409.	Commission; officers; meetings; quorum.
85-1410.	Commission; duties.
85-1411.	Commission; executive director, employees, consultants; compensation; recruitment expenses; rules and regulations; duties.

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Section

- 85-1412. Commission; additional powers and duties.
85-1413. Comprehensive statewide plan; establish; requirements; unified statewide facilities plan; develop.
85-1414. Programs; capital construction projects; review; commission, public institutions, and governing boards; duties.
85-1414.01. Oral health care; practice of dentistry; legislative intent; Oral Health Training and Services Fund; created; use; investment; contracts authorized; duties.
85-1415. Repealed. Laws 2014, LB 546, § 8.
85-1416. Budget and state aid requests; review; commission; duties.
85-1417. Reports to commission; form.
85-1418. Program or capital construction project; state funds; restrictions on use; district court of Lancaster County; jurisdiction; appeals; procedure.
85-1419. Coordinating Commission for Postsecondary Education Cash Fund; created; use; investment.
85-1420. Coordinating Commission for Postsecondary Education Trust Fund; created; use; investment.

(b) NEBRASKA EDUCATIONAL DATA SYSTEM

- 85-1421. Legislative intent.
85-1422. Terms, defined.
85-1423. Commission; postsecondary education information system; duties.
85-1424. Commission; verification and reporting duties.
85-1425. Commission; solicit advice.
85-1426. Postsecondary education system and institution; report.
85-1427. Commission; administrative duties.

(c) LEGISLATIVE PRIORITIES

- 85-1428. Economic expansion and diversification; postsecondary education priorities; legislative findings.
85-1429. Commission; report on higher education priorities.

(a) COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION ACT

85-1401 Act, how cited.

Sections 85-1401 to 85-1420 shall be known and may be cited as the Coordinating Commission for Postsecondary Education Act.

Source: Laws 1991, LB 663, § 4; Laws 1999, LB 816, § 10; Laws 2015, LB661, § 38.

85-1402 Terms, defined.

For purposes of the Coordinating Commission for Postsecondary Education Act:

(1)(a) Capital construction project shall mean a project which utilizes tax funds designated by the Legislature and shall be: Any proposed new capital structure; any proposed addition to, renovation of, or remodeling of a capital structure; any proposed acquisition of a capital structure by gift, purchase, lease-purchase, or other means of construction or acquisition that (i) will be directly financed in whole or in part with tax funds designated by the Legislature totaling at least the minimum capital expenditure for purposes of this subdivision or (ii) is likely, as determined by the institution, to result in an incremental increase in appropriation or expenditure of tax funds designated by the Legislature of at least the minimum capital expenditure for the facility's operations and maintenance costs in any one fiscal year within a period of ten years from the date of substantial completion or acquisition of the project. No

tax funds designated by the Legislature shall be appropriated or expended for any incremental increase of more than the minimum capital expenditure for the costs of the operations and utilities of any facility which is not included in the definition of capital construction project and thus is not subject to commission approval pursuant to the Coordinating Commission for Postsecondary Education Act. No institution shall include a request for funding such an increase in its budget request for tax funds designated by the Legislature nor shall any institution utilize any such funds for such an increase. The Governor shall not include in his or her budget recommendations, and the Legislature shall not appropriate, such funds for such increase.

(b) For purposes of this subdivision:

(i) Directly financed shall mean funded by:

(A) Appropriation of tax funds designated by the Legislature for the specific capital construction project;

(B) Property tax levies authorized pursuant to subdivision (1)(b) of section 85-1517 for fiscal years prior to fiscal year 2013-14 and subdivision (2)(b) of section 85-1517 for fiscal year 2013-14 and each fiscal year thereafter used to establish a capital improvement and bond sinking fund as provided in section 85-1515; or

(C) That portion of tax funds designated by the Legislature and appropriated by the Legislature for the general operation of the public institution and utilized to fund the capital project;

(ii) Incremental increase shall mean an increase in appropriation or expenditure of tax funds designated by the Legislature of at least the minimum capital expenditure for a facility's operations and maintenance costs, beyond any increase due to inflation, to pay for a capital structure's operations and maintenance costs that are a direct result of a capital construction project; and

(iii) Minimum capital expenditure shall mean:

(A) For purposes of subdivision (a)(i) of this subdivision, a base amount of two million dollars; and

(B) For the facility's operations and maintenance costs pursuant to subdivision (a)(ii) of this subdivision, a base amount of eighty-five thousand dollars for any one fiscal year.

The base amount for the facility's operations and maintenance costs shall be subject to any inflationary or market adjustments made by the commission pursuant to this subdivision. The commission shall adjust the base amount on a biennial basis beginning January 1, 2010. The adjustments shall be based on percentage changes in a construction cost index and any other published index relevant to operations and utilities costs, both as selected by the commission in cooperation with the public institutions. The index or indices shall reflect inflationary or market trends for the applicable operations and maintenance or construction costs;

(2) Commission shall mean the Coordinating Commission for Postsecondary Education;

(3) Coordination shall mean:

(a) Authority to adopt, and revise as needed, a comprehensive statewide plan for postsecondary education which shall include (i) definitions of the role and mission of each public postsecondary educational institution within any general

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assignments of role and mission as may be prescribed by the Legislature and (ii) plans for facilities which utilize tax funds designated by the Legislature;

(b) Authority to review, monitor, and approve or disapprove each public postsecondary educational institution's programs and capital construction projects which utilize tax funds designated by the Legislature in order to provide compliance and consistency with the comprehensive plan and to prevent unnecessary duplication; and

(c) Authority to review and modify, if needed to promote compliance and consistency with the comprehensive statewide plan and prevent unnecessary duplication, the budget requests of the governing boards or any other governing board for any other public postsecondary educational institution which may be established by the Legislature;

(4) Education center shall mean an off-campus branch of a public institution or cooperative of either public or public and private postsecondary educational institutions which offers instructional programs to students;

(5) Governing board shall mean the Board of Regents of the University of Nebraska, the Board of Trustees of the Nebraska State Colleges, or the board of governors for each community college area;

(6) Program shall mean any program of instruction which leads directly to a degree, diploma, or certificate and, for purposes of section 85-1414, shall include public service programs and all off-campus instructional programs, whether or not such programs lead directly to a degree, diploma, or certificate. Program shall also include the establishment of any new college, school, major division, education center, or institute but shall not include reasonable and moderate extensions of existing curricula which have a direct relationship to existing programs;

(7) Public institution shall mean each campus of a public postsecondary educational institution which is or may be established by the Legislature, which is under the direction of a governing board, and which is administered as a separate unit by the board; and

(8) Tax funds designated by the Legislature shall mean all state tax revenue and all property tax revenue.

Source: Laws 1991, LB 663, § 5; Laws 1994, LB 683, § 15; Laws 1999, LB 816, § 11; Laws 2006, LB 196, § 2; Laws 2009, LB440, § 3; Laws 2012, LB946, § 12.

85-1403 Coordinating Commission for Postsecondary Education; established.

The Coordinating Commission for Postsecondary Education is hereby established. The commission shall, under the direction of the Legislature, be vested with the authority for the coordination of public institutions in Nebraska as provided in Article VII, section 14, of the Constitution of Nebraska and the Coordinating Commission for Postsecondary Education Act.

Source: Laws 1991, LB 663, § 6.

85-1404 Commission; purposes; powers and duties.

The purposes of the Coordinating Commission for Postsecondary Education established by Article VII, section 14, of the Constitution of Nebraska and section 85-1403 shall be to (1) develop an ongoing comprehensive statewide

plan for the operation of an educationally and economically sound, vigorous, progressive, and coordinated system of postsecondary education, (2) identify and enact policies to meet the educational, research, and public service needs of the state, and (3) effect the best use of available resources through the elimination of unnecessary duplication of programs and facilities among Nebraska's public institutions.

In carrying out its powers and duties, the commission shall consider the need for diversity of public institutions and the need for addressing regional needs but shall above all reflect a commitment to a perspective in decisionmaking and planning for postsecondary education which will best serve the state as a whole consistent with the role and mission assignment of each public institution.

The commission shall work with the public institutions to encourage and sustain their aspirations consistent with the comprehensive statewide plan and in a manner designed to achieve a vision of statewide postsecondary education. The commission shall not be an advocate for any one public institution but shall strive for a balance and responsiveness among all public institutions.

Source: Laws 1991, LB 663, § 7.

85-1405 Commission; membership; terms.

The commission shall consist of eleven members who shall be appointed by the Governor with the approval of a majority of the Legislature. One member shall be chosen from each of the six Supreme Court judicial districts. Five members shall be chosen on a statewide basis. The term of each member shall be six years or until a successor is qualified and takes office, except that of the members initially appointed, two statewide members and the members appointed from districts 1 and 2 shall serve for terms of two years and two statewide members and the members appointed from districts 3 and 4 shall serve for terms of four years. Members shall be residents of the state or district from which appointed, and no member or any member of his or her immediate family shall be employed by or be a member of a governing board or of a governing body of an independent or private university or college.

Source: Laws 1991, LB 663, § 8; Laws 1994, LB 683, § 16.

85-1406 Commission; vacancies.

If any vacancy occurs during the term of a member of the commission, the Governor shall make an appointment to fill the vacancy for the remainder of the term. If the appointment is made when the Legislature is in session, the appointment shall be subject to the approval of a majority of the Legislature. If the appointment is made when the Legislature is not in session, the appointee shall serve with all rights and authority of the office until the approval or disapproval of the appointment is considered by the next session of the Legislature following the appointment.

Source: Laws 1991, LB 663, § 9.

85-1407 Commission; removal of members by Governor; procedure.

Members may be removed by the Governor for cause but only after delivering to the member a copy of the charges and affording him or her an opportunity to be publicly heard in person, or by counsel, in his or her own defense upon not less than ten days' notice. Such hearing shall be held before the Governor.

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When a member is removed, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against such member and the findings thereon together with the complete record of the proceedings.

Source: Laws 1991, LB 663, § 10.

85-1408 Commission; members; expenses.

Members of the commission shall receive no compensation for the performance of their duties but shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 1991, LB 663, § 11; Laws 2020, LB381, § 139.

85-1409 Commission; officers; meetings; quorum.

(1) The members of the commission shall annually elect a chairperson and vice-chairperson from among their members.

(2) The commission shall hold regular meetings at times determined by the commission. Special or additional meetings may be held on the call of the chairperson or upon the call of at least three members. A majority of the members shall constitute a quorum at all meetings. Commission action on any item shall require a majority of those present at meetings in which there is a quorum, except that adoption of the comprehensive statewide plan, or any changes or alternatives thereto, required by section 85-1413 and approval or disapproval of a new program or disapproval of an existing program pursuant to section 85-1414 shall require the concurrence of a majority of the members.

Source: Laws 1991, LB 663, § 12; Laws 1994, LB 683, § 17; Laws 1999, LB 816, § 12; Laws 2006, LB 196, § 3.

85-1410 Commission; duties.

In carrying out its duties, the commission shall:

(1) Encourage initiatives and collaboration between public institutions, public state and local entities, and private state and local entities to increase the contribution of postsecondary education in advancing Nebraska's economy;

(2) Encourage the governing boards and administrators of public institutions to review instructional practices, curriculum design and content, and related academic considerations to facilitate improvements that enhance the quality of education in the state;

(3) Encourage the interaction of public institutions with elementary and secondary educational institutions to facilitate joint planning initiatives regarding matters such as prior and subsequent learning practices and content, class or credit agreements for high school students enrolling in college-level programs, and shared instructional assignments; and

(4) Develop only those programs, activities, or functions (a) authorized by Article VII, section 14, of the Constitution of Nebraska or the Coordinating Commission for Postsecondary Education Act or (b) as directed by the Legislature. The commission, at its discretion, may develop programs, activities, or functions requested by the Legislature or the Governor. The commission may not direct any public institution to undertake any action unless authorized by

Article VII, section 14, of the Constitution of Nebraska or the Coordinating Commission for Postsecondary Education Act.

Source: Laws 1991, LB 663, § 13; Laws 1999, LB 816, § 13.

85-1411 Commission; executive director, employees, consultants; compensation; recruitment expenses; rules and regulations; duties.

To assist it in carrying out its duties, the commission shall:

(1) Employ an executive director and all other employees of the office of the commission and hire consultants as may be necessary and prescribe their duties;

(2) Except as may be provided pursuant to the State Employees Collective Bargaining Act, fix the compensation of the officers and employees of the office and provide benefits for all present or future employees of the commission, including retirement benefits, group life insurance, group hospital-medical insurance, and group long-term disability income insurance;

(3) Pay expenses for the recruitment of administrative and professional personnel for the commission; and

(4) Adopt and promulgate rules and regulations pursuant to the Administrative Procedure Act or as otherwise provided in the Coordinating Commission for Postsecondary Education Act to carry out the Coordinating Commission for Postsecondary Education Act and the powers and duties of the commission, except that for sections 85-1402 and 85-1413 to 85-1416, the provisions in section 84-908 for approval of the adoption, amendment, or repeal of any rule or regulation by the Governor shall not apply.

Source: Laws 1991, LB 663, § 14.

Cross References

Administrative Procedure Act, see section 84-920.

State Employees Collective Bargaining Act, see section 81-1369.

85-1412 Commission; additional powers and duties.

The commission shall have the following additional powers and duties:

(1) Conduct surveys and studies as may be necessary to undertake the coordination function of the commission pursuant to section 85-1403 and request information from governing boards and appropriate administrators of public institutions and other governmental agencies for research projects. All public institutions and governmental agencies receiving state funds shall comply with reasonable requests for information under this subdivision. Public institutions may comply with such requests pursuant to section 85-1417;

(2) Recommend to the Legislature and the Governor legislation it deems necessary or appropriate to improve postsecondary education in Nebraska and any other legislation it deems appropriate to change the role and mission provisions in sections 85-917 to 85-966.01. The recommendations submitted to the Legislature shall be submitted electronically;

(3) Establish any advisory committees as may be necessary to undertake the coordination function of the commission pursuant to section 85-1403 or to solicit input from affected parties such as students, faculty, governing boards, administrators of the public institutions, administrators of the private nonprofit institutions of postsecondary education and proprietary institutions in the state,

and community and business leaders regarding the coordination function of the commission;

(4) Participate in or designate an employee or employees to participate in any committee which may be created to prepare a coordinated plan for the delivery of educational programs and services in Nebraska through the telecommunications system;

(5) Seek a close liaison with the State Board of Education and the State Department of Education in recognition of the need for close coordination of activities between elementary and secondary education and postsecondary education;

(6) Administer the Integrated Postsecondary Education Data System or other information system or systems to provide the commission with timely, comprehensive, and meaningful information pertinent to the exercise of its duties. The information system shall be designed to provide comparable data on each public institution. The commission shall also administer the uniform information system prescribed in sections 85-1421 to 85-1427 known as the Nebraska Educational Data System. Public institutions shall supply the appropriate data for the information system or systems required by the commission;

(7) Administer (a) the Access College Early Scholarship Program Act, (b) the Community College Aid Act, (c) the Door to College Scholarship Act and the Door to College Scholarship Fund, (d) the Nebraska Community College Student Performance and Occupational Education Grant Fund under the direction of the Nebraska Community College Student Performance and Occupational Education Grant Committee, (e) the Nebraska Opportunity Grant Act and the Nebraska Opportunity Grant Fund, (f) the Postsecondary Institution Act, (g) the community college gap assistance program and the Community College Gap Assistance Program Fund, and (h) the Excellence in Teaching Act and the Excellence in Teaching Cash Fund;

(8) Accept and administer loans, grants, and programs from the federal or state government and from other sources, public and private, for carrying out any of its functions, including the administration of privately endowed scholarship programs. Such loans and grants shall not be expended for any other purposes than those for which the loans and grants were provided. The commission shall determine eligibility for such loans, grants, and programs, and such loans and grants shall not be expended unless approved by the Governor;

(9) On or before December 1 of each even-numbered year, submit to the Legislature and the Governor a report of its objectives and activities and any new private colleges in Nebraska and the implementation of any recommendations of the commission for the preceding two calendar years. The report submitted to the Legislature shall be submitted electronically;

(10) Provide staff support for interstate compacts on postsecondary education; and

(11) Request inclusion of the commission in any existing grant review process and information system.

Source: Laws 1991, LB 663, § 15; Laws 1993, LB 93, § 7; Laws 1994, LB 683, § 18; Laws 1999, LB 816, § 14; Laws 2003, LB 7, § 5; Laws 2003, LB 574, § 26; Laws 2003, LB 685, § 29; Laws 2007, LB192, § 1; Laws 2009, LB340, § 1; Laws 2010, LB956, § 3;

Laws 2011, LB637, § 29; Laws 2012, LB782, § 234; Laws 2012, LB946, § 13; Laws 2013, LB211, § 1; Laws 2015, LB519, § 26; Laws 2023, LB705, § 117.

Cross References

Access College Early Scholarship Program Act, see section 85-2101.

Community College Aid Act, see section 85-2231.

Door to College Scholarship Act, see section 85-3201.

Excellence in Teaching Act, see section 85-3101.

Integrated Postsecondary Education Data System, see section 85-1424.

Nebraska Opportunity Grant Act, see section 85-1901.

Postsecondary Institution Act, see section 85-2401.

85-1413 Comprehensive statewide plan; establish; requirements; unified statewide facilities plan; develop.

(1) Pursuant to the authority granted in Article VII, section 14, of the Constitution of Nebraska and the Coordinating Commission for Postsecondary Education Act, the commission shall establish and revise as needed a comprehensive statewide plan for postsecondary education which shall include (a) definitions of the role and mission of each public postsecondary educational institution within any general assignments of role and mission as prescribed in sections 85-917 to 85-966 and (b) a plan for facilities which utilize tax funds designated by the Legislature.

(2) The planning process of the commission (a) shall be policy-based and ongoing in order to achieve, within the coordination function of the commission pursuant to section 85-1403, the best possible use of available state resources for high quality and accessible postsecondary educational services and (b) shall take into consideration (i) the needs of the state as described in subsection (3) of this section, (ii) general assignments of role and mission for each public institution in sections 85-917 to 85-966, and (iii) plans for facilities which utilize tax funds designated by the Legislature.

(3) In establishing the plan, the commission shall assess the postsecondary educational needs of the state in the following areas:

- (a) The basic and continuing needs of various age groups;
- (b) Business and industrial needs for a skilled work force;
- (c) Demographic, social, and economic trends;
- (d) The needs of the ethnic populations;
- (e) College attendance, retention, and dropout rates;
- (f) The needs of recent high school graduates and place-bound adults;
- (g) The needs of residents of all geographic regions; and
- (h) Any other areas the commission may designate.

(4) The plan shall provide a structure or process which encourages and facilitates harmonious and cooperative relationships between public and private postsecondary educational institutions and shall recognize the role and relationship of elementary and secondary education and private postsecondary educational institutions in the state to postsecondary education.

(5) The commission shall incorporate into the plan provisions and policies to guide decisionmaking by the commission pursuant to this section and section 85-1414. The provisions and policies shall address issues which include, but are not limited to:

(a) The facilitation of statewide transfer-of-credit guidelines to be considered by institutional governing boards. The statewide transfer-of-credit guidelines shall be designed to facilitate the transfer of students among public institutions. The statewide transfer-of-credit guidelines shall not require nor encourage the standardization of course content and shall not prescribe course content or credit value assigned by any public institution to the courses;

(b) Recommended guidelines for admissions which recognize selective and differentiated admission standards at public institutions and which are consistent with the role and mission of each public institution. It is the intent of the Legislature that changes in admission standards be implemented in conjunction with the role and mission statements established pursuant to this section and sections 85-917 to 85-966 and the adoption of statewide transfer-of-credit and remedial program policies to assure that access to postsecondary education is not limited;

(c) Recommended enrollment guidelines consistent with the role and mission of each public institution and specific recommendations designed to increase diversity through more effective enrollment and retention at public institutions;

(d) Recommended guidelines for rational and equitable statewide tuition rates and fees for public institutions. The commission shall identify public policy issues relating to tuition and fees of the public postsecondary educational institutions in the state. The recommended guidelines shall take into account the role and mission of each public institution and the need to maximize access to public postsecondary education regardless of a student's financial circumstance;

(e) In conjunction with and consistent with its recommended guidelines on admission standards, recommended guidelines which place the primary emphasis at the community college level for postsecondary education remedial programs and reduce the role of the University of Nebraska in offering remedial programs. The commission shall collaborate with the Commissioner of Education to develop recommendations for secondary schools designed to reduce the need for remedial or developmental programs at the postsecondary level;

(f) In consultation with the governing boards or their designated representatives, designation of geographic and programmatic service areas for each public institution consistent with role and mission assignments. Except as permitted by the commission pursuant to section 85-1414, no public institution shall provide programs at any site outside its assigned geographic and programmatic service area unless permitted under rules and regulations adopted and promulgated by the commission;

(g) After consultation with the governing boards and experts from outside the State of Nebraska, the establishment of a peer group or groups for each public institution for purposes of budget review. In fulfilling this charge, the commission may accept a peer group determined by a governing board in consultation with out-of-state experts;

(h) Effective use of information technologies and telecommunications to aid in the delivery of instruction at the postsecondary level. In cooperation with the Nebraska Educational Telecommunications Commission, other state agencies, and, when appropriate, representatives of elementary and secondary public education, the commission may assist in the development of instructional delivery systems employing information technologies and telecommunications. The commission, with the involvement of faculties, public institutions and

private postsecondary educational institutions, and the information technology and telecommunications community, shall establish policies to ensure that the objectives of quality and efficiency are met in the delivery of information technology and telecommunications-aided instruction;

(i) Workforce development. The commission shall explore methods to improve the competitive quality of the work force and shall encourage enhanced communications and partnerships between public institutions and business and industry;

(j) Public service activities. The public institutions shall develop and provide to the commission a comprehensive inventory of public service programs and activities of public institutions; and

(k) Financial aid strategy. The commission shall develop a state strategy for state-supported student financial aid programs with the goal of assuring access to and choice in postsecondary education in Nebraska for Nebraska residents within the limits of available state resources.

(6) The commission shall develop a unified statewide facilities plan in consultation with the governing boards or their designated representatives and update the plan periodically.

(7) Prior to March 15 of the year following a year in which any revision is made to the comprehensive statewide plan, the Education Committee of the Legislature shall review the comprehensive statewide plan and revisions thereto at a public hearing and report its findings electronically to the Legislature.

Source: Laws 1991, LB 663, § 16; Laws 1993, LB 239, § 20; Laws 1994, LB 683, § 19; Laws 1999, LB 816, § 15; Laws 2003, LB 7, § 6; Laws 2012, LB782, § 235; Laws 2014, LB546, § 4.

85-1414 Programs; capital construction projects; review; commission, public institutions, and governing boards; duties.

(1) Pursuant to the authority granted in Article VII, section 14, of the Constitution of Nebraska and the Coordinating Commission for Postsecondary Education Act, the commission shall establish an ongoing process to review, monitor, and approve or disapprove the new and existing programs of public institutions and proposed capital construction projects which utilize tax funds designated by the Legislature in order to provide compliance and consistency with the comprehensive statewide plan and to prevent unnecessary duplication. When complying with requests for information during the review, monitoring, and approval process, public institutions may comply pursuant to section 85-1417.

(2)(a) Governing boards shall submit to the commission all proposals for any new program after the governing board has approved the program and prior to implementation of the program. Except for programs submitted for conditional approval by the commission pursuant to subdivision (b) of this subsection, the commission shall have ninety days from the date the program was submitted to take action to approve or disapprove a program or it shall stand approved. The commission shall establish a waiver process for specific, short-term job training programs and short-term public service programs as defined by the commission. New programs submitted for review may be approved or disapproved in whole or in part and with or without recommended modifications based on criteria established pursuant to subsection (7) of this section.

(b) After approval of the program by the governing board, the governing board may submit a proposal for a program which is not authorized by the role and mission provisions of sections 85-917 to 85-966 to the commission for conditional approval. Within one hundred twenty days from its receipt of the proposal, the commission shall report electronically to the Legislature its recommendation in support for or opposition to the amendments to the role and mission statutes that would be necessary for the commission to approve the program and for the institution to offer the program. The time period for submission of the report may be extended for up to an additional ninety days by resolution of the commission which shall show good cause why the extent of review required for this particular proposal necessitates an extension of time to complete the review. Such extension shall be filed electronically with the chairperson of the Education Committee of the Legislature prior to the expiration of the initial one hundred twenty days. The report shall contain supporting rationale for the commission's position, such additional comments as the commission deems appropriate and, in the event the commission supports the amendments to the role and mission statutes, the commission's specific recommendation as to the form of such amendments. If the report indicates support for the necessary amendments to the role and mission statutes, the report shall also constitute the commission's conditional approval of the program, unless the report specifically indicates disapproval of the program. If the necessary amendments to the role and mission statutes supported by the commission in its report to the Legislature are subsequently enacted by the Legislature, the program shall stand approved. Nothing in this section for conditional approval shall be construed to affect the commission's future consideration of such proposal or approval or disapproval of any programs affected by the proposal.

(3) Following approval of a new program, such program shall be added to the schedule of existing programs to be reviewed by the commission. Following consultation with the governing board, new programs approved by the commission may also be required to meet, within a reasonable time as stipulated by the commission, minimum performance standards established by the commission pursuant to its rules and regulations. If a program fails to meet minimum performance standards, the commission shall review the program and may continue or withdraw its approval for the program.

(4) Existing programs shall be reviewed by the commission pursuant to a program review process established by the commission in consultation with the governing boards or their designated representatives which, to the extent possible while still allowing for timely review by the commission, shall coincide with institutional review and accreditation cycles. In reviewing existing programs, the commission may make use of nonconfidential information and conclusions provided by accreditation processes supplied to the commission by the institutions. All programs in existence prior to January 1, 1992, shall be considered approved until the approval is confirmed or withdrawn by the commission pursuant to the program review process conducted by the commission.

(5) Existing programs which do not meet criteria established by the commission pursuant to subsection (7) of this section shall be targeted for indepth review by the public institutions and their governing boards. In performing such indepth review, institutions may make use of information and conclusions provided by accreditation and other established and ongoing academic review processes rather than providing for a separate review process. Programs

continued by the governing boards shall be further monitored by the governing board which shall report the status and process of the monitoring to the commission. If the commission determines that a program does not merit continuation, it shall hold a public hearing, following thirty days' notice to the public institution, to consider if the program should be continued. Following the hearing, the commission shall take action to approve or disapprove continuance of the program.

(6) Existing programs disapproved for continuance by the commission shall be terminated by a public institution when all students in the program on the date of the decision of the commission to disapprove continuance of the program have had a reasonable opportunity, as determined by the governing board of the public institution, to complete the program. Existing public service programs disapproved for continuance by the commission shall be terminated at the end of the fiscal year in which the decision to disapprove is made.

(7) The commission shall establish criteria for the review, monitoring, and approval or disapproval of programs. The governing boards of the public institutions shall be responsible for assuring the quality and effectiveness of programs offered by their institutions. The commission's criteria shall be designed to (a) meet educational needs and (b) assure efficiency and avoid unnecessary duplication. Criteria shall include:

- (i) Centrality to the role and mission of the public institution;
- (ii) Consistency with the comprehensive statewide plan;
- (iii) Evidence of need and demand; and
- (iv) Adequacy of resources to support proposed new programs.

The criteria shall not infringe on the prerogative of the governing boards to make decisions on the quality of staff and the design of curriculum.

(8) The commission shall develop specific criteria for review, monitoring, and approval or disapproval of participation by any public institution in proposed or existing education centers in addition to the criteria specified in this section. Participation by a public institution in an education center shall also be approved by the governing board of such public institution. The commission shall develop policies and procedures for conducting and approving off-campus programming in an education center.

(9) Each public institution shall submit its most recent institutional facilities plan to the commission subject to commission guidelines for the format and content of such plans. The commission shall (a) review each institutional facilities plan to ensure (i) consistency with the comprehensive statewide plan, statewide facilities plan, and institutional role and mission assignments and (ii) identification of unnecessary duplication of facilities and (b) make a written report of its review to the governing board of the public institution within ninety days after receipt of the institutional facilities plan. The commission may, in accordance with the coordination function of the commission pursuant to section 85-1403, recommend modifications to the institutional facilities plans and may require submission of periodic updates of the institutional facilities plans.

(10) Governing boards shall submit all proposed capital construction projects which utilize tax funds designated by the Legislature to the commission for review and approval or disapproval. The commission shall, in accordance with the coordination function of the commission pursuant to section 85-1403,

review, monitor, and approve or disapprove each such capital construction project to provide compliance and consistency with the statewide facilities plan and the comprehensive statewide plan and to prevent unnecessary duplication of capital facilities. The commission may disapprove a project only on the basis of a finding by the commission that the project (a) does not comply or is inconsistent with one or more provisions of the statewide facilities plan or other relevant provisions of the comprehensive statewide plan or (b) will result in unnecessary duplication of capital facilities.

(11) In fulfilling its program and project approval activities prescribed in this section, the commission shall, in accordance with the coordination function of the commission pursuant to section 85-1403, recognize educational activities among all segments of postsecondary education and take into account the educational programs, facilities, and other resources of both public and independent and private postsecondary educational institutions.

(12) Any program which is authorized by action of the Legislature or a governing board and which is not in existence prior to January 1, 1992, shall not become operative unless and until such program has been approved by the commission pursuant to this section.

Source: Laws 1991, LB 663, § 17; Laws 1994, LB 683, § 20; Laws 1999, LB 816, § 16; Laws 2003, LB 7, § 7; Laws 2006, LB 196, § 4; Laws 2012, LB782, § 236.

85-1414.01 Oral health care; practice of dentistry; legislative intent; Oral Health Training and Services Fund; created; use; investment; contracts authorized; duties.

(1) The Legislature finds that:

(a) The availability and accessibility of quality, affordable oral health care for all residents of the State of Nebraska is a matter of public concern and represents a compelling need affecting the general welfare of all residents;

(b) The development and sustainability of a skilled workforce in the practice of dentistry is a public health priority for the State of Nebraska; and

(c) According to research sponsored by the Office of Oral Health and Dentistry of the Department of Health and Human Services, the Nebraska Rural Health Advisory Commission, and the Health Professions Tracking Service of the College of Public Health of the University of Nebraska Medical Center:

(i) A majority of the ninety-three counties of the State of Nebraska are general dentistry shortage areas as designated by the Nebraska Rural Health Advisory Commission and more than twenty percent of the ninety-three counties have no dentist;

(ii) Eighty-two counties are shortage areas in pediatric dentistry as designated by the Nebraska Rural Health Advisory Commission;

(iii) The uneven distribution of dentists in the State of Nebraska is a public health concern and twenty-four percent of the dentists in Nebraska are estimated to be planning to retire by 2017;

(iv) Sixty percent of the children in the State of Nebraska experience dental disease by the time they are in the third grade; and

(v) It is estimated that more than twenty-five thousand children attending public schools in Omaha, Nebraska, do not have a means of continuing dental care.

(2) It is the intent of the Legislature to provide for the development of a skilled and diverse workforce in the practice of dentistry and oral health care in order to provide for the oral health of all residents of Nebraska, to assist in dispersing the workforce to address the disparities of the at-risk populations in the state, and to focus efforts in areas and demographic groups in which access to a skilled workforce in the practice of dentistry and oral health care is most needed. In order to accomplish these goals, the Legislature recognizes that it is necessary to contract with professional dental education institutions committed to addressing the critical oral health care needs of the residents of Nebraska.

(3) The Oral Health Training and Services Fund is created. The Coordinating Commission for Postsecondary Education shall administer the fund to contract for reduced-fee and charitable oral health services, oral health workforce development, and oral health services using telehealth as defined in section 71-8503 for the residents of Nebraska. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(4) To be eligible to enter into a contract under this section, an applicant shall be a corporation exempt for federal tax purposes under section 501(c)(3) of the Internal Revenue Code and shall submit a plan to the commission as prescribed in subsection (5) of this section to provide oral health training, including assistance for the graduation of dental students at a Nebraska dental college, to provide discounted or charitable oral health services focusing on lower-income and at-risk populations within the state, and to target the unmet oral health care needs of residents of Nebraska. In addition, the applicant shall submit at least five letters of intent with school districts or federally qualified health centers 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, in at least five different counties throughout the state to provide discounted or charitable oral health services for a minimum of ten years. An application to enter into a contract under this section shall be made no later than January 1, 2017.

(5) The plan shall include (a) a proposal to provide oral health training at a reduced fee to students in dental education programs who agree to practice dentistry for at least five years after graduation in a dental health profession shortage area designated by the Nebraska Rural Health Advisory Commission pursuant to section 71-5665, (b) a proposal to provide discounted or charitable oral health services for a minimum of ten years to residents of Nebraska, and (c) a proposal to provide oral health services to residents of Nebraska using telehealth as defined in section 71-8503.

(6) Any party entering into a contract under this section shall agree that any funds disbursed pursuant to the contract shall only be used for services and equipment related to the proposals in the plan and shall not be used for any other program operated by the contracting party. If any of the funds disbursed pursuant to the contract are used for equipment, such funds shall only be used for patient-centered oral health care equipment, including, but not limited to, dental chairs for patients, lighting for examination and procedure rooms, and other equipment used for oral health services for patients and for training

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students in dental education programs, and shall not be used for travel, construction, or any other purpose not directly related to the proposals in the plan.

(7) The contract shall require matching funds from other sources in a four-to-one ratio with the funds to be disbursed under the contract. The party entering into the contract shall specify the source and amount of all matching funds. No applicant shall receive an award amount under a contract under this section of more than eight million dollars. If more than one applicant meets the requirements of this section to enter into a contract and provides evidence that private or other funds have been received by the applicant as matching funds for such a contract in an amount greater than or equal to sixteen million dollars, each of such applicants shall receive an award amount under a contract equal to eight million dollars divided by the number of such applicants. If one of such applicants qualifies for a contract award amount of less than four million dollars, any other such applicant may receive a contract award amount up to eight million dollars minus the amount awarded to the applicant qualifying for less than four million dollars. The contract amount shall be awarded first to the applicant qualifying for the lowest contract award amount. The contract shall require full and detailed reporting of the expenditure of funds disbursed pursuant to the contract. Any party entering into a contract under this section shall report electronically to the Legislature within one hundred twenty days after the expenditure of the funds disbursed pursuant to the contract detailing the nature of the expenditures made as a result of the contract. In addition, any party entering into a contract under this section shall report electronically to the Legislature on an annual basis the charitable oral health services provided in school districts and federally qualified health centers and the number of recipients and the placements of students receiving oral health training at a reduced fee in dental education programs.

(8) The State Treasurer shall transfer the June 30, 2017, unobligated balance in the Oral Health Training and Services Fund to the Cash Reserve Fund on such date as directed by the budget administrator of the budget division of the Department of Administrative Services.

Source: Laws 2015, LB661, § 39; Laws 2017, LB331, § 56.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

85-1415 Repealed. Laws 2014, LB 546, § 8.

85-1416 Budget and state aid requests; review; commission; duties.

(1) Pursuant to the authority granted in Article VII, section 14, of the Constitution of Nebraska and the Coordinating Commission for Postsecondary Education Act, the commission shall, in accordance with the coordination function of the commission pursuant to section 85-1403, review and modify, if needed to promote compliance and consistency with the comprehensive state-wide plan and prevent unnecessary duplication, the budget requests of the governing boards.

(2)(a) At least thirty days prior to submitting to the Governor their biennial budget requests pursuant to subdivision (1) of section 81-1113 and any major deficit appropriation requests pursuant to instructions of the Department of Administrative Services, the Board of Regents of the University of Nebraska

and the Board of Trustees of the Nebraska State Colleges shall each submit to the commission an outline of its proposed operating budget. The outline of its proposed operating budget or outline of proposed state aid request shall include those information summaries provided to the institution's governing board describing the respective institution's budget for the next fiscal year or biennium. The outline shall contain projections of funds necessary for (i) the retention of current programs and services at current funding levels, (ii) any inflationary costs necessary to maintain current programs and services at the current programmatic or service levels, and (iii) proposed new and expanded programs and services. In addition to the outline, the commission may request an institution to provide to the commission any other supporting information to assist the commission in its budget review process. An institution may comply with such requests pursuant to section 85-1417.

(b) On September 15 of each biennial budget request year, the boards of governors of the community colleges or their designated representatives shall submit to the commission outlines of their proposed state aid requests.

(c) The commission shall analyze institutional budget priorities in light of the comprehensive statewide plan, role and mission assignments, and the goal of prevention of unnecessary duplication. The commission shall submit to the Governor and Legislature by October 15 of each year recommendations for approval or modification of the budget requests together with a rationale for its recommendations. The recommendations submitted to the Legislature shall be submitted electronically. The analysis and recommendations by the commission shall focus on budget requests for new and expanded programs and services and major statewide funding issues or initiatives as identified in the comprehensive statewide plan. If an institution does not comply with the commission's request pursuant to subdivision (a) of this subsection for additional budget information, the commission may so note the refusal and its specific information request in its report of budget recommendations. The commission shall also provide to the Governor and the Appropriations Committee of the Legislature on or before October 1 of each even-numbered year a report identifying public policy issues relating to student tuition and fees, including the appropriate relative differentials of tuition and fee levels between the sectors of public postsecondary education in the state consistent with the comprehensive statewide plan. The report submitted to the committee shall be submitted electronically.

(3) At least thirty days prior to submitting to the Governor their biennial budget requests pursuant to subdivision (1) of section 81-1113 and any major deficit appropriation requests pursuant to instructions of the Department of Administrative Services, the Board of Regents of the University of Nebraska and the Board of Trustees of the Nebraska State Colleges shall each submit to the commission information the commission deems necessary regarding each board's capital construction budget requests. The commission shall review the capital construction budget request information and may recommend to the Governor and the Legislature modification, approval, or disapproval of such requests consistent with the statewide facilities plan and any project approval determined pursuant to subsection (10) of section 85-1414. The recommendations submitted to the Legislature shall be submitted electronically. The commission shall develop from a statewide perspective a unified prioritization of individual capital construction budget requests for which it has recommended approval and submit such prioritization to the Governor and the Legislature for

their consideration. The prioritization submitted to the Legislature shall be submitted electronically. In establishing its prioritized list, the commission may consider and respond to the priority order established by the Board of Regents or the Board of Trustees in their respective capital construction budget requests.

(4) Nothing in this section shall be construed to affect other constitutional, statutory, or administrative requirements for the submission of budget or state aid requests by the governing boards to the Governor and the Legislature.

Source: Laws 1991, LB 663, § 19; Laws 1993, LB 239, § 21; Laws 1994, LB 683, § 22; Laws 1999, LB 816, § 17; Laws 2002, Second Spec. Sess., LB 12, § 5; Laws 2006, LB 962, § 5; Laws 2007, LB342, § 38; Laws 2010, LB1072, § 4; Laws 2012, LB782, § 238; Laws 2014, LB546, § 5; Laws 2016, LB1092, § 12.

85-1417 Reports to commission; form.

Each public institution may file with the commission a copy of any report filed with any other state agency. The filing shall be either in an electronic format compatible with the commission's computer system or a paper copy. A public institution may respond to any requests for information from the commission by providing the commission with the exact location of the information within a report that has previously been filed with the commission.

Source: Laws 1999, LB 816, § 18.

85-1418 Program or capital construction project; state funds; restrictions on use; district court of Lancaster County; jurisdiction; appeals; procedure.

(1) No state warrant shall be issued by the Department of Administrative Services or used by any public institution for the purpose of funding any program or capital construction project which has not been approved or which has been disapproved by the commission pursuant to the Coordinating Commission for Postsecondary Education Act. If state funding for any such program or project cannot be or is not divided into warrants separate from other programs or projects, the department shall reduce a warrant to the public institution which includes funding for the program or project by the amount of tax funds designated by the Legislature which are budgeted in that fiscal year by the public institution for use for the program or project.

(2) The district court of Lancaster County shall have jurisdiction to enforce an order or decision of the commission entered pursuant to the Coordinating Commission for Postsecondary Education Act and to enforce this section.

(3) Any person or public institution aggrieved by a final order of the commission entered pursuant to section 85-1413, 85-1414, or 85-1416 shall be entitled to judicial review of the order. Proceedings for review shall be instituted by filing a petition in the district court of Lancaster County within thirty days after public notice of the final decision by the commission is given. The filing of the petition or the service of summons upon the commission shall not stay enforcement of such order. The review shall be conducted by the court without a jury on the record of the commission. The court shall have jurisdiction to enjoin enforcement of any order of the commission which is (a) in violation of constitutional provisions, (b) in excess of the constitutional or statutory authority of the commission, (c) made upon unlawful procedure, or (d) affected by other error of law.

(4) A party may secure a review of any final judgment of the district court by appeal to the Court of Appeals. Such appeal shall be taken in the manner provided by law for appeals in civil cases and shall be heard de novo on the record.

Source: Laws 1991, LB 663, § 21; Laws 1992, LB 360, § 40; Laws 1993, LB 239, § 22; Laws 2007, LB342, § 39; Laws 2010, LB1072, § 5; Laws 2011, LB59, § 4; Laws 2012, LB946, § 14; Laws 2013, LB211, § 2; Laws 2014, LB546, § 6; Laws 2019, LB3, § 2.

85-1419 Coordinating Commission for Postsecondary Education Cash Fund; created; use; investment.

There is hereby created the Coordinating Commission for Postsecondary Education Cash Fund. The fund shall contain money received from application fees from out-of-state institutions of higher and postsecondary education seeking authorization to offer courses and programs in the State of Nebraska and from private colleges seeking provisional accreditation and money received by the commission for services rendered incident to the administration of its statutory or contractual functions. The fund shall be expended for the administrative costs of reviewing applications, publishing and duplicating reports, coordinating studies, conducting conferences, and other related activities as may be authorized by the Legislature or by contract, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. All such money received by the commission shall be remitted to the State Treasurer for credit to the Coordinating Commission for Postsecondary Education Cash Fund. A report on the receipts and expenditures from the fund shall be included as a part of the operating budget request submitted to the Legislature and the Governor. 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 663, § 22; Laws 1994, LB 683, § 23; Laws 1994, LB 1066, § 138; Laws 2009, First Spec. Sess., LB3, § 94.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

85-1420 Coordinating Commission for Postsecondary Education Trust Fund; created; use; investment.

There is hereby created the Coordinating Commission for Postsecondary Education Trust Fund. The fund shall serve as a revolving fund to receive grants from foundations, institutions, or individuals for specific studies which are a part of the powers and duties of the commission or for the administration of privately endowed scholarship programs for students attending Nebraska institutions. The grant money shall be used only for purposes specified in the grant. A report of the findings of any studies done pursuant to the grants shall be included as a part of the operating budget request submitted to the Legislature and the Governor. 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 663, § 23; Laws 1994, LB 683, § 24; Laws 1994, LB 1066, § 139; Laws 1999, LB 816, § 19.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

(b) NEBRASKA EDUCATIONAL DATA SYSTEM

85-1421 Legislative intent.

The Legislature hereby declares that it is the intent and purpose of sections 85-1421 to 85-1427 to provide for a state-level uniform information system for all public postsecondary education systems and institutions which will:

- (1) Provide for a coordinated state-level information base regarding the activities of the public postsecondary education systems and institutions;
- (2) Insure that the Legislature and other state and federal agencies obtain timely and accurate information concerning the programs, personnel, students, finances, and facilities of the state's postsecondary education systems and institutions;
- (3) Maintain procedures for the uniform definition and reporting of information;
- (4) Avoid unnecessary, duplicative, and conflicting information requests by state-level agencies through the uniform definition and collection of data elements, identification of data necessary for annual reporting to the state, and development of uniform and comparable data classification systems;
- (5) Provide information users and suppliers an opportunity to cooperatively maintain a uniform information system; and
- (6) Maintain an information base to support state-level planning, budgeting, and performance evaluation activities for postsecondary education.

Source: Laws 1978, LB 897, § 1; R.S.1943, (1987), § 85-968; Laws 1994, LB 683, § 25.

85-1422 Terms, defined.

For purposes of sections 85-1421 to 85-1427:

- (1) Commission shall mean the Coordinating Commission for Postsecondary Education; and
- (2) Information system shall mean the uniform information system established by such sections and known as the Nebraska Educational Data System.

Source: Laws 1978, LB 897, § 2; Laws 1991, LB 663, § 106; Laws 1992, LB 988, § 18; R.S.Supp.,1992, § 85-969; Laws 1994, LB 683, § 26.

85-1423 Commission; postsecondary education information system; duties.

The commission shall maintain a comprehensive state-level public postsecondary education information system. After consulting with the governing boards or their designated representatives, the commission shall:

- (1) Identify the state-level information to be reported on an annual or periodic basis regarding each postsecondary system's and institution's programs, personnel, finances, students, and facilities utilization and inventory;
- (2) Identify the data elements for which information will be collected and reported to the state;

(3) Identify the information classification formats to be used by the postsecondary systems and institutions in presenting program, financial, student, facility, personnel, and audit information;

(4) Identify the data-collection, reporting, and auditing procedures for the information system; and

(5) Identify a procedure for updating the information system to meet changing conditions.

Source: Laws 1978, LB 897, § 3; R.S.1943, (1987), § 85-970; Laws 1994, LB 683, § 27; Laws 1999, LB 816, § 20.

85-1424 Commission; verification and reporting duties.

The commission shall:

(1) Review and verify all information submitted by public postsecondary systems and institutions as part of the Integrated Postsecondary Education Data System and make such corrections in the submitted information as are necessary; and

(2) Prepare and disseminate an annual report of the information submitted by each public postsecondary system and institution and those private postsecondary educational institutions willing to cooperate as part of the Integrated Postsecondary Education Data System.

Source: Laws 1978, LB 897, § 7; Laws 1984, LB 290, § 8; Laws 1988, LB 927, § 3; Laws 1991, LB 663, § 109; R.S.Supp.,1992, § 85-974; Laws 1994, LB 683, § 28.

85-1425 Commission; solicit advice.

The commission shall provide ongoing means for information suppliers and users to advise the commission in carrying out sections 85-1421 to 85-1427.

Source: Laws 1978, LB 897, § 8; Laws 1985, LB 421, § 5; Laws 1991, LB 663, § 110; R.S.Supp.,1992, § 85-975; Laws 1994, LB 683, § 29.

85-1426 Postsecondary education system and institution; report.

Each public postsecondary education system and institution shall report information as required by the commission pursuant to sections 85-1421 to 85-1427.

Source: Laws 1978, LB 897, § 9; Laws 1991, LB 663, § 111; R.S.Supp.,1992, § 85-976; Laws 1994, LB 683, § 30.

85-1427 Commission; administrative duties.

In order to carry out its responsibilities under sections 85-1421 to 85-1427, the commission shall:

(1) Periodically meet and confer with officials of the state and its political subdivisions having responsibility for postsecondary education services;

(2) Consult with and utilize the services of any office, department, or agency of the state; and

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(3) Employ such personnel as may be necessary to assist it in the performance of its duties.

Source: Laws 1978, LB 897, § 12; Laws 1991, LB 663, § 114; R.S.Supp.,1992, § 85-979; Laws 1994, LB 683, § 31.

(c) LEGISLATIVE PRIORITIES

85-1428 Economic expansion and diversification; postsecondary education priorities; legislative findings.

The Legislature finds that:

(1) Expansion and diversification of Nebraska's economy is necessary in order to sustain essential public services sponsored or aided by the state;

(2) Increasing the number of Nebraskans with high levels of educational attainment is essential to support economic expansion and diversification;

(3) In order to increase the number of Nebraskans with high levels of educational attainment, the state's postsecondary education system shall include, but not be limited to, the following key priorities that were identified by the LR 174 Task Force of 2003:

(a) Increasing the number of students who enter postsecondary education in Nebraska;

(b) Increasing the percentage of students who enroll and successfully complete a degree; and

(c) Reducing, eliminating, and then reversing the net out-migration of Nebraskans with high levels of educational attainment; and

(4) Unprecedented collaboration and cooperation between and among educational institutions and sectors will be necessary to develop community, regional, and statewide strategies to achieve progress toward these priorities and to assist the state in serving Nebraska students and allowing them to reach their academic caliber.

Source: Laws 2006, LB 962, § 7.

85-1429 Commission; report on higher education priorities.

On or before March 15 of each year, the Coordinating Commission for Postsecondary Education shall provide electronically to the Legislature a report that evaluates progress toward attainment of the priorities listed in subdivision (3) of section 85-1428.

Source: Laws 2006, LB 962, § 8; Laws 2012, LB782, § 239; Laws 2015, LB99, § 1.

ARTICLE 15

COMMUNITY COLLEGES

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85-1501 Declaration of intent and purpose.

The Legislature hereby declares that for a community college to be truly responsible to the people it serves, primary control of such colleges shall be placed in the citizens within the local area so served subject to coordination by the Coordinating Commission for Postsecondary Education. It is the intent and purpose of sections 85-1501 to 85-1540 to create locally governed and locally supported community college areas with the major educational emphasis on occupational education. Each community college area is intended to be an independent, local, unique, and vital segment of postsecondary education separate from both the established elementary and secondary school system and from other institutions of postsecondary education and is not to be converted into a four-year, baccalaureate-degree-granting institution.

Source: Laws 1975, LB 344, § 1; Laws 1988, LB 802, § 29; Laws 1991, LB 663, § 44; R.S.Supp.,1992, § 79-2636; Laws 1993, LB 239, § 23; Laws 1997, LB 269, § 66.

Chapter 79, article 26, the Technical Community College Area Act, is not in violation of Article VIII, section 1A, of the Constitution. State ex rel. Western Technical Com. Col. Area v. Tallon, 196 Neb. 603, 244 N.W.2d 183 (1976).

85-1501.01 Financing; legislative intent.

The Legislature recognizes the need for and importance of a strong partnership with the community colleges to assure the continued economic growth of the state. In recognition of that partnership, the Legislature affirms that community colleges should be financed through a funding partnership from property tax, state aid, tuition and fees, and other sources of revenue.

Source: Laws 1997, LB 269, § 67; Laws 2012, LB946, § 15.

85-1502 Area governance and statewide coordination; legislative intent; voluntary membership in boards or associations of community colleges; section, how construed.

(1) It is the intent of the Legislature that a clear distinction between area governance and statewide coordination for the community college areas be recognized and that such coordination is appropriate in order to provide the most cost-effective programs for residents of each community college area. It is further the intent of the Legislature that coordination of the community colleges by the Coordinating Commission for Postsecondary Education be conducted as provided in Article VII, section 14, of the Constitution of Nebraska and the Coordinating Commission for Postsecondary Education Act. It is further the intent of the Legislature that such coordination not be conducted through a board or association representing all the community colleges and that membership in any boards or associations of community colleges be voluntary.

(2) The board of governors of any community college area may pay from college funds an amount to be determined by the board of governors for membership in boards or associations of community colleges.

(3) Nothing in this section shall be construed to require or provide for state control of the operations of any community college area or to abridge the governance ability, rights, or responsibilities of any board. Nothing in this section shall be construed to limit the ability or authority of the commission to

fulfill its responsibilities and duties regarding the individual community college areas and the individual community college area campuses.

Source: Laws 1991, LB 625, § 1; Laws 1991, LB 663, § 46; R.S.Supp.,1992, § 79-2636.01; Laws 1993, LB 239, § 24; Laws 2004, LB 821, § 43; Laws 2010, LB1072, § 6; Laws 2013, LB211, § 3.

Cross References

Coordinating Commission for Postsecondary Education Act, see section 85-1401.

85-1503 Terms, defined.

For purposes of sections 85-1501 to 85-1540, unless the context otherwise requires:

(1) Community college means an educational institution operating and offering programs pursuant to such sections;

(2) Community college area means an area established by section 85-1504;

(3) Board means the Community College Board of Governors for each community college area;

(4) Full-time equivalent student means, in the aggregate, the equivalent of a registered student who in a twelve-month period is enrolled in (a) thirty semester credit hours or forty-five quarter credit hours of classroom, laboratory, clinical, practicum, or independent study course work or cooperative work experience or (b) nine hundred contact hours of classroom or laboratory course work for which credit hours are not offered or awarded. Avocational and recreational community service programs or courses are not included in determining full-time equivalent students or student enrollment. The number of credit and contact hours to be counted by any community college area in which a tribally controlled community college is located shall include credit and contact hours awarded by such tribally controlled community college to students for which such institution received no federal reimbursement pursuant to the federal Tribally Controlled Colleges and Universities Assistance Act of 1978, 25 U.S.C. 1801 et seq.;

(5) Contact hour means an educational activity consisting of sixty minutes minus break time and required time to change classes;

(6) Credit hour means the unit used to ascertain the educational value of course work offered by the institution to students enrolling for such course work, earned by such students upon successful completion of such course work, and for which tuition is charged. A credit hour may be offered and earned in any of several instructional delivery systems, including, but not limited to, classroom hours, laboratory hours, clinical hours, practicum hours, cooperative work experience, and independent study. A credit hour shall consist of a minimum of: (a) Ten quarter or fifteen semester classroom contact hours per term of enrollment; (b) twenty quarter or thirty semester academic transfer and academic support laboratory hours per term of enrollment; (c) thirty quarter or forty-five semester vocational laboratory hours per term of enrollment; (d) thirty quarter or forty-five semester clinical or practicum contact hours per term of enrollment; or (e) forty quarter or sixty semester cooperative work experience contact hours per term of enrollment. An institution may include in a credit hour more classroom, laboratory, clinical, practicum, or cooperative work experience hours than the minimum required in this subdivision. The

institution shall publish in its catalog, or otherwise make known to the student in writing prior to the student enrolling or paying tuition for any courses, the number of credit or contact hours offered in each such course. Such published credit or contact hour offerings shall be used to determine whether a student is a full-time equivalent student pursuant to subdivision (4) of this section;

(7) Classroom hour means a minimum of fifty minutes of formalized instruction on campus or off campus in which a qualified instructor applying any combination of instructional methods such as lecture, directed discussion, demonstration, or the presentation of audiovisual materials is responsible for providing an educational experience to students;

(8) Laboratory hour means a minimum of fifty minutes of educational activity on campus or off campus in which students conduct experiments, perfect skills, or practice procedures under the direction of a qualified instructor;

(9) Clinical hour means a minimum of fifty minutes of educational activity on campus or off campus during which the student is assigned practical experience under constant supervision at a health-related agency, receives individual instruction in the performance of a particular function, and is observed and critiqued in the repeat performance of such function. Adjunct professional personnel, who may or may not be paid by the college, may be used for the directed supervision of students and for the delivery of part of the didactic phase of the experience;

(10) Practicum hour means a minimum of fifty minutes of educational activity on campus or off campus during which the student is assigned practical experiences, receives individual instruction in the performance of a particular function, and is observed and critiqued by an instructor in the repeat performance of such function. Adjunct professional personnel, who may or may not be paid by the college, may be used for the directed supervision of the students;

(11) Cooperative work experience means an internship or on-the-job training, designed to provide specialized skills and educational experiences, which is coordinated, supervised, observed, and evaluated by qualified college staff or faculty and may be completed on campus or off campus, depending on the nature of the arrangement;

(12) Independent study means an arrangement between an instructor and a student in which the instructor is responsible for assigning work activity or skill objectives to the student, personally providing needed instruction, assessing the student's progress, and assigning a final grade. Credit hours shall be assigned according to the practice of assigning credits in similar courses;

(13) Full-time equivalent student enrollment total means the total of full-time equivalent students enrolled in a community college in any fiscal year;

(14) General academic transfer course means a course offering in a one-year or two-year degree-credit program, at the associate degree level or below, intended by the offering institution for transfer into a baccalaureate program. The completion of the specified courses in a general academic transfer program may include the award of a formal degree;

(15) Applied technology or occupational course means a course offering in an instructional program, at the associate degree level or below, intended to prepare individuals for immediate entry into a specific occupation or career. The primary intent of the institutions offering an applied technology or occupational program shall be that such program is for immediate job entry. The

completion of the specified courses in an applied technology or occupational program may include the award of a formal degree, diploma, or certificate;

(16) Academic support course means a general education academic course offering which may be necessary to support an applied technology or occupational program;

(17) Class 1 course means an applied technology or occupational course offering which requires the use of equipment, facilities, or instructional methods easily adaptable for use in a general academic transfer program classroom or laboratory;

(18) Class 2 course means an applied technology or occupational course offering which requires the use of specialized equipment, facilities, or instructional methods not easily adaptable for use in a general academic transfer program classroom or laboratory;

(19) Reimbursable educational unit means a full-time equivalent student multiplied by (a) for a general academic transfer course or an academic support course, a factor of one, (b) for a Class 1 course, a factor of one and fifty-hundredths, (c) for a Class 2 course, a factor of two, (d) for a tribally controlled community college general academic transfer course or academic support course, a factor of two, (e) for a tribally controlled community college Class 1 course, a factor of three, and (f) for a tribally controlled community college Class 2 course, a factor of four;

(20) Reimbursable educational unit total means the total of all reimbursable educational units accumulated in a community college area in any fiscal year;

(21) Special instructional term means any term which is less than fifteen weeks for community colleges using semesters or ten weeks for community colleges using quarters;

(22) Statewide reimbursable full-time equivalent total means the total of all reimbursable full-time equivalents accumulated statewide for the community college in any fiscal year;

(23) Tribally controlled community college means an educational institution operating and offering programs pursuant to the federal Tribally Controlled Colleges and Universities Assistance Act of 1978, 25 U.S.C. 1801 et seq.; and

(24) Tribally controlled community college state aid amount means the quotient of the amount of state aid to be distributed pursuant to subdivisions (1) and (3) of section 85-2234 for such fiscal year to a community college area in which a tribally controlled community college is located divided by the reimbursable educational unit total for such community college area for the fiscal year immediately preceding the fiscal year for which aid is being calculated, with such quotient then multiplied by the reimbursable educational units derived from credit and contact hours awarded by a tribally controlled community college to students for which such institution received no federal reimbursement pursuant to the federal Tribally Controlled Colleges and Universities Assistance Act of 1978, 25 U.S.C. 1801 et seq., for the fiscal year immediately preceding the fiscal year for which aid is being calculated.

Source: Laws 1975, LB 344, § 2; Laws 1977, LB 459, § 10; Laws 1979, LB 363, § 1; Laws 1984, LB 890, § 1; Laws 1987, LB 329, § 1; Laws 1988, LB 802, § 30; Laws 1991, LB 663, § 45; Laws 1992, LB 921, § 1; R.S.Supp., 1992, § 79-2637; Laws 1993, LB 239, § 25; Laws 1995, LB 241, § 1; Laws 1997, LB 269, § 68; Laws

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1999, LB 67, § 1; Laws 2005, LB 38, § 3; Laws 2007, LB342, § 40; Laws 2010, LB1072, § 7; Laws 2011, LB59, § 5; Laws 2012, LB946, § 16; Laws 2015, LB100, § 1; Laws 2019, LB3, § 3.

Chapter 79, article 26, the Technical Community College Area Act, is not in violation of Article VIII, section 1A, of the Constitution. State ex rel. Western Technical Com. Col. Area v. Tallon, 196 Neb. 603, 244 N.W.2d 183 (1976).

85-1504 Community college areas, designated.

The state is hereby divided into six community college areas as follows:

(1) The Western Community College Area shall consist of the following counties: Sioux, Dawes, Sheridan, Box Butte, Scotts Bluff, Banner, Kimball, Morrill, Cheyenne, Garden, Deuel, and Grant and the voting districts of Merriam, Russell, King, Mother Lake, Cody, Barley, Gillaspie, Lackey, and Calf Creek in Cherry County as such voting districts existed on July 1, 1975;

(2) The Mid-Plains Community College Area shall consist of the following counties: Cherry except as provided in subdivision (1) of this section, Hooker, Thomas, Blaine, Loup, Arthur, McPherson, Logan, Custer, Keith, Lincoln, Perkins, Chase, Hayes, Frontier, Dundy, Hitchcock, and Red Willow;

(3) The Northeast Community College Area shall consist of the following counties: Keya Paha, Brown, Rock, Boyd, Holt, Garfield, Wheeler, Knox, Cedar, Antelope, Pierce, Madison, Wayne, Stanton, Dixon, Dakota, Thurston, Burt, and Cuming and the precincts of North Oakland, South Oakland, Ashland, North Branch, Shell Creek, and Midland in Boone County as such precincts existed on July 1, 1975;

(4) The Central Community College Area shall consist of the following counties: Valley, Greeley, Platte, Colfax, Sherman, Howard, Nance, Merrick, Polk, Butler, Dawson, Buffalo, Hall, Hamilton, Gosper, Phelps, Kearney, Adams, Clay, Furnas, Harlan, Franklin, Webster, and Nuckolls and all of Boone County except as provided in subdivision (3) of this section;

(5) The Southeast Community College Area shall consist of the following counties: Saunders, Cass, York, Seward, Lancaster, Otoe, Fillmore, Saline, Thayer, Jefferson, Gage, Johnson, Nemaha, Pawnee, and Richardson; and

(6) The Metropolitan Community College Area shall consist of the following counties: Dodge, Washington, Douglas, and Sarpy.

Source: Laws 1975, LB 344, § 3; R.S.1943, (1987), § 79-2638; Laws 1993, LB 239, § 26; Laws 1999, LB 596, § 1.

Chapter 79, article 26, the Technical Community College Area Act, is not in violation of Article VIII, section 1A, of the Constitution. State ex rel. Western Technical Com. Col. Area v. Tallon, 196 Neb. 603, 244 N.W.2d 183 (1976).

85-1505 Community college area; body corporate.

Each community college area shall constitute a body corporate and as such may sue and be sued.

Source: Laws 1975, LB 344, § 4; R.S.1943, (1987), § 79-2639; Laws 1993, LB 239, § 27.

Chapter 79, article 26, the Technical Community College Area Act, is not in violation of Article VIII, section 1A, of the Constitution. State ex rel. Western Technical Com. Col. Area v. Tallon, 196 Neb. 603, 244 N.W.2d 183 (1976).

85-1506 Community College Board of Governors; membership.

Each community college area shall be governed by a board composed of eleven members. The governing boards shall be known as the Community College Board of Governors for the community college area the board serves.

Source: Laws 1975, LB 344, § 5; Laws 1988, LB 802, § 31; R.S.Supp.,1992, § 79-2640; Laws 1993, LB 239, § 28.

Chapter 79, article 26, the Technical Community College Area Act, is not in violation of Article VIII, section 1A, of the Constitution. State ex rel. Western Technical Com. Col. Area v. Tallon, 196 Neb. 603, 244 N.W.2d 183 (1976).

85-1507 Boards; officers; quorum required to perform duties.

Each board shall annually elect from among its members a chairperson and a vice-chairperson, each to serve for one year. The board shall appoint a secretary and a treasurer, and one person may hold both such offices. A majority of the members of the board shall constitute a quorum, and no action shall be taken by less than a majority of the members present and voting, except that approval of employee contracts and the appropriation of money from the funds of the community college area shall be by the affirmative vote of a majority of elected members of the board. For purposes of this section, appropriation shall mean the adoption or modification of budgets for the community college area.

Source: Laws 1975, LB 344, § 6; R.S.1943, (1987), § 79-2641; Laws 1993, LB 239, § 29; Laws 1995, LB 372, § 1.

Chapter 79, article 26, the Technical Community College Area Act, is not in violation of Article VIII, section 1A, of the Constitution. State ex rel. Western Technical Com. Col. Area v. Tallon, 196 Neb. 603, 244 N.W.2d 183 (1976).

85-1508 Community college area officers and employees; bond.

The officers and employees of a community college area authorized to handle funds shall furnish and maintain a corporate surety bond in an amount, in a form, and with sureties approved by the board. A copy of such bond shall be filed with the Secretary of State. The premium on such bond shall be paid by the community college.

Source: Laws 1975, LB 344, § 8; R.S.1943, (1987), § 79-2643; Laws 1993, LB 239, § 30.

Chapter 79, article 26, the Technical Community College Area Act, is not in violation of Article VIII, section 1A, of the Constitution. State ex rel. Western Technical Com. Col. Area v. Tallon, 196 Neb. 603, 244 N.W.2d 183 (1976).

85-1509 Board; members; expenses; insurance coverage.

(1) Members of a board shall not receive a per diem. The board may reimburse members for expenses incurred while carrying out their duties. Mileage expenses shall be computed at the rate provided in section 81-1176. Sections 81-1174, 81-1175, and 81-1177 shall serve as guidelines for the board when determining allowable expenses and reimbursement for such expenses.

(2) A board may permit its members to participate in any hospitalization, medical, surgical, accident, sickness, or term life insurance coverage offered to the employees of such community college area. A board member electing to participate in any such insurance coverage shall pay both the employee and the employer portions of the premium for such insurance coverage. A board which opts to permit its members to participate in insurance coverage pursuant to this subsection shall report quarterly at a meeting of the board a list of the board members who have elected to participate in such insurance coverage. The list shall be made available in the office of the board for review by the public upon request.

Source: Laws 1993, LB 239, § 31; Laws 2019, LB256, § 1; Laws 2020, LB381, § 140.

85-1510 Community college area; power to indemnify; liability insurance; purchase.

(1) A community college area may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, other than an action by or in the right of the community college area, by reason of the fact that he or she is or was a board member or an officer, employee, or agent of the community college area, against expenses, including attorney's fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit, or proceeding if such person acted in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the community college area and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent shall not of itself create a presumption that such person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the community college area and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

(2) A community college area may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the community college area to procure a judgment in its favor by reason of the fact that he or she is or was a board member or an officer, employee, or agent of the community college area, against expenses, including attorney's fees, actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the community college area, except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person was adjudged to be liable for negligence or misconduct in the performance of his or her duty to the community college area unless and only to the extent that the court in which such action or suit was brought determines upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court deems proper.

(3) To the extent that a board member or an officer, employee, or agent of a community college area has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in subsections (1) and (2) of this section or in defense of any claim, issue, or matter in such action, suit, or proceeding, such person shall be indemnified against expenses, including attorney's fees, actually and reasonably incurred by him or her in connection with such defense.

(4) Any indemnification under such subsections, unless ordered by a court, shall be made by the community college area only as authorized in the specific case upon a determination that indemnification of the board member or the officer, employee, or agent of the community college area is proper in the circumstances because he or she has met the applicable standard of conduct set

forth in such subsections. Such determination shall be made by the board members by a majority vote of a quorum consisting of board members who were not parties to such action, suit, or proceeding or, if such a quorum is not obtainable or even if obtainable a quorum of disinterested board members so directs, by independent legal counsel in a written opinion.

(5) Expenses incurred in defending a civil or criminal action, suit, or proceeding may be paid by a community college area in advance of the final disposition of such action, suit, or proceeding as authorized in the manner provided in subsection (4) of this section upon receipt of an undertaking by or on behalf of the board member or officer, employee, or agent of the community college area to repay such amount unless it is ultimately determined that he or she is entitled to be indemnified by the community college area as authorized in this section.

(6) The indemnification provided by this section shall not be deemed exclusive of any other rights to which the person indemnified may be entitled under any agreement, either as to action in his or her official capacity or as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a board member or an officer, employee, or agent of a community college area and shall inure to the benefit of the heirs, executors, and administrators of such person.

(7) A community college area may purchase and maintain insurance on behalf of any person who is or was a board member or an officer, employee, or agent of a community college area against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the community college area would have the power to indemnify him or her against such liability under this section.

Source: Laws 1993, LB 239, § 32.

85-1511 Board; powers and duties; enumerated.

In addition to any other powers and duties imposed upon the community college system or its areas, campuses, or boards by the Community College Aid Act, sections 85-917 to 85-966 and 85-1501 to 85-1540, and any other provision of law, each board shall:

(1) Have general supervision, control, and operation of each community college within its jurisdiction;

(2) Subject to coordination by the Coordinating Commission for Postsecondary Education as prescribed in the Coordinating Commission for Postsecondary Education Act, develop and offer programs of applied technology education, academic transfer programs, academic support courses, and such other programs and courses as the needs of the community college area served may require. The board shall avoid unnecessary duplication of existing programs and courses in meeting the needs of the students and the community college area;

(3) Employ, for a period to be fixed by the board, executive officers, members of the faculty, and such other administrative officers and employees as may be necessary or appropriate and fix their salaries and duties;

(4) Subject to coordination by the Coordinating Commission for Postsecondary Education as prescribed in the Coordinating Commission for Postsecondary

Education Act, construct, lease, purchase, purchase on contract, operate, equip, and maintain facilities;

(5) Contract for services connected with the operation of the community college area as needs and interest demand;

(6)(a) Cause a comprehensive audit of the books, accounts, records, and affairs to be made annually covering the most recently completed fiscal year. The audit of each area shall include all sources of revenue used to finance operating expenditures and capital improvements and the county-certified property valuation for the community college for the fiscal year for which such audit is being performed. Such audit of the books, accounts, records, and affairs shall be completed and filed with the Auditor of Public Accounts, the commission, and the Department of Administrative Services on or before November 15 of each year; and

(b) Cause a comprehensive audit of the full-time equivalent student enrollment totals and reimbursable educational unit totals to be made annually covering the most recently completed fiscal year. The audit of each area shall include a report of full-time equivalent student enrollment totals and reimbursable educational unit totals verified by such audits for the three most recently completed fiscal years which shall be used for calculation of aid to the community college areas for fiscal year 2013-14 and each fiscal year thereafter pursuant to subdivisions (3)(b) and (c) of section 85-2234. The audit of the full-time equivalent student enrollment totals and reimbursable educational unit totals shall be completed and filed with the Auditor of Public Accounts, the commission, and the Department of Administrative Services on or before August 15 of each year;

(7) Establish fees and charges for the facilities authorized by sections 85-1501 to 85-1540. Such fees and charges shall be identified as facility fees at the time they are assessed. The revenue from such fees and charges, other than revenue pledged to retire bonds issued pursuant to sections 85-1515 and 85-1520 to 85-1527 and deposited in a separate bond sinking fund, shall be deposited in the capital improvement and bond sinking fund provided for in section 85-1515. Each board may enter into agreements with owners of facilities to be used for housing regarding the management, operation, and government of such facilities and may employ necessary employees to govern, manage, and operate such facilities;

(8) Receive such gifts, grants, conveyances, and bequests of real and personal property from public or private sources as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out the community college programs as specified by law. Each board may sell, lease, exchange, invest, or expend such gifts, grants, conveyances, and bequests or the proceeds, rents, profits, and income therefrom according to the terms and conditions thereof and adopt and promulgate rules and regulations governing the receipt and expenditure of such proceeds, rents, profits, and income, except that acceptance of such gifts, grants, or conveyances shall not be conditioned on matching state or local funds;

(9) Prescribe the courses of study for any community college under its control and publish such catalogs and bulletins as may be necessary;

(10) Grant to every student upon graduation or completion of a course of study a suitable diploma, associate degree, or certificate;

(11) Adopt and promulgate such rules and regulations and perform all other acts as the board may deem necessary or appropriate to the administration of the community college area. Such rules and regulations shall include, but not be limited to, rules and regulations relating to facilities, housing, scholarships, discipline, and pedestrian and vehicular traffic on property owned, operated, or maintained by the community college area;

(12) Employ, for a period to be fixed by the board, an executive officer for the community college area and, by written order filed in its office, delegate to such executive officer any of the powers and duties vested in or imposed upon it by sections 85-1501 to 85-1540. Such delegated powers and duties may be exercised in the name of the board;

(13) Acquire real property by eminent domain pursuant to sections 76-701 to 76-724;

(14) Acquire real and personal property and sell, convey, or lease such property whenever the community college area will be benefited thereby. The sale, conveyance, or lease of any real estate owned by a community college area shall be effective only when authorized by an affirmative vote of at least two-thirds of all the members of the board;

(15) Enter into agreements for services, facilities, or equipment and for the presentation of courses for students when such agreements are deemed to be in the best interests of the education of the students involved;

(16) Transfer tribally controlled community college state aid amounts to a tribally controlled community college located within its community college area;

(17) Invest, after proper consideration of the requirements for the availability of money, funds of the community college in securities the nature of which individuals of prudence, discretion, and intelligence acquire or retain in dealing with the property of another;

(18) Establish tuition rates for courses of instruction offered by each community college within its community college area. Separate tuition rates shall be established for students who are nonresidents of the State of Nebraska. Each board may also establish fees to support the operating expenditures of the community college area if such fees are accounted for separately from the fees and charges established for facilities pursuant to subdivision (7) of this section and are identified as operating fees at the time they are assessed;

(19) Establish a fiscal year for the community college area which conforms to the fiscal year of the state;

(20) Enter into a memorandum of understanding with the State Board of Education to adopt a policy to share student data. At a minimum, the policy shall ensure that the exchange of information is conducted in conformance with the requirements of the federal Family Educational Rights and Privacy Act of 1974, as amended, 20 U.S.C. 1232g, and all federal regulations and applicable guidelines adopted in accordance with such act, as such act, regulations, and guidelines existed on January 1, 2010; and

(21) Exercise any other powers, duties, and responsibilities necessary to carry out sections 85-1501 to 85-1540.

Source: Laws 1975, LB 344, § 9; Laws 1977, LB 459, § 11; Laws 1978, LB 756, § 52; Laws 1979, LB 363, § 5; Laws 1987, LB 30, § 2; Laws 1988, LB 802, § 32; Laws 1991, LB 663, § 47;

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R.S.Supp.,1992, § 79-2644; Laws 1993, LB 239, § 33; Laws 1997, LB 269, § 69; Laws 2007, LB342, § 41; Laws 2010, LB1071, § 36; Laws 2010, LB1072, § 8; Laws 2012, LB946, § 17; Laws 2014, LB781, § 1.

Cross References

Community College Aid Act, see section 85-2231.

Coordinating Commission for Postsecondary Education Act, see section 85-1401.

This section charges the board of governors of a technical community college with the power, duty, and responsibility of establishing curriculum and employing members of the faculty. *Cross v. Board of Governors*, 204 Neb. 383, 281 N.W.2d 925 (1979).

Chapter 79, article 26, the Technical Community College Area Act, is not in violation of Article VIII, section 1A, of the Constitution. *State ex rel. Western Technical Com. Col. Area v. Tallon*, 196 Neb. 603, 244 N.W.2d 183 (1976).

85-1512 Boards; establish election districts; nomination and election of members; qualifications.

Each board shall divide the community college area into five election districts as nearly equal in population as may be practicable and shall transmit the appropriate information pertaining to such election districts to the Secretary of State and to the appropriate election officials within the area. Board members shall be nominated and elected as provided in section 32-514. To be eligible for membership on the board, a person shall be a registered voter and shall have been a resident of the area for six months and, for members representing a district, a resident of the district for six months. No person shall be eligible for membership on a community college board of governors who is an elected or appointed member of any other board relating to education. No member of a community college board of governors shall be employed by the community college area for which he or she serves as a board member. Each member elected to represent a district shall be a resident of the district.

Source: Laws 1975, LB 344, § 11; Laws 1981, LB 446, § 35; R.S.1943, (1987), § 79-2646; Laws 1993, LB 239, § 34; Laws 1994, LB 76, § 612; Laws 2013, LB135, § 1.

Chapter 79, article 26, the Technical Community College Area Act, is not in violation of Article VIII, section 1A, of the Consti-

tution. *State ex rel. Western Technical Com. Col. Area v. Tallon*, 196 Neb. 603, 244 N.W.2d 183 (1976).

85-1513 Repealed. Laws 1994, LB 76, § 615.

85-1514 Vacancy on board; procedure to fill; qualifications of member filling vacancy.

(1) In addition to the events listed in section 32-560, a vacancy on any board shall exist in the event of the removal of a board member from the community college area for board members elected at large or community college district for board members elected by district. After notice and hearing, a vacancy shall also exist when any board member is absent from more than three consecutive regular meetings of the board unless such absences are excused by a majority of the remaining board members. In the event of a vacancy from any of such causes or otherwise, such vacancy shall be filled by the remaining board members for the balance of the unexpired term. Any person so named to fill a vacancy shall have the same qualifications as his or her immediate predecessor. Such appointment shall be made in writing and certified to the office of the Secretary of State.

(2) If after a primary election there is a vacancy upon the ballot, such vacancy shall be filled by a petition candidate pursuant to section 32-625.

(3) An incumbent shall not be permitted to hold over the term, but such office shall automatically become vacant and an appointment shall be made within one calendar month to fill such vacancy for the ensuing term. If there are vacancies in the offices of a majority of the members of the board, the Secretary of State shall conduct a special election to fill such vacancies. Candidates for such special election shall file a candidate filing form pursuant to section 32-606.01.

Source: Laws 1975, LB 344, § 12; Laws 1986, LB 887, § 1; Laws 1989, LB 640, § 11; R.S.Supp.,1992, § 79-2647; Laws 1993, LB 239, § 36; Laws 1994, LB 76, § 613; Laws 2002, LB 251, § 7; Laws 2024, LB287, § 75.

Operative date July 19, 2024.

Chapter 79, article 26, the Technical Community College Area Act, is not in violation of Article VIII, section 1A, of the Constitution. State ex rel. Western Technical Com. Col. Area v. Tallon, 196 Neb. 603, 244 N.W.2d 183 (1976).

85-1515 Board; power to sell revenue and general obligation bonds; purpose; sinking fund; purpose; election required; when; state liability.

Each board may issue and sell revenue bonds and general obligation bonds for the purchase, construction, reconstruction, equipping, demolition, or alteration of capital assets, including accessibility barrier elimination project costs and abatement of environmental hazards as such terms are defined in section 79-10,110, and the acquisition of sites, rights-of-way, easements, improvements, or appurtenances and other facilities connected with the operation of the community colleges. Each board may establish in its budget a capital improvement and bond sinking fund. Such fund shall be used (1) first for the retirement of bonds assumed by the board in accordance with the provisions of such bonds, (2) then for (a) renewal work and deferred maintenance as defined in section 81-173, (b) handicapped access and life safety improvements made to existing structures or grounds including accessibility barrier elimination project costs and abatement of environmental hazards as such terms are defined in section 79-10,110, and (c) projects designed to prevent or correct a waste of energy, including measures taken to utilize alternate energy sources, all in accordance with the capital facilities plan of the community college area, (3) then for the retirement of bonds issued pursuant to this section, and (4) then for the purchasing, purchasing on contract, constructing, and improving of facilities necessary to carry out sections 85-1501 to 85-1540. Revenue bonds issued shall be subject to sections 85-1520 to 85-1527. No general obligation bonds shall be issued without the approval by a majority vote of the qualified electors of the community college area voting in an election called for such purpose pursuant to section 85-1518. No bonds issued under sections 85-1501 to 85-1540 shall be an obligation of the State of Nebraska, and no state tax shall be levied to raise funds for the payment thereof or interest thereon.

Source: Laws 1975, LB 344, § 13; Laws 1978, LB 922, § 4; Laws 1980, LB 824, § 1; Laws 1987, LB 329, § 2; Laws 1988, LB 802, § 33; Laws 1992, LB 1001, § 34; R.S.Supp.,1992, § 79-2648; Laws 1993, LB 239, § 37; Laws 1996, LB 900, § 1083; Laws 1997, LB 269, § 70.

Chapter 79, article 26, the Technical Community College Area Act, is not in violation of Article VIII, section 1A, of the Constitution. State ex rel. Western Technical Com. Col. Area v. Tallon, 196 Neb. 603, 244 N.W.2d 183 (1976).

85-1516 Board; power to issue warrants; purpose; limitation; obligation of area; how paid.

Each board may issue warrants in an amount necessary to finance the operating expenses of the community college area until the proceeds of the tax levy as provided in section 85-1517 are received. The amount of such warrants plus interest shall not exceed the amount of the money to be received from the property tax levy. Whenever such warrants are issued, they shall be the general obligation of the community college area and the full faith and credit of the community college area shall be pledged to retire such warrants. In addition the board shall set aside from the proceeds of the property tax levied pursuant to sections 85-1501 to 85-1540 an amount sufficient to pay the warrants and the interest on such warrants. Such warrants shall be subject to registration as provided in sections 77-2201 to 77-2215.

Source: Laws 1975, LB 344, § 14; Laws 1988, LB 802, § 34; R.S.Supp.,1992, § 79-2649; Laws 1993, LB 239, § 38; Laws 1997, LB 269, § 71.

Chapter 79, article 26, the Technical Community College Area Act, is not in violation of Article VIII, section 1A, of the Constitution. State ex rel. Western Technical Com. Col. Area v. Tallon, 196 Neb. 603, 244 N.W.2d 183 (1976).

85-1517 Board; power to certify tax levy; limit; purposes; approval required to raise levy over limit; how collected.

(1) For fiscal years 2011-12 and 2012-13:

(a) The board may certify to the county board of equalization of each county within the community college area a tax levy not to exceed ten and one-quarter cents on each one hundred dollars on the taxable valuation of all property subject to the levy within the community college area, uniform throughout the area, for the purpose of supporting operating expenditures of the community college area;

(b) In addition to the levies provided in subdivisions (1)(a) and (c) of this section, the board may certify to the county board of equalization of each county within the community college area a tax levy not to exceed one cent on each one hundred dollars on the taxable valuation of all property within the community college area, uniform throughout such area, for the purposes of paying off bonds issued under sections 85-1520 to 85-1527 and establishing a capital improvement and bond sinking fund as provided in section 85-1515. The levy provided by this subdivision may be exceeded by that amount necessary to retire the general obligation bonds assumed by the community college area or issued pursuant to section 85-1515 according to the terms of such bonds or for any obligation pursuant to section 85-1535 entered into prior to January 1, 1997; and

(c) In addition to the levies provided in subdivisions (1)(a) and (b) of this section, the board may also certify to the county board of equalization of each county within the community college area a tax levy on each one hundred dollars on the taxable valuation of all property within the community college area, uniform throughout such area, in the amount which will produce funds only in the amount necessary to pay for funding accessibility barrier elimination project costs and abatement of environmental hazards as such terms are defined in section 79-10,110. Such tax levy shall not be so certified unless approved by an affirmative vote of a majority of the board taken at a public meeting of the board following notice and a hearing. The board shall give at least seven days' notice of such public hearing and shall publish such notice once in a newspaper of general circulation in the area to be affected by the

increase. The proceeds of such tax levy shall be deposited in the capital improvement and bond sinking fund provided for in section 85-1515 for use in funding the projects authorized pursuant to this subdivision.

(2)(a) For fiscal years 2013-14 through 2023-24, the board may certify to the county board of equalization of each county within the community college area a tax levy not to exceed the difference between eleven and one-quarter cents and the rate levied for such fiscal year pursuant to subdivision (b) of this subsection on each one hundred dollars on the taxable valuation of all property subject to the levy within the community college area, uniform throughout the area, for the purpose of supporting operating expenditures of the community college area. For purposes of calculating the amount of levy authority available for operating expenditures pursuant to this subdivision, the rate levied pursuant to subdivision (b) of this subsection shall not include amounts 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. For fiscal year 2024-25 and each fiscal year thereafter, the board may certify a levy under this subdivision only if such levy is authorized under section 85-1543 or 85-2238. If so authorized, the levy provided by this subdivision may be exceeded by the amount necessary to generate sufficient revenue as described in section 85-1543 or 85-2238.

(b) For fiscal year 2013-14 and each fiscal year thereafter, in addition to the levies provided in subdivisions (a) and (c) of this subsection, the board may certify to the county board of equalization of each county within the community college area a tax levy not to exceed two cents on each one hundred dollars on the taxable valuation of all property within the community college area, uniform throughout such area, for the purposes of paying off bonds issued under sections 85-1520 to 85-1527 and establishing a capital improvement and bond sinking fund as provided in section 85-1515. The levy provided by this subdivision may be exceeded by that 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.

(c) For fiscal years 2013-14 through 2023-24, in addition to the levies provided in subdivisions (a) and (b) of this subsection, the board of a community college area with a campus located on the site of a former ammunition depot may certify to the county board of equalization of each county within the community college area a tax levy not to exceed three-quarters of one cent on each one hundred dollars on the taxable valuation of all property within the community college area, uniform throughout such area, to pay for funding accessibility barrier elimination project costs and abatement of environmental hazards as such terms are defined in section 79-10,110. Such tax levy shall not be so certified unless approved by an affirmative vote of a majority of the board taken at a public meeting of the board following notice and a hearing. The board shall give at least seven days' notice of such public hearing and shall publish such notice once in a newspaper of general circulation in the area to be affected by the increase. The proceeds of such tax levy shall be deposited in the capital improvement and bond sinking fund provided for in section 85-1515 for use in funding accessibility barrier elimination project costs and abatement of environmental hazards as such terms are defined in section 79-10,110.

(3) The taxes provided by this section shall be levied and assessed in the same manner as other property taxes and entered on the books of the county treasurer. The proceeds of the tax, as collected, shall be remitted to the treasurer of the board not less frequently than once each month.

Source: Laws 1975, LB 344, § 15; Laws 1978, LB 922, § 5; Laws 1979, LB 363, § 2; Laws 1979, LB 187, § 251; Laws 1980, LB 599, § 16; Laws 1980, LB 824, § 2; Laws 1981, LB 320, § 1; Laws 1984, LB 881, § 1; Laws 1986, LB 796, § 1; Laws 1988, LB 38, § 1; Laws 1990, LB 1050, § 1; Laws 1992, LB 719A, § 197; Laws 1992, LB 1001, § 35; R.S.Supp.,1992, § 79-2650; Laws 1993, LB 239, § 39; Laws 1995, LB 268, § 1; Laws 1996, LB 299, § 32; Laws 1996, LB 900, § 1084; Laws 1996, LB 1114, § 69; Laws 1997, LB 269, § 72; Laws 2005, LB 38, § 4; Laws 2007, LB342, § 42; Laws 2010, LB1072, § 9; Laws 2011, LB59, § 6; Laws 2012, LB946, § 18; Laws 2012, LB1104, § 2; Laws 2023, LB243, § 20.

Chapter 79, article 26, the Technical Community College Area Act, is not in violation of Article VIII, section 1A, of the Constitution. State ex rel. Western Technical Com. Col. Area v. Tallon, 196 Neb. 603, 244 N.W.2d 183 (1976).

85-1518 Tax funds; voter approval required; procedure.

(1) If a board determines that it is necessary for the proper management and operation of the community college area to expend tax funds in a manner requiring a vote of the people, the board may by resolution place the proposition for such expenditure on the general or primary ballot or call for a special election in such area for the purpose of approving such expenditure. The proposition appearing on the ballot in any election shall state the purpose for which such tax funds will be spent and the amount of funds to be so expended. Such proposition shall be adopted if approved by a majority of those voting in such election.

(2) The resolution calling for the election and the election notice shall show the proposed purpose for which such tax funds will be expended and the amount of money sought.

(3) Notice of the election shall state the date of the election 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 community college area at least twenty days prior to such election. If no newspaper is published in or of general circulation in the community college area, notice shall be posted at least twenty days prior to such election in at least two public places in each county in the community college area.

(4) If a special election is called, the board shall prescribe the form of the ballot to be used.

Source: Laws 1978, LB 922, § 3; Laws 1979, LB 363, § 3; R.S.1943, (1987), § 79-2650.03; Laws 1993, LB 239, § 40.

85-1519 Capital construction project; bids; board; adopt plans and specifications.

Each board shall adopt plans and specifications in advance of letting bids for any capital construction project. Such plans and specifications shall be the basis upon which the bids are received.

Source: Laws 1978, LB 922, § 8; R.S.1943, (1987), § 79-2650.06; Laws 1993, LB 239, § 41.

85-1520 Facilities; construct, purchase, repair, and equip; revenue bonds; authorized.

Each board may construct, purchase, or otherwise acquire, remodel, repair, furnish, and equip dormitories, residence halls, single-dwelling units, multiple-dwelling units, or other facilities for (1) the housing or boarding of single or married students, faculty, or other employees of the institution under its control, (2) buildings and structures for student and faculty unions or centers, and (3) the medical care and other activities of the students of such institutions, on real estate owned or controlled by such board or on real estate purchased, leased, or otherwise acquired for such purpose and pay the cost thereof, including the cost of such real estate, by issuing revenue bonds payable out of the revenue from such buildings or facilities, the revenue from the tax levy authorized pursuant to subdivision (1)(b) of section 85-1517 for fiscal years prior to fiscal year 2013-14 and subdivision (2)(b) of section 85-1517 for fiscal year 2013-14 and each fiscal year thereafter, or a combination thereof. Any such buildings or facilities shall be located on or adjacent to a campus or campuses controlled by such board.

Source: Laws 1987, LB 329, § 3; R.S.1943, (1987), § 79-2650.08; Laws 1993, LB 239, § 42; Laws 2012, LB946, § 19.

85-1521 Revenue bonds; pledge of revenue; payment; board; powers and duties; bonds not obligation of state.

Each board may, by resolution or agreement, pledge all or any part of the revenue and fees derived from the operation of the dormitories, residence halls, single-dwelling units, multiple-dwelling units, buildings, and other facilities for housing, boarding, medical care, and other activities of students, faculty, or employees of the institution under its control erected or acquired or previously erected or acquired by any such board and contract as to the care, insurance, management, and operation of such buildings and facilities and the charges to be made and the rights of the holders of the revenue bonds. When any board contracts that the operation of any building or facility or part thereof shall be performed other than by the board itself, such board shall at all times maintain supervision of and control over the fees and charges imposed for the use of such building, facility, or part. In issuing revenue bonds and pledging revenue therefor, the board may pledge all or any part of the revenue and fees from buildings and facilities other than the building or facility to be constructed. Bonds issued under sections 85-1520 to 85-1527 shall not be an obligation of the State of Nebraska, and no tax, except for the tax authorized under subdivision (1)(b) of section 85-1517 for fiscal years prior to fiscal year 2013-14 and subdivision (2)(b) of section 85-1517 for fiscal year 2013-14 and each fiscal year thereafter, shall ever be levied to raise funds for the payment thereof or interest thereon. The bonds shall constitute limited obligations of the board issuing the same and shall be paid out of revenue from the tax levy authorized pursuant to subdivision (1)(b) of section 85-1517 for fiscal years prior to fiscal year 2013-14 and subdivision (2)(b) of section 85-1517 for fiscal year 2013-14 and each fiscal year thereafter and out of money derived from the revenue and earnings pledged as provided in sections 85-1501 to 85-1540.

Source: Laws 1987, LB 329, § 4; Laws 1988, LB 802, § 35; R.S.Supp.,1992, § 79-2650.09; Laws 1993, LB 239, § 43; Laws 1997, LB 269, § 73; Laws 2012, LB946, § 20.

85-1522 Revenue bonds; where payable.

All revenue bonds issued pursuant to sections 85-1515 and 85-1520 to 85-1527 may be payable at the office of the State Treasurer, at such bank or trust company, either within or without the State of Nebraska, or at such other place as may be determined by the board.

Source: Laws 1987, LB 329, § 5; R.S.1943, (1987), § 79-2650.10; Laws 1993, LB 239, § 44; Laws 2001, LB 420, § 36.

85-1523 Revenue bond proceeds; use; board; establish charges.

The proceeds of revenue bonds provided for in section 85-1515, 85-1520, or 85-1521 shall be used solely for the purpose for which the bonds are issued and for the expenses of issuing such bonds. The board shall establish and maintain a schedule of rates, fees, or charges for the use of the facilities constructed or acquired by the issuance of revenue bonds and other facilities controlled by the board, the revenue of which, in whole or in part, is pledged to the holder of the bonds, which shall be in an amount at least sufficient, on the amortization plan, to pay the operating and maintenance charges of the facilities and the principal and interest representing the indebtedness against the income and revenue therefrom.

Source: Laws 1987, LB 329, § 6; R.S.1943, (1987), § 79-2650.11; Laws 1993, LB 239, § 45.

85-1524 Revenue refunding bonds; authorized.

For the purpose of refunding any revenue bonds which may have been issued and are outstanding, the respective boards may issue revenue refunding bonds in the same manner as provided in sections 85-1520 to 85-1527 for the issuance of revenue bonds.

Source: Laws 1987, LB 329, § 7; R.S.1943, (1987), § 79-2650.12; Laws 1993, LB 239, § 46.

85-1525 Board; furnish utilities.

Each board may furnish heat, light, power, and other similar utilities to any facility or for any activities covered by sections 85-1515 and 85-1520 to 85-1527 without charging for the provision of such utilities against the revenue derived from such facility or activity.

Source: Laws 1987, LB 329, § 8; R.S.1943, (1987), § 79-2650.13; Laws 1993, LB 239, § 47.

85-1526 Bonds; interest; exempt from taxation.

In issuing revenue bonds pursuant to section 85-1515 or sections 85-1520 to 85-1527, the board issuing such bonds shall be a governmental subdivision and instrumentality of the State of Nebraska and all bonds issued under the authority of such sections, together with interest on such bonds, shall be wholly exempt from taxation.

Source: Laws 1987, LB 329, § 9; R.S.1943, (1987), § 79-2650.14; Laws 1993, LB 239, § 48.

85-1527 Board; bonds; powers.

Each board may do any and all things necessary and convenient to carry out the purposes and intent of sections 85-1515 and 85-1520 to 85-1527.

Source: Laws 1987, LB 329, § 10; R.S.1943, (1987), § 79-2650.15; Laws 1993, LB 239, § 49.

85-1528 Teachers and school nurses; contract; renewal; exceptions; amend or terminate; notice; hearings; decision.

The contracts of the teaching staff and school nurses employed by a board of a community college shall require the sanction of a majority of the members of the board. Except as provided in section 85-1534, each such contract shall be deemed renewed and in force and effect until a majority of the board votes, sixty days before the close of the contract period, to amend or terminate the contract for just cause. The secretary of the board shall notify each teacher or school nurse in writing at least ninety days before the close of the contract period of any conditions of unsatisfactory performance or a reduction in teaching staff or nursing staff that the board considers may be just cause to either amend or terminate the contract for the ensuing year. Any teacher or school nurse so notified shall have the right to file within five days of receipt of such notice a written request with the board for a hearing before the board. Upon receipt of such request, the board shall order the hearing to be held within ten days and shall give written notice of the time and place of the hearing to the teacher or school nurse. At the hearing, evidence shall be presented in support of the reasons given for considering amendment or termination of the contract, and the teacher or school nurse shall be permitted to produce evidence related thereto. The board shall render the decision to amend or terminate a contract based on the evidence produced at the hearing.

Source: Laws 1993, LB 239, § 50.

A community college employee whose duties are primarily administrative and who does not hold a teaching certificate is not a teacher for purposes of this section, even if the employee occasionally teaches. *Apland v. Northeast Community College*, 8 Neb. App. 621, 599 N.W.2d 233 (1999).

Statutory requirements in this section concerning the timing of a hearing regarding proposed termination of an employee's

contract prevail over any contrary provisions in an educational institution's reduction in force policy. Nothing in this section suggests that the Legislature intended to include part-time employees in the statutory reduction in force provisions. *Ackerman v. Metropolitan Community College Area*, 6 Neb. App. 536, 575 N.W.2d 181 (1998).

85-1529 Teachers and school nurses; additional contract rights; not affected.

This section and section 85-1528 shall be construed as providing a minimum standard and not as repealing any rule, regulation, order, or other action of a board that provides for additional contract rights pertaining to the same subject matter.

Source: Laws 1993, LB 239, § 51.

85-1530 Board; adopt reduction-in-force policy; contents.

Each board shall adopt a reduction-in-force policy covering employees subject to such statutory provisions to carry out the intent of sections 85-1530 to 85-1533. No such policy shall allow the reduction of a permanent or tenured employee while a probationary employee is retained to render a service which such permanent employee is qualified by reason of certification and endorsement to perform or, if certification is not applicable, by reason of college credits in the teaching area. If employee evaluation is to be included as a criterion to be used for reduction in force, specific criteria, such as frequency of

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evaluation, evaluation forms, and number and length of classroom observations shall be included as part of the reduction-in-force policy.

Source: Laws 1993, LB 239, § 52.

This section does not apply to part-time employees. An educational institution does not need to literally attach evaluation forms to its reduction in force policy, so long as the policy sets forth specific criteria to be used in conducting evaluations. *Ackerman v. Metropolitan Community College Area*, 6 Neb. App. 536, 575 N.W.2d 181 (1998).

85-1531 Reduction in force; board and administration; duties.

Before a reduction in force occurs, the board and administration shall present competent evidence demonstrating that a change in circumstances has occurred, necessitating a reduction in force. Any alleged change in circumstances shall be specifically related to the teacher or teachers to be reduced in force, and the board, based upon evidence produced at the hearing required by section 85-1528 shall be required to specifically find that there are no other vacancies on the staff for which the employee to be reduced is qualified by endorsement or professional training to perform.

Source: Laws 1993, LB 239, § 53.

85-1532 Reduction in force; employee; contract terminated; effect; recall; rights.

Any employee whose contract is terminated because of reduction in force shall be considered to have been dismissed with honor and shall upon request be provided a letter to that effect. Such employee shall have preferred rights to reemployment for a period of twenty-four months commencing at the end of the contract year of such employee, and the employee shall be recalled on the basis of length of service to the community college area to any position for which he or she is qualified by endorsement or college preparation to teach. The employee shall, upon reappointment, retain any benefits which had accrued to such employee prior to termination, but such leave of absence shall not be considered as a year of employment by the area. An employee under contract to another educational institution may waive recall, but such waiver shall not deprive the employee of his or her right to subsequent recall.

Source: Laws 1993, LB 239, § 54.

85-1533 Reduction in force; noncompliance with federal or state law; how treated.

Notwithstanding sections 85-1530 to 85-1532, if the reduction of an employee based upon the provisions of such sections would place a community college area in noncompliance of any federal or state law or regulations requiring affirmative action employment practices, the area may vary from the provisions of such sections as necessary to comply with such laws or regulations.

Source: Laws 1993, LB 239, § 55.

85-1534 Contract; probationary period required.

Any contract of employment entered into after September 9, 1993, between the teaching staff and a board which applies to the first two years of the employment of such teaching staff shall provide that the first two years of the

employment of such teacher are a probationary period. Any such contract may be terminated during the probationary period without cause.

Source: Laws 1993, LB 239, § 56.

85-1534.01 Leave of absence; effect.

A person who has been hired to fulfill the duties of a teacher or school nurse who is on a leave of absence shall not accrue rights under sections 85-1528 to 85-1534 during the period that the person is fulfilling such duties.

Source: Laws 2005, LB 352, § 1.

85-1535 Facilities for applied technology educational programs; contracts authorized; costs.

(1) A board of a community college area with a population of less than one hundred thousand according to the last federal decennial census and a campus located on a former military base may enter into contracts with any person, firm, or corporation providing for the implementation of any project for the constructing and improving of facilities to house applied technology educational programs necessary to carry out sections 85-1501 to 85-1540 and providing for the long-term payment of the cost of such project.

(2) In no case shall any such contract run for a period longer than twenty years or shall the aggregate of existing contracts exceed four million five hundred thousand dollars for each area exclusive of administrative costs, credit enhancement costs, financing costs, capitalized interest, and reserves dedicated to secure payment of contracts.

(3) No contract shall be entered into pursuant to this section without prior approval by a resolution of the board and the approval of the Coordinating Commission for Postsecondary Education.

(4) The long-term payment of the cost of such project shall be paid from revenue to be raised pursuant to (a) subdivision (1)(b) of section 85-1517 for fiscal years prior to fiscal year 2013-14 and (b) subdivision (2)(b) of section 85-1517 for fiscal year 2013-14 and each fiscal year thereafter. Any board entering into such contract for the construction and improvement of facilities from revenue to be raised pursuant to such subdivisions shall make annual appropriations for amounts sufficient to pay annual obligations under such contract for the duration of such contract.

(5) The board may also convey or lease and lease back all or any part of the project and the land on which such project is situated to such person, firm, or corporation as the board may contract with pursuant to this section to facilitate the long-term payment of the cost of such project. Any such conveyance or lease shall provide that when the cost of such project has been paid, together with interest and other costs thereon, such project and the land on which such project is located shall become the property of the community college area.

Source: Laws 1993, LB 239, § 57; Laws 1997, LB 269, § 74; Laws 2011, LB59, § 7; Laws 2012, LB946, § 21.

85-1536 Transferred to section 85-2222.

85-1536.01 Repealed. Laws 2007, LB 342, § 46.

85-1537 Repealed. Laws 2007, LB 342, § 46.

85-1537.01 Repealed. Laws 2003, LB 540, § 13.

85-1538 Transferred to section 85-2229.

85-1539 Nebraska Community College Student Performance and Occupational Education Grant Committee; created; duties; applications for aid or grants.

(1) There is hereby created the Nebraska Community College Student Performance and Occupational Education Grant Committee. The committee shall consist of (a) a representative of the Coordinating Commission for Postsecondary Education who shall serve as chairperson of the committee, (b) a representative of the Department of Economic Development, (c) a representative of the Department of Labor, (d) a representative of the State Department of Education, (e) a representative affiliated with one of the two community college areas with the two smallest full-time equivalent student enrollment totals for the most recent fiscal year, (f) a representative affiliated with one of the two community college areas with the two largest full-time equivalent student enrollment totals for the most recent fiscal year, and (g) a representative affiliated with one of the two community college areas not included in the categories provided in subdivisions (1)(e) and (f) of this section. Each member shall be appointed by the agency or community college areas being represented. The representatives appointed pursuant to subdivisions (1)(e) through (g) of this section shall serve terms of two years and shall be succeeded by a representative affiliated with the community college areas not represented for the preceding term.

(2) The committee shall develop guidelines for and annually determine the allocation of aid or grants to the community colleges for (a) applied technology and occupational faculty training, instructional equipment upgrades, employee assessment, preemployment training, employment training, and dislocated worker programs benefiting the State of Nebraska or (b) programs or activities to enhance (i) student performance in the areas of degree, certificate, or diploma completion, retention, or foundations education as defined in section 85-932.01 or (ii) the collection, reporting, analysis, and utilization of student data. The total amount allocated for a fiscal year shall not exceed the amounts appropriated from the Nebraska Community College Student Performance and Occupational Education Grant Fund and such other funds as may be appropriated by the Legislature for purposes of this section for such fiscal year. The commission shall certify the allocation determined by the committee on or before September 10 of the fiscal year for which such allocation is being certified and shall report such allocation to the Department of Administrative Services. The commission shall distribute the allocated funds to the selected community college board or boards in a single payment between the fifth and twentieth day of October of each year.

(3) Applications for aid or grants pursuant to this section may be submitted by a community college area independently or in collaboration with other community college areas.

Source: Laws 1989, LB 305, § 2; R.S.Supp.,1992, § 79-2663; Laws 1993, LB 239, § 61; Laws 2012, LB946, § 22; Laws 2013, LB211, § 4.

85-1540 Nebraska Community College Student Performance and Occupational Education Grant Fund; created; administration; use; investment.

There is hereby created the Nebraska Community College Student Performance and Occupational Education Grant Fund. The fund shall be under the direction of the Nebraska Community College Student Performance and Occupational Education Grant Committee and shall be administered by the Coordinating Commission for Postsecondary Education. The fund shall consist of money received by the state in the form of grants or gifts from nonfederal sources, such other amounts as may be transferred or otherwise accrue to the fund, and any investment income earned on the fund. The fund shall be used to provide aid or grants to the community colleges pursuant to section 85-1539. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1989, LB 305, § 1; Laws 1991, LB 663, § 52; R.S.Supp.,1992, § 79-2664; Laws 1993, LB 239, § 62; Laws 1994, LB 1066, § 140; Laws 1995, LB 1, § 16; Laws 2000, LB 953, § 12; Laws 2012, LB946, § 23; Laws 2013, LB211, § 5.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

85-1541 Activities pass; volunteer, defined.

For purposes of section 85-1542, volunteer shall mean a person who is not an elected or appointed official or employee of a community college area who, at the request or with the permission of the board of governors of the community college area, engages in activities related to the purposes and functions of the community college area or for its general benefit.

Source: Laws 1994, LB 1310, § 14.

85-1542 Activities pass; authorized; when.

The board of governors of any community college area may authorize the issuance of a pass to any elected or appointed official, employee, retired employee, or volunteer of the community college area, member of a senior citizens group, or city official authorizing the admittance of the recipient of the pass and his or her spouse to recognized college activities without the need for the payment of any fee or charge. Such pass may be issued at no cost to the recipient or at such cost as may be designated by the board of governors.

Source: Laws 1994, LB 1310, § 13.

85-1543 Community college areas; distribution of funds; Coordinating Commission for Postsecondary Education; certify amounts; distributions; Community College Future Fund; created; use; investment; property tax; levy authorized, when.

(1) Beginning in fiscal year 2024-25, funds shall be distributed to community college areas as provided in this section in order to offset the funds lost by community college areas due to the elimination of their levy authority under subdivisions (2)(a) and (c) of section 85-1517.

(2) The amount to be distributed to each community college area under this section shall be equal to:

(a) For fiscal year 2024-25, the amount of property taxes levied by such community college area for fiscal year 2023-24 pursuant to subdivisions (2)(a) and (c) of section 85-1517 or the amount of property taxes that would have been generated from a levy of seven and one-half cents per one hundred dollars of taxable valuation, whichever is greater, with such amount then increased by three and one-half percent or the percentage increase in the reimbursable educational units of the community college area, whichever is greater. Such amount shall be calculated by the Coordinating Commission for Postsecondary Education and certified to the community college area and to the budget administrator of the budget division of the Department of Administrative Services by August 15, 2024; and

(b) For fiscal year 2025-26 and each fiscal year thereafter, the amount distributed under this section to such community college area in the prior fiscal year, increased by three and one-half percent or the percentage increase in the reimbursable educational units of the community college area, whichever is greater. Such amount shall be calculated by the Coordinating Commission for Postsecondary Education and certified to the community college area and to the budget administrator of the budget division of the Department of Administrative Services by August 15 of each year.

(3) The Coordinating Commission for Postsecondary Education shall annually certify the total amount to be distributed to all community college areas under subsection (2) of this section to the State Treasurer. The State Treasurer shall transfer the certified amount from the General Fund to the Community College Future Fund in ten equal payments distributed monthly beginning in September of the fiscal year and continuing through June.

(4) The Coordinating Commission for Postsecondary Education shall annually make distributions to the community college areas in the amounts determined pursuant to subsection (2) of this section. The distributions shall be made in ten equal payments distributed monthly beginning in September of the fiscal year and continuing through June. Community college areas shall receive no payments during the months of July and August.

(5) The Community College Future Fund is created. The fund shall be administered by the Coordinating Commission for Postsecondary Education and shall be used to provide state distributions to community college areas pursuant to this section. The fund shall consist of transfers authorized by the Legislature. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(6) Beginning in fiscal year 2024-25, if the state fails to provide full funding of the amounts described in subsection (2) of this section for any fiscal year, each community college area may, if approved by a majority vote of the community college board of governors, levy an amount for such fiscal year under subdivision (2)(a) of section 85-1517 sufficient to generate revenue equal to the amount that would have been provided to the community college area under subsection (2) of this section if fully funded minus the amount that was actually provided to the community college area. The property tax levy provided for in this subsection is in addition to the maximum allowable property tax levy described in subdivision (2)(b) of section 85-1517 and any property tax levied for funding accessibility barrier elimination project costs and abatement of environmental hazards as such terms are defined in section 79-10,110.

(7) For purposes of this section, reimbursable educational unit has the same meaning as in section 85-1503.

Source: Laws 2023, LB243, § 21.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 16

PRIVATE POSTSECONDARY CAREER SCHOOLS

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85-1601 Act, how cited.

Sections 85-1601 to 85-1658 shall be known and may be cited as the Private Postsecondary Career School Act.

Source: Laws 1977, LB 486, § 1; Laws 1990, LB 488, § 1; Laws 1993, LB 348, § 51; R.S.1943, (1994), § 79-2801; Laws 1995, LB 4, § 1.

85-1602 Act, purpose.

It is the purpose of the Private Postsecondary Career School Act to provide for the protection, education, and welfare of the citizens of the State of Nebraska, its private postsecondary career schools, and its students by:

- (1) Establishing minimum standards concerning quality of education, ethical and business practices, health and safety, and fiscal responsibility in order to protect against substandard, transient, unethical, deceptive, or fraudulent schools and practices;
- (2) Prohibiting the granting of false educational credentials;
- (3) Prohibiting misleading literature, advertising, solicitation, or representation by schools or their agents;
- (4) Providing for the preservation of essential records; and
- (5) Providing certain rights and remedies to the consuming public and the board necessary to effectuate the purposes of the act.

Source: Laws 1977, LB 486, § 2; Laws 1990, LB 488, § 2; R.S.1943, (1994), § 79-2802; Laws 1995, LB 4, § 2.

85-1603 Terms, defined.

For purposes of the Private Postsecondary Career School Act:

- (1) Agent means any person who owns any interest in, is employed by, or regularly represents for remuneration a private postsecondary career school located within or outside this state who (a) by solicitation made in this state

enrolls or seeks to enroll a resident of this state for education offered by such school, (b) offers to award educational credentials for remuneration on behalf of any such school, or (c) holds himself or herself out to residents of this state as representing such a school;

(2) Agent's permit means a nontransferable, written authorization issued to a natural person by the department which allows that person to solicit or enroll any resident of this state for education in a private postsecondary career school;

(3) Authorization to operate means approval by the department to operate a private postsecondary career school in this state;

(4) Board means the State Board of Education;

(5) Branch facility means a facility (a) which is separate from a principal facility, (b) which offers a full program and full student services, (c) which is under the supervision of an onsite director or administrator, and (d)(i) the ownership, management, and control of which are the same as the principal facility, which principal facility is responsible for the delivery of all services, or (ii) at which education is offered by a franchisee of a franchisor authorized to operate as a private postsecondary career school pursuant to the act if the franchisor establishes the course curriculum and guidelines for teaching at the franchisee's facility;

(6) Commission means the Coordinating Commission for Postsecondary Education;

(7) Commissioner means the Commissioner of Education;

(8) Course of study or instruction means a program of study, training, or instruction consisting of a series of lessons or classes which are coordinated as a curriculum or program of instruction to prepare or qualify individuals or improve or upgrade the skills needed for employment, career opportunities, or any specific occupation;

(9) Department means the State Department of Education;

(10) Distance education means instruction offered by any means in which the student and faculty member are in separate physical locations and includes, but is not limited to, online, interactive video, and correspondence courses or programs;

(11) Education or educational services means any class, course, or program of occupational training, instruction, or study;

(12) Entity means any individual, company, firm, society, group, association, partnership, limited liability company, corporation, trust, or other person;

(13) Grant, with respect to educational credentials, means award, sell, confer, bestow, or give;

(14) Offer includes, in addition to its usual meaning, advertising, publicizing, soliciting, or encouraging any person, directly or indirectly, in any form, to perform a described act;

(15) Out-of-state school means any private postsecondary career school which has its place of instruction or its principal location outside the boundaries of this state and which offers or conducts courses of instruction or subjects on the premises of the school, provides distance education, or offers or provides Nebraska students with courses of instruction or subjects through activities engaged in or conducted outside the boundaries of Nebraska;

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(16) Principal facility or main school means a private postsecondary career school located in the State of Nebraska;

(17) Private postsecondary career school means any organization or business enterprise which is not specifically exempt under section 85-1604 and which offers a course of study or instruction for which tuition is charged, even though the organization's or business enterprise's principal efforts may not be exclusively educational in nature;

(18) Resident school means any school offering courses of instruction to its students on the school's premises;

(19) Separate classroom means a supplemental training space (a) which is located near the main school for the purpose of expanding the educational offerings or for training an overflow of students who cannot be accommodated at the main school, (b) which is close enough to the main school to assure immediate supervision and administration of all essential student services by the main school and ready access by students to the student services available, and (c) in which the only required onsite service is teaching; and

(20) Short-term training means classes, courses, or programs of instruction or study that are offered for the purpose of training, preparing, or improving a person for an occupation when (a) the total hours of instruction required for completion is sixteen clock hours or less and (b) no final course grade is given to persons enrolled.

Source: Laws 1977, LB 486, § 3; Laws 1982, LB 370, § 1; Laws 1990, LB 488, § 3; Laws 1993, LB 121, § 519; R.S.1943, (1994), § 79-2803; Laws 1995, LB 4, § 3; Laws 2003, LB 685, § 30; Laws 2013, LB410, § 18; Laws 2014, LB967, § 25.

85-1604 Education and schools; exempt from act.

The following education and schools are exempted from the Private Postsecondary Career School Act:

(1) Schools exclusively offering instruction at any or all levels from preschool through the twelfth grade;

(2) Education sponsored by a bona fide trade, business, professional, or fraternal organization which is offered solely for that organization's membership or offered without charge;

(3) Education provided by or funded by an employer and offered solely to its employees for the purpose of improving such persons in such employment;

(4) Education solely avocational or recreational in nature as determined by the department;

(5) Educational programs offered by a charitable institution, organization, or agency as long as such education or training is not advertised or promoted as leading toward occupational objectives;

(6) Public postsecondary schools established, operated, and governed by this state or its political subdivisions or similar entities in other states as determined by the department;

(7) Schools or organizations offering education or instruction that is not part of a degree program leading to an associate, a baccalaureate, a graduate, or a professional degree which are licensed and regulated by agencies of this state other than the department, except that such schools or organizations shall not

be exempt from the act with respect to agents' permits and the Tuition Recovery Cash Fund;

(8) Schools or organizations which offer education or instruction and which are licensed and regulated solely by an agency of the federal government with respect to curriculum and qualifications of instructional staff;

(9) Any postsecondary institution offering or proposing to offer courses or programs leading to a baccalaureate, graduate, or professional degree, but whose offerings may include associate degree programs, diplomas, and other certificates based on the award of college credit, including any such institutions that were regulated prior to May 5, 2011, as private postsecondary career schools pursuant to the Private Postsecondary Career School Act;

(10) Entities exclusively offering short-term training; and

(11) Distance education programs offered by out-of-state schools authorized in accordance with an interstate reciprocity agreement for the provision of postsecondary distance education across state boundaries entered into and administered pursuant to subdivisions (5) and (6) of section 85-2405.

Source: Laws 1977, LB 486, § 4; Laws 1980, LB 774, § 1; Laws 1982, LB 370, § 2; Laws 1990, LB 488, § 4; Laws 1993, LB 348, § 57; R.S.1943, (1994), § 79-2804; Laws 1995, LB 4, § 4; Laws 2003, LB 685, § 31; Laws 2011, LB637, § 30; Laws 2013, LB410, § 19; Laws 2014, LB967, § 26.

85-1605 Department; administer act; personnel.

The department shall administer the Private Postsecondary Career School Act and for the purposes thereof shall employ such personnel as may be necessary. To effectuate the purposes of the act, the department may request from any department, division, board, bureau, commission, or other agency of the state, and the same shall provide, such information as will enable the department to exercise properly its powers and perform its duties under the act.

Source: Laws 1977, LB 486, § 5; Laws 1990, LB 488, § 5; R.S.1943, (1994), § 79-2805; Laws 1995, LB 4, § 5.

85-1606 Board; powers and duties; rules and regulations.

The board has the following powers and duties in the administration of the Private Postsecondary Career School Act:

(1) To establish minimum standards in conformity with section 85-1608, including quality of education, ethical and business practices, health and safety, and fiscal responsibility. Applicants for authorization to operate or for an agent's permit shall meet minimum standards before such authorization or permit may be issued or to continue such authorization or permit in effect. The standards to be developed under this subdivision shall be such as will effectuate the purposes of the act but will not unreasonably hinder legitimate educational innovation;

(2) To receive, investigate as it may deem necessary, and act upon applications for authorization to operate a private postsecondary career school and applications for an agent's permit;

(3) To maintain a list of private postsecondary career schools authorized to operate in this state and agents' permits which shall be available for the information of the public;

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(4) To receive and cause to be maintained as a permanent file copies of records in conformity with section 85-1644;

(5) To establish fees for applications for authorization to operate, for agent's permits, and for accreditation. The fees shall be not more than the amount necessary to cover the cost of administration of the act; and

(6) To adopt and promulgate rules, regulations, and procedures necessary and appropriate for the conduct of its work and the implementation of the act.

Source: Laws 1977, LB 486, § 6; Laws 1990, LB 488, § 6; R.S.1943, (1994), § 79-2806; Laws 1995, LB 4, § 6; Laws 1999, LB 489, § 1.

85-1607 Advisory council; members; appointment; term; duties.

The board shall appoint an advisory council of six representatives of private postsecondary career schools. Members of the council shall include representatives from a business school, a trade or technical school, a better business bureau, and three other distinct areas of education. Members of the council shall serve staggered terms of three years each as established by the board at the time of initial appointment. If a vacancy occurs on the council, the board shall appoint a successor in the same category as the predecessor. The advisory council shall have the following responsibilities:

(1) To advise the department in its administration of the Private Postsecondary Career School Act; and

(2) To review the rules and regulations adopted or proposed for adoption by the department and make recommendations with respect thereto.

Source: Laws 1977, LB 486, § 7; Laws 1990, LB 488, § 7; R.S.1943, (1994), § 79-2807; Laws 1995, LB 4, § 7.

85-1608 Private postsecondary career school; minimum standards.

The board shall adopt and promulgate rules and regulations to establish minimum standards according to which a private postsecondary career school shall be maintained and operated in the state. A new school shall demonstrate that it can be maintained and operated in accordance with such standards. The standards shall include, but not be limited to, provisions on educational quality, facilities, equipment, qualification of administrators and instructors, publication of catalogs, credentials awarded, records, building and sanitation standards, financial stability, advertising, refund of unearned tuition and fees, and any other aspects deemed necessary by the board.

Source: Laws 1977, LB 486, § 8; Laws 1990, LB 488, § 8; R.S.1943, (1994), § 79-2808; Laws 1995, LB 4, § 8.

85-1609 Accreditation; effect.

Accreditation by accrediting agencies recognized by the United States Department of Education such as the Association of Independent Colleges and Schools, the Accrediting Council for Continuing Education and Training, the National Accrediting Association of Cosmetology Arts and Sciences, or the National Association of Trade and Technical Schools may be accepted by the department as evidence of compliance with the minimum standards established pursuant to sections 85-1606 and 85-1608. Accreditation by a recognized, specialized accrediting agency such as the Council on Medical Education of the

American Medical Association, the Commission on Accreditation of the American Dental Association, or the American Veterinary Medical Association may be accepted as evidence of such compliance only as to the portion or program of a school accredited by such agency if the school as a whole is not accredited.

Source: Laws 1977, LB 486, § 10; Laws 1990, LB 488, § 9; R.S.1943, (1994), § 79-2810; Laws 1995, LB 4, § 9; Laws 2021, LB528, § 54.

85-1610 Prohibited acts; enumerated.

No entity of whatever kind, alone or in concert with others, shall:

(1) Operate in this state a private postsecondary career school not exempted from the Private Postsecondary Career School Act unless the school has a currently valid authorization to operate issued pursuant to section 85-1612;

(2) Offer, as or through an agent, unless such agent is a natural person and has a currently valid agent's permit issued pursuant to section 85-1623, enrollment or instruction in or the granting of educational credentials from a private postsecondary career school not exempted from the act, whether such institution is within or outside this state, nor accept contracts or enrollment applications from any person who does not have a current agent's permit, but the board may adopt and promulgate rules and regulations to permit the rendering of legitimate public information services without such permit;

(3) Instruct or educate, offer to instruct or educate, including advertising or soliciting for such purpose, enroll or offer to enroll, or contract or offer to contract with any school or party to perform any such act in this state, whether such entity is located within or without this state, unless such entity observes and is in compliance with the minimum standards established pursuant to sections 85-1606 and 85-1608 and the rules and regulations adopted and promulgated by the department;

(4) Grant or offer to grant educational credentials without authorization to do so from the department; or

(5) Have a cohort default rate which triggers state liability pursuant to section 428(n) of the federal Higher Education Act of 1965, as amended, under section 85-9,139.02.

Source: Laws 1977, LB 486, § 11; Laws 1990, LB 488, § 10; R.S.1943, (1994), § 79-2811; Laws 1995, LB 4, § 10; Laws 1996, LB 29, § 3.

85-1611 Private postsecondary career school; authority to operate; application; requirements.

Each private postsecondary career school desiring authorization to operate in this state shall make application to the department upon forms to be provided by the department. The application shall be accompanied by descriptive literature published or proposed to be published by the school containing the information specified in the department's rules and regulations. The application shall include the identification of any branch facility or separate classroom. A facility which does not meet the criteria provided in subdivision (5) of section 85-1603 is not a branch facility and shall be considered a separate private postsecondary career school requiring separate authorization. A separate classroom shall not require separate authorization. The application shall also be

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accompanied by the application fee provided in section 85-1643. Until the Tuition Recovery Cash Fund initially reaches the minimum fund level prescribed in section 85-1656, the application shall be accompanied by a surety bond as provided in section 85-1639.

Source: Laws 1977, LB 486, § 12; Laws 1982, LB 370, § 3; Laws 1990, LB 488, § 11; Laws 1993, LB 348, § 58; R.S.1943, (1994), § 79-2812; Laws 1995, LB 4, § 11.

85-1612 Commissioner; grant or deny authorization to operate.

Following review of an application for authorization to operate and any further information submitted by the applicant or required by the department and following such investigation of the applicant as the department may deem necessary or appropriate, the commissioner shall either grant or deny authorization to operate. A grant of authorization to operate may be on such terms and conditions as the commissioner may specify.

Source: Laws 1977, LB 486, § 13; Laws 1990, LB 488, § 12; R.S.1943, (1994), § 79-2813; Laws 1995, LB 4, § 12.

85-1613 Authorization to operate; form; contents.

The authorization to operate shall be in a form approved by the department and shall state in a clear and conspicuous manner at least the following information:

- (1) The date of issuance, effective date, and term of the authorization;
- (2) The full, correct name and address of the school so authorized;
- (3) The authority for authorization and conditions thereof; and
- (4) Any limitation of authorization as deemed necessary by the commissioner.

The term for which authorization is given shall not extend for more than one fiscal year. For purposes of this section, fiscal year means the fiscal year established by the applicant school.

Source: Laws 1977, LB 486, § 14; Laws 1990, LB 488, § 13; R.S.1943, (1994), § 79-2814; Laws 1995, LB 4, § 13; Laws 1999, LB 489, § 2.

85-1614 Authorization to operate; nontransferable; change in ownership; new authorization.

The authorization to operate shall be issued to the owner or governing body of the applicant school and shall be nontransferable. In the event of a change in ownership of the school, the new owner or governing body shall, within ten days after the change of ownership, apply for a new authorization to operate, and in the event of failure to do so the authorization to operate shall terminate. An application for a new authorization to operate by reason of change in the ownership of the school shall be deemed an application for renewal of the school's authorization to operate.

Source: Laws 1977, LB 486, § 15; Laws 1990, LB 488, § 14; R.S.1943, (1994), § 79-2815; Laws 1995, LB 4, § 14.

85-1615 Authorization to operate; renewal; procedure; accreditation required; when.

Annual renewal of an authorization shall be required on a schedule established by the department. At least thirty days prior to the expiration of an authorization to operate and upon notification by the department, the school shall complete and file with the department an application form for renewal of its authorization to operate. Financial stability information shall accompany the application. The renewal application shall be reviewed and acted upon as provided for an initial application. No authorization issued to any private postsecondary career school shall be renewed unless such school has been accredited by the department within five years of the date of its initial authorization to operate.

Source: Laws 1977, LB 486, § 16; Laws 1990, LB 488, § 15; R.S.1943, (1994), § 79-2816; Laws 1995, LB 4, § 15; Laws 1999, LB 489, § 3.

85-1616 Inaugural authorization to operate; provisional authorization to operate; when applicable.

A school not yet in operation when its application for authorization to operate is filed may not begin operation until receipt of authorization. The authorization shall be an inaugural authorization valid for one year and upon showing to the satisfaction of the commissioner that it has fully complied with sections 85-1611 to 85-1615, the school will be eligible for a regular authorization. The commissioner may issue provisional authorization to operate containing such limitations as to time, procedures, functions, or other conditions as the commissioner may deem necessary.

Source: Laws 1977, LB 486, § 17; Laws 1990, LB 488, § 16; R.S.1943, (1994), § 79-2817; Laws 1995, LB 4, § 16.

85-1617 Private postsecondary career school; accreditation; application.

Any private postsecondary career school offering instruction in the State of Nebraska shall, within five years of its initial authorization to operate, apply to the department for the accreditation of such school. No private postsecondary career school shall be accredited unless it submits to the department a written application for accreditation in accordance with the rules and regulations adopted and promulgated by the department pursuant to the Private Postsecondary Career School Act. Such application shall be accompanied by the fee provided in section 85-1643.

Source: Laws 1977, LB 486, § 18; Laws 1990, LB 488, § 17; R.S.1943, (1994), § 79-2818; Laws 1995, LB 4, § 17; Laws 1999, LB 489, § 4.

85-1618 Department; accredit private postsecondary career school; when.

The department may accredit a private postsecondary career school when the school has met the minimum standards specified in the rules and regulations of the department.

Source: Laws 1977, LB 486, § 19; Laws 1990, LB 488, § 18; R.S.1943, (1994), § 79-2819; Laws 1995, LB 4, § 18.

85-1619 Commissioner; certificate of accreditation; issuance; period valid; reaccreditation; application; list of schools.

The commissioner, upon determining that a private postsecondary career school has complied with all the requirements of the Private Postsecondary Career School Act and the rules and regulations of the department, shall issue a certificate of accreditation to the school. Unless disapproved for failure to meet the requirements for accreditation on a continuing basis as provided for in the act and as defined by the rules and regulations, accreditation shall be valid for a period of five years following the effective date appearing on the certificate. The application for reaccreditation shall be accompanied by the applicable fee. The department shall maintain a list of the schools accredited under this section and make such lists available to the public upon request.

Source: Laws 1977, LB 486, § 20; Laws 1982, LB 370, § 4; Laws 1990, LB 488, § 19; R.S.1943, (1994), § 79-2820; Laws 1995, LB 4, § 19.

85-1620 School; authority to award associate degrees; commissioner; authorize.

A school which has been accredited pursuant to section 85-1619 may apply to the department for authority to award associate degrees. Upon determining that the quality of the courses of instruction at the applicant school meets the standards established in the department's rules and regulations, the commissioner may grant the applicant the authority to award an associate degree and shall issue a certificate setting forth the programs for which the associate degree may be awarded. Such authorization shall continue so long as the school remains accredited.

Source: Laws 1982, LB 370, § 5; Laws 1990, LB 488, § 20; R.S.1943, (1994), § 79-2820.01; Laws 1995, LB 4, § 20; Laws 2003, LB 685, § 32; Laws 2011, LB637, § 31.

85-1621 School; withdrawal of accreditation or authorization; when; hearing; notice.

Any private postsecondary career school which has been accredited or authorized to award associate degrees and which ceases to meet any of the requirements for accreditation or the awarding of associate degrees shall be notified in writing of the specifics by certified mail and shall be afforded the opportunity for a hearing to show cause why the accreditation or the authorization should not be withdrawn. The board shall adopt and promulgate rules and regulations for the hearing and may utilize a hearing officer to conduct the hearing and to present recommendations, including findings of facts and conclusions of law, to the board for final decision. Following the hearing, if it is determined that the requirements have not been met, the board may withdraw the accreditation or authorization or may require action as a condition of continued accreditation or authorization.

Source: Laws 1977, LB 486, § 21; Laws 1982, LB 370, § 6; Laws 1990, LB 488, § 21; R.S.1943, (1994), § 79-2821; Laws 1995, LB 4, § 21.

85-1622 Agent's permit; application; procedure.

An applicant for an agent's permit shall be an individual of good reputation and character and shall represent only private postsecondary career schools which meet the minimum standards established pursuant to sections 85-1606

and 85-1608. Each person desiring to perform the services of an agent in this state shall make application to the department upon forms to be provided by the department. The application shall state the school which the applicant intends to represent and shall include the applicant's social security number. An agent shall obtain a separate agent's permit for each school represented. A single agent's permit and surety bond for one school with one or more branch facilities shall extend to cover all branch facilities. The application for an agent's permit shall also be accompanied by evidence of a surety bond as provided in section 85-1640 and payment of the application fee provided in section 85-1643.

If any school which the applicant intends to represent is not domiciled in this state, the application shall be accompanied by the information required of schools making application for authorization to operate and evidence to show that its place of business outside this state has been licensed or approved for operation by the appropriate state agency in the state in which it is domiciled. If the state of domicile of the school has no authorization law for private postsecondary career schools or no such law applies to a particular school or course of study or instruction concerning which the applicant intends to act as an agent, the school shall (1) submit all information required of schools applying for authorization to operate in this state and show evidence that it has been accredited by an accrediting agency recognized by the United States Department of Education as specified in section 85-1609 and (2) file with the department a school bond in at least the amount required by section 85-1639.

Source: Laws 1977, LB 486, § 22; Laws 1982, LB 370, § 7; Laws 1990, LB 488, § 22; R.S.1943, (1994), § 79-2822; Laws 1995, LB 4, § 22; Laws 1997, LB 752, § 230; Laws 2003, LB 685, § 33.

85-1623 Agent's permit; commissioner; grant or deny.

Following review of an application for an agent's permit and any further information submitted by the applicant or required by the department and following such investigation of the applicant as the department may deem necessary or appropriate, the commissioner shall either grant or deny an agent's permit to the applicant.

Source: Laws 1977, LB 486, § 23; Laws 1990, LB 488, § 23; R.S.1943, (1994), § 79-2823; Laws 1995, LB 4, § 23.

85-1624 Agent's permit; form; contents.

The agent's permit shall be in a form approved by the department and shall state in a clear and conspicuous manner at least the following information:

- (1) The date of issuance, effective date, and term;
- (2) The correct name and address of the agent; and
- (3) The school which such agent is authorized to represent.

The term for which an agent's permit is issued shall not extend for more than three calendar years.

Source: Laws 1977, LB 486, § 24; Laws 1990, LB 488, § 24; R.S.1943, (1994), § 79-2824; Laws 1995, LB 4, § 24; Laws 1999, LB 489, § 5.

85-1625 Agent's permit; renewal; application.

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At least thirty days prior to the expiration of an agent's permit, the agent shall complete and file with the department an application form for renewal thereof. The application shall be reviewed and acted upon as provided for an initial application.

Source: Laws 1977, LB 486, § 25; Laws 1990, LB 488, § 25; R.S.1943, (1994), § 79-2825; Laws 1995, LB 4, § 25.

85-1626 Authorization to operate; agent's permit; application; denial; reasons.

Upon review and consideration of an application for authorization to operate or for an agent's permit, if the department determines that the applicant fails to meet the standards established in the Private Postsecondary Career School Act, the department shall so notify the applicant, setting forth the reasons therefor in writing, and shall deny the application.

Source: Laws 1977, LB 486, § 26; Laws 1990, LB 488, § 26; R.S.1943, (1994), § 79-2826; Laws 1995, LB 4, § 26.

85-1627 Authorization to operate; agent's permit; application; denial; extension of time; when.

The commissioner may grant to an applicant for an authorization to operate or an agent's permit an extension of time of reasonable duration in which the applicant may eliminate the reasons for denial contained in the statement of denial if the applicant has demonstrated to the satisfaction of the commissioner the desire to meet the standards established pursuant to sections 85-1606 and 85-1608 and if, in the judgment of the commissioner, it would be reasonably possible for the applicant to meet such requirements and standards within such time.

Source: Laws 1977, LB 486, § 27; Laws 1990, LB 488, § 27; R.S.1943, (1994), § 79-2827; Laws 1995, LB 4, § 27.

85-1628 Agent's permit; denial; notice; reasons.

If the commissioner denies an application for an agent's permit, he or she shall notify the school which the agent represented or proposed to represent, according to the records of the department, including the reasons for denial.

Source: Laws 1977, LB 486, § 28; Laws 1990, LB 488, § 28; R.S.1943, (1994), § 79-2828; Laws 1995, LB 4, § 28.

85-1629 Commissioner decision; person aggrieved; right to hearing and review.

Any person aggrieved by a decision of the commissioner respecting denial of an authorization to operate or of an agent's permit or the placing of conditions on either shall have the right to a hearing and review of such decision by the board as provided in sections 85-1630 to 85-1632.

Source: Laws 1977, LB 486, § 29; Laws 1990, LB 488, § 29; R.S.1943, (1994), § 79-2829; Laws 1995, LB 4, § 29.

85-1630 Commissioner decision; aggrieved party; hearing and review; notify board.

If, upon written notification of any such action taken by the commissioner, the aggrieved party desires a hearing and review, such party shall so notify the board in writing within ten business days after the giving of notice of such action. If such notice is not given, the action shall be deemed final. Upon receipt of such notice from the aggrieved party, the board shall fix the time and place for a hearing and shall notify the aggrieved party by certified mail.

Source: Laws 1977, LB 486, § 30; Laws 1990, LB 488, § 30; R.S.1943, (1994), § 79-2830; Laws 1995, LB 4, § 30.

85-1631 Aggrieved party; hearing; procedure.

At such hearing, the party may employ counsel, shall have the right to hear the evidence upon which the action is based, and may present evidence in opposition to the commissioner's action or in extenuation or mitigation. The hearing shall be conducted in accordance with the Administrative Procedure Act. Any member of the board may preside except when a clear conflict of interest may be demonstrated. The board shall adopt and promulgate rules and regulations for such hearings and may utilize hearing officers to conduct the hearings and to present recommendations, including findings of fact and conclusions of law, to the board for final decision.

Source: Laws 1977, LB 486, § 31; Laws 1990, LB 488, § 31; R.S.1943, (1994), § 79-2831; Laws 1995, LB 4, § 31.

Cross References

Administrative Procedure Act, see section 84-920.

85-1632 Hearing; decision; when final; judicial review.

A decision of the board following a hearing shall be deemed final subject to the right of judicial review provided in the Administrative Procedure Act. All matters presented at any such hearing shall be acted upon promptly by the board, and the board shall notify all parties in writing of its decision, which shall include a statement of findings and conclusions upon all material issues of fact, law, or discretion presented at the hearing, and the appropriate rule, order, sanction, relief, or denial thereof.

Source: Laws 1977, LB 486, § 32; Laws 1990, LB 488, § 32; R.S.1943, (1994), § 79-2832; Laws 1995, LB 4, § 32.

Cross References

Administrative Procedure Act, see section 84-920.

85-1633 Authorization to operate; agent's permit; made conditional or revoked; cause; notice; hearing.

An authorization to operate or an agent's permit may be revoked or made conditional after its issuance if the board has reasonable cause to believe that the holder thereof has violated or is violating the Private Postsecondary Career School Act or any rules and regulations adopted and promulgated under the act. Prior to such revocation or imposition of condition, the board shall notify the holder of the authorization or permit in writing of the impending action, setting forth the grounds for the action contemplated to be taken and advising the holder that if a hearing is requested in writing within ten business days of

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receipt of the notice, the board shall set a time and place for a hearing at which the holder may be heard in response to the allegation of noncompliance.

Source: Laws 1977, LB 486, § 33; Laws 1990, LB 488, § 33; R.S.1943, (1994), § 79-2833; Laws 1995, LB 4, § 33.

85-1634 Revocation hearing; how conducted; decision; when final; judicial review; notice; to whom given.

If a hearing is requested pursuant to section 85-1633, it shall be conducted as provided in sections 85-1630 and 85-1631. The decision of the board shall be made as provided in section 85-1632 and shall be deemed final subject to the right of judicial review provided in the Administrative Procedure Act. If an agent's permit is revoked or conditions imposed thereon, the board shall notify the school which the agent was permitted to represent, as shown in the records of the department, in addition to the notice required to be given to the agent and any other parties to the hearing.

Source: Laws 1977, LB 486, § 34; Laws 1990, LB 488, § 34; R.S.1943, (1994), § 79-2834; Laws 1995, LB 4, § 34.

Cross References

Administrative Procedure Act, see section 84-920.

85-1635 Complaints of violations; filed; procedure.

Any person claiming damage or loss as a result of any act or practice by a private postsecondary career school or its agent, or both, which is a violation of the Private Postsecondary Career School Act or of the rules and regulations adopted and promulgated under the act may file with the board a verified complaint against such school or against its agent or both. The complaint shall set forth the alleged violation and shall contain such other information as may be required by the board. A complaint may also be filed with the board by the commissioner or the Attorney General.

Source: Laws 1977, LB 486, § 35; Laws 1990, LB 488, § 35; R.S.1943, (1994), § 79-2835; Laws 1995, LB 4, § 35.

85-1636 Complaint; when considered; notice; hearing.

The board may consider a complaint after ten days' written notice by certified mail, return receipt requested, to such school or to such agent, or both, as appropriate, giving notice of a time and place for hearing thereon. Such hearing shall be conducted in accordance with the Administrative Procedure Act.

Source: Laws 1977, LB 486, § 36; Laws 1990, LB 488, § 36; R.S.1943, (1994), § 79-2836; Laws 1995, LB 4, § 36.

Cross References

Administrative Procedure Act, see section 84-920.

85-1637 Complaint; hearing; violation; actions of board.

If, upon all the evidence at the hearing, the board finds that a private postsecondary career school or its agent, or both, has engaged in or is engaging in any act or practice which violates the Private Postsecondary Career School Act or the rules and regulations adopted and promulgated under the act, the

board shall issue and cause to be served upon such school or agent, or both, an order requiring such school or agent, or both, to cease and desist from such act or practice. The board may also, as appropriate, based on its own investigation or the evidence adduced at such hearing, or both, commence an action to revoke a school's authorization to operate or an agent's permit.

Source: Laws 1977, LB 486, § 37; Laws 1990, LB 488, § 37; R.S.1943, (1994), § 79-2837; Laws 1995, LB 4, § 37.

85-1638 Appeal; procedure.

Any person aggrieved or adversely affected by any final board action or by any penalty imposed by the board may appeal such action or penalty, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1977, LB 486, § 38; Laws 1988, LB 352, § 164; R.S.1943, (1994), § 79-2838; Laws 1995, LB 4, § 38.

Cross References

Administrative Procedure Act, see section 84-920.

85-1639 Bond or security agreement; filed; when; requirements.

Until the Tuition Recovery Cash Fund initially reaches the minimum fund level prescribed in section 85-1656, when an application is made for authorization to operate, the department may require the private postsecondary career school making such application to file with the department a good and sufficient surety bond in the penal sum of twenty thousand dollars or other security agreement deemed satisfactory by the department. Such bond or other security shall cover branch facilities. The bond or agreement shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in this state. The bond or agreement shall be conditioned to provide indemnification to any student or enrollee or his or her parent or guardian determined to have suffered loss or damage as a result of any act or practice which is a violation of the Private Postsecondary Career School Act by the school and that the surety shall pay any final judgment rendered by any court of this state having jurisdiction upon receipt of written notification of the judgment. Regardless of the number of years that such bond or agreement is in force, the aggregate liability of the surety thereon shall in no event exceed the penal sum of the bond or agreement. The bond or agreement may be continuous.

Source: Laws 1977, LB 486, § 42; Laws 1982, LB 370, § 8; Laws 1990, LB 488, § 38; Laws 1993, LB 348, § 59; R.S.1943, (1994), § 79-2842; Laws 1995, LB 4, § 39.

85-1640 Agent's permit; application; surety bond; requirements.

The application for an agent's permit shall be accompanied by a good and sufficient surety bond in a penal sum of five thousand dollars. The bond shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in this state. The bond may be in blanket form to cover more than one agent for a private postsecondary career school, but it shall cover each agent for the school in a penal sum of five thousand dollars. Bonds in blanket form shall be executed by the school as principal. The bond shall be conditioned to provide indemnification to any student or enrollee or his

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or her parent or guardian determined to have suffered loss or damage as a result of any act or practice which is a violation of the Private Postsecondary Career School Act by the agent and that the surety shall pay any final judgment rendered by any court of this state having jurisdiction upon receipt of written notification of the judgment. Regardless of the number of years that such bond is in force, the aggregate liability of the surety thereon shall in no event exceed the penal sum thereof. The bond may be continuous.

Source: Laws 1977, LB 486, § 43; Laws 1990, LB 488, § 39; R.S.1943, (1994), § 79-2843; Laws 1995, LB 4, § 40; Laws 2003, LB 685, § 34.

85-1641 Surety bond or agreement; release of surety; effect.

(1) Until the Tuition Recovery Cash Fund initially reaches the minimum fund level prescribed in section 85-1656, the surety bond or other security agreement of a school provided for in section 85-1639 shall cover the period of the authorization to operate except when a surety is released as provided in this section. The surety bond of an agent provided for in section 85-1640 shall cover the period of such agent's permit except when a surety is released as provided in this section.

(2) A surety on any bond or agreement filed under section 85-1639 or 85-1640 may be released after such surety serves written notice on the department thirty days prior to the release. Such release shall not discharge or otherwise affect any claim previously or subsequently filed by a student or enrollee or his or her parent or guardian for loss or damage resulting from any act or practice which is a violation of the Private Postsecondary Career School Act alleged to have occurred while the bond or agreement was in effect or for a school's ceasing operations during the term for which tuition has been paid while the bond or agreement was in force.

Source: Laws 1977, LB 486, § 44; Laws 1990, LB 488, § 40; Laws 1993, LB 348, § 60; R.S.1943, (1994), § 79-2844; Laws 1995, LB 4, § 41; Laws 2001, LB 797, § 51.

85-1642 Authorization to operate or agent's permit; bond or agreement; when required.

Except as otherwise provided in this section, authorization to operate and an agent's permit shall be suspended by operation of law when the school or agent is no longer covered by a surety bond or agreement as required by sections 85-1639 and 85-1640. The commissioner shall cause the school or agent, or both, to receive at least thirty days' written notice prior to the release of the surety to the effect that the authorization or permit shall be suspended by operation of law until another surety bond or agreement is filed in the same manner and like amount as the bond or agreement being terminated. After the Tuition Recovery Cash Fund initially reaches the minimum fund level prescribed in section 85-1656, the surety bond or agreement provided for in section 85-1639 shall no longer be required to be kept in force by any private postsecondary career school contributing to the fund except as specified for any private postsecondary career school applying for authorization to operate from the commissioner or any other agency after September 9, 1993.

Source: Laws 1977, LB 486, § 45; Laws 1990, LB 488, § 41; R.S.1943, (1994), § 79-2845; Laws 1995, LB 4, § 42; Laws 2001, LB 797, § 52.

85-1643 Private Postsecondary Career Schools Cash Fund; created; use; fees; schedule; no refund.

(1) The Private Postsecondary Career Schools Cash Fund is created. All fees collected pursuant to the Private Postsecondary Career School Act shall be remitted to the State Treasurer for credit to the fund. The fund shall be used only for the purpose of administering the act. No fees shall be subject to refund.

(2) Except as provided in subsection (4) of this section, fees collected pursuant to the act shall be the following:

(a) Initial application for authorization to operate, two hundred dollars plus twenty dollars per program of study offered;

(b) Renewal application for authorization to operate, one hundred dollars plus twenty dollars per program of study offered, except that the board may establish a variable fee schedule based upon the prior school year's gross tuition revenue as provided by the school pursuant to section 85-1656;

(c) Approval to operate a branch facility, one hundred dollars;

(d) Late submission of application, fifty dollars;

(e) Initial agent's permit, fifty dollars;

(f) Agent's permit renewal, twenty dollars;

(g) Accreditation or reaccreditation, one hundred dollars;

(h) Initial authorization to award an associate degree, one hundred dollars;

(i) Significant program change, fifty dollars;

(j) Change of name or location, twenty-five dollars; and

(k) Additional new program, one hundred dollars.

(3) Fees for out-of-state schools may include, but shall not exceed the following:

(a) Certificate of approval to recruit, five hundred dollars annually;

(b) Initial agent's permit, one hundred dollars; and

(c) Agent's permit renewal, forty dollars.

(4)(a) The board shall consult with the advisory council established pursuant to section 85-1607 regarding any increase in fees under the act. Beginning with fiscal year 2006-07 and each year thereafter, the board in consultation with the advisory council shall establish fees sufficient to cover the total cost of administration, except that such fees shall not exceed one hundred ten percent of the previous year's total cost. Such fees shall be set out in the rules and regulations adopted and promulgated by the board.

(b) Total cost of administration shall be determined by an annual audit of:

(i) Salaries and benefits or portions thereof for those department employees who administer the act;

(ii) Operating costs such as rent, utilities, and supplies;

(iii) Capital costs such as office equipment, computer hardware, and computer software;

(iv) Costs for travel by employees of the department, including car rental, gas, and mileage charges; and

(v) Other reasonable and necessary costs as determined by the board.

Source: Laws 1977, LB 486, § 46; Laws 1982, LB 928, § 72; Laws 1982, LB 370, § 9; Laws 1990, LB 488, § 42; R.S.1943, (1994), § 79-2846; Laws 1995, LB 4, § 43; Laws 1999, LB 489, § 6; Laws 2003, LB 685, § 35; Laws 2011, LB637, § 32.

85-1644 Private postsecondary career school; discontinue operation; transcripts and records; preserved; permanent file maintained by department; fee.

If any private postsecondary career school now or hereafter operating in this state proposes to discontinue its operation, the chief administrative officer of such school shall cause to be filed with the department the original or legible true copies of all academic and financial aid transcripts and such other records of the school as may be specified by the department. If there is a change of ownership, the records shall be transferred intact and in good condition to the new owner and the transfer shall be verified by the department. The department shall maintain or cause to be maintained a permanent file of such records coming into its possession. A student requesting a copy of his or her transcripts may be charged a fee of ten dollars for each copy requested.

Source: Laws 1977, LB 486, § 48; Laws 1990, LB 488, § 43; R.S.1943, (1994), § 79-2848; Laws 1995, LB 4, § 44; Laws 1999, LB 489, § 7; Laws 2013, LB410, § 20.

85-1645 Contract or evidence of indebtedness; rights of parties; invalid agreements.

If the person to whom educational services are to be rendered or furnished by a private postsecondary career school is a resident of this state at the time any contract relating to payment for such services, any note, instrument, or other evidence of indebtedness relating to payment for such services, or any note, instrument, or other evidence of indebtedness relating thereto is entered into, sections 85-1645 to 85-1649 shall govern the rights of the parties to such contract or evidence of indebtedness. The following agreements entered into in connection with the contract or the giving of such evidence of indebtedness shall be invalid:

- (1) That the law of another state shall apply;
- (2) That the maker or any person liable on such contract or evidence of indebtedness consents to the jurisdiction of another state;
- (3) That another person is authorized to confess judgment on such contract or evidence of indebtedness; and
- (4) That fixes venue.

Source: Laws 1977, LB 486, § 49; Laws 1990, LB 488, § 44; R.S.1943, (1994), § 79-2849; Laws 1995, LB 4, § 45.

85-1646 Enforceability of contracts and evidence of indebtedness.

No note, instrument, or other evidence of indebtedness or contract relating to payment for education or educational services shall be enforceable in the courts of this state by (1) any private postsecondary career school operating in this state unless the school has received authorization to operate or (2) any private postsecondary career school having an agent or agents in this state unless any and all agents who enrolled or sought to enroll the person to whom such

services were to be rendered or to whom educational credentials were to be granted had an agent's permit at the time of their contract with such person.

Source: Laws 1977, LB 486, § 50; Laws 1990, LB 488, § 45; R.S.1943, (1994), § 79-2850; Laws 1995, LB 4, § 46.

85-1647 Lending agency; evidence of indebtedness; marked, Student Loan; liability.

Any lending agency extending credit or lending money to any person for tuition, fees, or charges whatever of a private postsecondary career school for educational or other services or facilities to be rendered or furnished by the school shall cause any note, instrument, or other evidence of indebtedness taken in connection with such loan or extension of credit to be conspicuously marked, on the face thereof, Student Loan. If such lending agency fails to do so, it shall be liable for any loss or damage suffered or incurred by any subsequent assignee, transferee, or holder of such evidence of indebtedness on account of the absence of such notation.

Source: Laws 1977, LB 486, § 51; Laws 1990, LB 488, § 46; R.S.1943, (1994), § 79-2851; Laws 1995, LB 4, § 47.

85-1648 Lending agency; subject to defenses and claims.

Notwithstanding the presence or absence of the notation required by section 85-1647 and notwithstanding any agreement to the contrary, the lending agency making such loan or extending such credit and any transferee, assignee, or holder of such evidence of indebtedness shall be subject to all defenses and claims which could be asserted against the private postsecondary career school which was to render or furnish such services or facilities by any party to the evidence of indebtedness or by the person to whom such services or facilities were to be rendered or furnished up to the amount remaining to be paid thereon.

Source: Laws 1977, LB 486, § 52; Laws 1990, LB 488, § 47; R.S.1943, (1994), § 79-2852; Laws 1995, LB 4, § 48.

85-1649 Lending agency, defined.

For purposes of sections 85-1647 and 85-1648, lending agency shall mean (1) any private postsecondary career school or (2) any entity (a) controlling, controlled by, or held in common ownership with such a school or (b) regularly lending money to such a school or to students of such a school.

Source: Laws 1977, LB 486, § 53; Laws 1990, LB 488, § 48; R.S.1943, (1994), § 79-2853; Laws 1995, LB 4, § 49.

85-1650 Violation; penalty.

Any entity or any owner, officer, agent, or employee thereof who willfully violates section 85-1610 or willfully fails or refuses to deposit with the department the records required by section 85-1644 shall be guilty of a Class II misdemeanor. Each day's failure to comply with such sections shall be a separate violation.

Source: Laws 1977, LB 486, § 55; Laws 1990, LB 488, § 49; R.S.1943, (1994), § 79-2855; Laws 1995, LB 4, § 50.

85-1651 Private postsecondary career school; subject to jurisdiction of courts of this state.

Any private postsecondary career school not exempt under section 85-1604, whether or not a resident of or having a place of business in this state, which instructs or educates or offers to contract to provide instructional or educational services in this state to a resident of this state, whether such instruction or services are provided in person or by correspondence, or which offers to award or awards any educational credentials to a resident of this state, thereby submits such school and, if a natural person, his or her personal representative to the jurisdiction of the courts of this state concerning any cause of action arising therefrom and for the purpose of enforcement of the Private Postsecondary Career School Act by injunction pursuant to sections 85-1652 and 85-1653.

Source: Laws 1977, LB 486, § 56; Laws 1983, LB 447, § 93; Laws 1990, LB 488, § 50; R.S.1943, (1994), § 79-2856; Laws 1995, LB 4, § 51.

85-1652 Attorney General or county attorney; enforce act.

The Attorney General or the county attorney of any county in which a private postsecondary career school or an agent thereof is found, at the request of the board or on his or her own motion, may bring any appropriate action or proceeding in any court of competent jurisdiction for the enforcement of the Private Postsecondary Career School Act.

Source: Laws 1977, LB 486, § 57; Laws 1990, LB 488, § 51; R.S.1943, (1994), § 79-2857; Laws 1995, LB 4, § 52.

85-1653 Commissioner; file for injunctive relief; when.

Whenever it appears to the commissioner that any entity is or has been violating any of the provisions of the Private Postsecondary Career School Act or any of the lawful rules, regulations, or orders of the board or department, the commissioner may file a petition for injunction in the name of the department in any court of competent jurisdiction in this state against such entity for the purpose of enjoining such violation or for an order directing compliance with the provisions of the act and the rules, regulations, and orders. It shall not be necessary that the commissioner allege or prove that there is no adequate remedy at law. The right of injunction provided in this section shall be in addition to any other legal remedy which the department may have and shall be in addition to any right of criminal prosecution provided by law. The commissioner shall not obtain a temporary restraining order without notice to the entity affected. The pendency of board action with respect to alleged violations shall not operate as a bar to an action for injunctive relief pursuant to this section.

Source: Laws 1977, LB 486, § 58; Laws 1990, LB 488, § 52; R.S.1943, (1994), § 79-2858; Laws 1995, LB 4, § 53.

85-1654 Tuition Recovery Cash Fund; established; use; investment.

The Tuition Recovery Cash Fund is hereby established. The fund shall be a cash fund used to receive assessments imposed under section 85-1656 and to pay claims authorized under section 85-1657. Any money in the fund available

for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Any interest earned by the fund shall accrue to the fund.

Source: Laws 1993, LB 348, § 52; Laws 1994, LB 1066, § 92; R.S.1943, (1994), § 79-2859; Laws 1995, LB 4, § 54.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

85-1655 Tuition Recovery Cash Fund; administration.

The Tuition Recovery Cash Fund shall be administered by the board. The board shall adopt and promulgate rules and regulations for the administration of the fund and for the evaluation and approval of claims pursuant to section 85-1657.

Source: Laws 1993, LB 348, § 53; R.S.1943, (1994), § 79-2860; Laws 1995, LB 4, § 55; Laws 2009, LB154, § 20.

85-1656 Tuition Recovery Cash Fund; assessment; board; powers and duties.

(1) The board shall annually assess each private postsecondary career school one-tenth of one percent of the prior school year's gross tuition revenue until the Tuition Recovery Cash Fund reaches the minimum fund level. The fund shall be maintained at a minimum of two hundred fifty thousand dollars and a maximum of five hundred thousand dollars. At any time when the fund drops below the minimum level, the board may resume the assessment. Funds in excess of the maximum level shall be used as directed by the board to provide grants or scholarships for students attending private postsecondary career schools.

(2) The board shall require documentation from each private postsecondary career school to verify the tuition revenue collected by the school and to determine the amount of the assessment under this section.

(3) Any private postsecondary career school applying for authorization to operate from the commissioner or any other agency after September 9, 1993, shall not be assessed under this section for the first year of operation but shall be assessed each year thereafter for four years or until the fund reaches the minimum level required by this section, whichever occurs last, and shall maintain the surety bond or other security required by section 85-1639 until such time.

(4) The authorization to operate of any private postsecondary career school which fails to comply with this section shall be subject to revocation.

Source: Laws 1993, LB 348, § 54; R.S.1943, (1994), § 79-2861; Laws 1995, LB 4, § 56; Laws 2013, LB410, § 21.

85-1657 Tuition Recovery Cash Fund; claim; statute of limitations.

(1) Any student injured by the termination of operations by a private postsecondary career school on or after September 9, 1993, may submit a claim against the Tuition Recovery Cash Fund. The board shall adopt rules and regulations for the evaluation and approval of claims made against the fund and shall provide for payments made from the fund. No claim shall be allowed

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unless it is submitted within one year after the school terminates operations and there are sufficient funds available in the fund to pay the claim.

(2) For purposes of this section, a student injured by the termination of operations by a private postsecondary career school means (a) a student who has paid tuition and fees to the school for which classes were not offered and no refunds were made or (b) a student who ceased to be enrolled in classes at a school while the school was in operation and to whom a refund of unearned tuition and fees became due from the school after the school terminated operations and no refunds were made within the required time period following the student's withdrawal from the school under the rules and regulations established by the department.

Source: Laws 1993, LB 348, § 55; R.S.1943, (1994), § 79-2862; Laws 1995, LB 4, § 57; Laws 2001, LB 797, § 53.

85-1658 Tuition Recovery Cash Fund; references in advertising or information authorized.

A private postsecondary career school may include references to the Tuition Recovery Cash Fund in advertising or information provided to students or prospective students. Any such reference shall clearly describe the protection and limitations prescribed in section 85-1657 and the rules and regulations.

Source: Laws 1993, LB 348, § 56; R.S.1943, (1994), § 79-2863; Laws 1995, LB 4, § 58.

ARTICLE 17

NEBRASKA EDUCATIONAL FINANCE AUTHORITY

Section

- 85-1701. Transferred to section 58-801.
- 85-1702. Transferred to section 58-802.
- 85-1703. Transferred to section 58-803.
- 85-1704. Transferred to section 58-804.
- 85-1705. Transferred to section 58-805.
- 85-1706. Transferred to section 58-806.
- 85-1707. Transferred to section 58-809.
- 85-1708. Transferred to section 58-811.
- 85-1709. Transferred to section 58-812.
- 85-1710. Transferred to section 58-813.
- 85-1711. Transferred to section 58-814.
- 85-1712. Transferred to section 58-815.
- 85-1713. Transferred to section 58-816.
- 85-1714. Transferred to section 58-817.
- 85-1715. Transferred to section 58-818.
- 85-1716. Transferred to section 58-819.
- 85-1717. Transferred to section 58-820.
- 85-1718. Transferred to section 58-821.
- 85-1719. Transferred to section 58-822.
- 85-1720. Transferred to section 58-823.
- 85-1721. Transferred to section 58-824.
- 85-1722. Transferred to section 58-825.
- 85-1723. Transferred to section 58-826.
- 85-1724. Transferred to section 58-827.
- 85-1725. Transferred to section 58-828.
- 85-1726. Transferred to section 58-829.
- 85-1727. Transferred to section 58-830.
- 85-1728. Transferred to section 58-831.
- 85-1729. Transferred to section 58-832.

Section

85-1730. Transferred to section 58-833.
85-1731. Transferred to section 58-834.
85-1732. Transferred to section 58-835.
85-1733. Transferred to section 58-836.
85-1734. Transferred to section 58-837.
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85-1736. Transferred to section 58-839.
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85-1759. Transferred to section 58-862.
85-1760. Transferred to section 58-863.
85-1761. Transferred to section 58-864.
85-1762. Transferred to section 58-865.
85-1763. Transferred to section 58-866.

85-1701 Transferred to section 58-801.

85-1702 Transferred to section 58-802.

85-1703 Transferred to section 58-803.

85-1704 Transferred to section 58-804.

85-1705 Transferred to section 58-805.

85-1706 Transferred to section 58-806.

85-1707 Transferred to section 58-809.

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85-1712 Transferred to section 58-815.

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- 85-1758 Transferred to section 58-861.
- 85-1759 Transferred to section 58-862.
- 85-1760 Transferred to section 58-863.
- 85-1761 Transferred to section 58-864.
- 85-1762 Transferred to section 58-865.
- 85-1763 Transferred to section 58-866.

ARTICLE 18

EDUCATIONAL SAVINGS PLAN TRUST

Section

- 85-1801. Legislative findings.
- 85-1802. Terms, defined.
- 85-1803. Repealed. Laws 2010, LB 197, § 11.
- 85-1804. Nebraska educational savings plan trust; created; State Treasurer; Nebraska Investment Council; powers and duties.
- 85-1805. Advertising or promotional materials; restriction.
- 85-1806. Participation agreements; terms and conditions.
- 85-1807. Deposit of funds; College Savings Plan Program Fund; College Savings Plan Administrative Fund; College Savings Plan Expense Fund; created; use; investment; State Treasurer; report.
- 85-1808. Participation agreement; cancellation; when; effect.
- 85-1809. Ownership rights under participation agreement.
- 85-1810. Benefits received; employer contributions; effect on other benefits or aid.
- 85-1811. Annual audited financial report.
- 85-1812. Benefits received; tax consequences.
- 85-1813. Assets of trust; how treated.
- 85-1814. Sections; how construed.
- 85-1815. College Savings Incentive Cash Fund; created; use; investment.

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Section

- 85-1816. Employer Matching Contribution Incentive Program; created; purpose; employer; application; State Treasurer; powers and duties.
85-1817. College Savings Plan Low-Income Matching Scholarship Program; established; participation; eligibility; application; State Treasurer; duties.

85-1801 Legislative findings.

The Legislature finds that the general welfare and well-being of the state are directly related to educational levels and skills of the citizens of the state and that a vital and valid public purpose is served by the creation and implementation of programs which encourage and make possible the attainment of higher education by the greatest number of citizens of the state. The state has limited resources to provide additional programs for higher education funding and the continued operation and maintenance of the state's public institutions of higher education, and the general welfare of the citizens of the state will be enhanced by establishing a program which allows parents and others interested in the higher education of our youth to invest money in a public trust for future application to the payment of qualified higher education expenses. The creation of the means of encouragement for persons to invest in such a program represents the carrying out of a vital and valid public purpose. In order to make available to parents and others interested in the higher education of our youth an opportunity to fund future higher education needs, it is necessary that a public trust be established in which money may be invested for future educational use.

Source: Laws 2000, LB 1003, § 1; Laws 2010, LB197, § 2; Laws 2012, LB1104, § 3.

85-1802 Terms, defined.

For purposes of sections 85-1801 to 85-1817:

- (1) Administrative fund means the College Savings Plan Administrative Fund created in section 85-1807;
- (2) Beneficiary means the individual designated by a participation agreement to benefit from advance payments of qualified higher education expenses on behalf of the beneficiary;
- (3) Benefits means the payment of qualified higher education expenses on behalf of a beneficiary or, in the case of a qualified education loan payment, on behalf of a beneficiary or the sibling of a beneficiary by the Nebraska educational savings plan trust;
- (4) Eligible educational institution means an institution described in 20 U.S.C. 1088 which is eligible to participate in a program under Title IV of the federal Higher Education Act of 1965;
- (5) Expense fund means the College Savings Plan Expense Fund created in section 85-1807;
- (6) Nebraska educational savings plan trust means the trust created in section 85-1804;
- (7) Nonqualified withdrawal refers to (a) a distribution from an account to the extent it is not used to pay the qualified higher education expenses of the beneficiary or, in the case of a qualified education loan payment, to the extent it is not used to pay the qualified higher education expenses of the beneficiary or a sibling of the beneficiary or to the extent it does not constitute a rollover to a

Roth individual retirement account as permitted by section 529 of the Internal Revenue Code, (b) a qualified rollover permitted by section 529 of the Internal Revenue Code where the funds are transferred to a qualified tuition program sponsored by another state or entity, or (c) a distribution from an account to pay the costs of attending kindergarten through grade twelve;

(8) Participant or account owner means an individual, an individual's legal representative, or any other legal entity authorized to establish a savings account under section 529 of the Internal Revenue Code who has entered into a participation agreement for the advance payment of qualified higher education expenses on behalf of a beneficiary. For purposes of section 77-2716, as to contributions by a custodian to a custodial account established pursuant to the Nebraska Uniform Transfers to Minors Act or similar law in another state, which account has been established under a participation agreement, participant includes the parent or guardian of a minor, which parent or guardian is also the custodian of the account;

(9) Participation agreement means an agreement between a participant and the Nebraska educational savings plan trust entered into under sections 85-1801 to 85-1817;

(10) Program fund means the College Savings Plan Program Fund created in section 85-1807;

(11) Qualified education loan payment means the payment of principal or interest on a qualified education loan as defined in 26 U.S.C. 221(d), as such section existed on January 1, 2022, of the beneficiary or a sibling of the beneficiary as described in 26 U.S.C. 152(d)(2)(B), as such section existed on January 1, 2022. For purposes of this subdivision, the aggregate total of qualified education loan payments for the qualified education loans of a single beneficiary or sibling shall not exceed ten thousand dollars for all taxable years combined. The aggregate total for qualified education loan payments for the qualified education loans of a sibling of a beneficiary shall be calculated with respect to such sibling and not with respect to the beneficiary and shall include all qualified education loan payments for loans of such sibling, including any qualified education loan payments for which such sibling is the beneficiary or the sibling of a beneficiary;

(12) Qualified higher education expenses means the certified costs of tuition and fees, books, supplies, and equipment required (a) for enrollment or attendance at an eligible educational institution or (b) for costs incurred on or after January 1, 2021, for participation in an apprenticeship program registered and certified with the United States Secretary of Labor under 29 U.S.C. 50, as such section existed on January 1, 2021. Reasonable room and board expenses, based on the minimum amount applicable for the eligible educational institution during the period of enrollment, shall be included as qualified higher education expenses for those students enrolled on at least a half-time basis. In the case of a special needs beneficiary, expenses for special needs services incurred in connection with enrollment or attendance at an eligible educational institution shall be included as qualified higher education expenses. Expenses paid or incurred on or after January 1, 2022, for the purchase of computer technology or equipment or Internet access and related services, subject to the limitations set forth in section 529 of the Internal Revenue Code, shall be included as qualified higher education expenses. Qualified higher education expenses includes qualified education loan payments. Qualified higher edu-

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cation expenses does not include any amounts in excess of those allowed by section 529 of the Internal Revenue Code;

(13) Section 529 of the Internal Revenue Code means such section of the code and the regulations interpreting such section; and

(14) Tuition and fees means the quarter or semester charges imposed to attend an eligible educational institution.

Source: Laws 2000, LB 1003, § 2; Laws 2001, LB 750, § 1; Laws 2010, LB197, § 3; Laws 2012, LB1104, § 4; Laws 2013, LB296, § 2; Laws 2019, LB610, § 8; Laws 2021, LB432, § 17; Laws 2021, LB528, § 55; Laws 2022, LB864, § 1; Laws 2023, LB727, § 106.

Cross References

Nebraska Uniform Transfers to Minors Act, see section 43-2701.

85-1803 Repealed. Laws 2010, LB 197, § 11.

85-1804 Nebraska educational savings plan trust; created; State Treasurer; Nebraska Investment Council; powers and duties.

The Nebraska educational savings plan trust is created. The State Treasurer is the trustee of the trust and as such is responsible for the administration, operation, and maintenance of the program and has all powers necessary to carry out and effectuate the purposes, objectives, and provisions of sections 85-1801 to 85-1817 pertaining to the administration, operation, and maintenance of the trust and program, except that the state investment officer shall have fiduciary responsibility to make all decisions regarding the investment of the money in the administrative fund, expense fund, and program fund, including the selection of all investment options and the approval of all fees and other costs charged to trust assets except costs for administration, operation, and maintenance of the trust as appropriated by the Legislature, pursuant to the directions, guidelines, and policies established by the Nebraska Investment Council. The State Treasurer may adopt and promulgate rules and regulations to provide for the efficient administration, operation, and maintenance of the trust and program. The State Treasurer shall not adopt and promulgate rules and regulations that in any way interfere with the fiduciary responsibility of the state investment officer to make all decisions regarding the investment of money in the administrative fund, expense fund, and program fund. The State Treasurer or his or her designee shall have the power to:

(1) Enter into agreements with any eligible educational institution, the state, any federal or other state agency, or any other entity to implement sections 85-1801 to 85-1817, except agreements which pertain to the investment of money in the administrative fund, expense fund, or program fund;

(2) Carry out the duties and obligations of the trust;

(3) Carry out studies and projections to advise participants regarding present and estimated future qualified higher education expenses and levels of financial participation in the trust required in order to enable participants to achieve their educational funding objectives;

(4) Participate in any federal, state, or local governmental program for the benefit of the trust;

(5) Procure insurance against any loss in connection with the property, assets, or activities of the trust as provided in section 81-8,239.01;

(6) Enter into participation agreements with participants;

(7) Make payments to eligible educational institutions pursuant to participation agreements on behalf of beneficiaries and make qualified education loan payments on behalf of beneficiaries or their siblings;

(8) Make distributions to participants upon the termination of participation agreements pursuant to the provisions, limitations, and restrictions set forth in sections 85-1801 to 85-1817;

(9) Contract for goods and services and engage personnel as necessary, including consultants, actuaries, managers, legal counsels, and auditors for the purpose of rendering professional, managerial, and technical assistance and advice regarding trust administration and operation, except contracts which pertain to the investment of the administrative, expense, or program funds; and

(10) Establish, impose, and collect administrative fees and charges in connection with transactions of the trust, and provide for reasonable service charges, including penalties for cancellations and late payments with respect to participation agreements.

The Nebraska Investment Council may adopt and promulgate rules and regulations to provide for the prudent investment of the assets of the trust. The council or its designee also has the authority to select and enter into agreements with individuals and entities to provide investment advice and management of the assets held by the trust, establish investment guidelines, objectives, and performance standards with respect to the assets held by the trust, and approve any fees, commissions, and expenses, which directly or indirectly affect the return on assets.

Source: Laws 2000, LB 1003, § 4; Laws 2001, LB 750, § 2; Laws 2003, LB 574, § 28; Laws 2010, LB197, § 4; Laws 2012, LB1104, § 5; Laws 2019, LB610, § 9; Laws 2022, LB864, § 2.

85-1805 Advertising or promotional materials; restriction.

Any advertising or promotional materials relating to the Nebraska educational savings plan trust may include references to a public office but shall not refer to an officeholder by name.

Source: Laws 2000, LB 1003, § 5.

85-1806 Participation agreements; terms and conditions.

The Nebraska educational savings plan trust may enter into participation agreements with participants on behalf of beneficiaries pursuant to the following terms and conditions:

(1) A participation agreement shall authorize a participant to make contributions to an account which is established for the purpose of meeting the qualified higher education expenses of a beneficiary as allowed by section 529 of the Internal Revenue Code. A participant shall not be required to make an annual contribution on behalf of a beneficiary, shall not be subject to minimum contribution requirements, and shall not be required to maintain a minimum account balance. The maximum contribution shall not exceed the amount allowed under section 529 of the Internal Revenue Code. The State Treasurer may set a maximum cumulative contribution, as necessary, to maintain compliance with section 529 of the Internal Revenue Code. Participation agreements may be amended to provide for adjusted levels of contributions based upon changed circumstances or changes in educational plans or to ensure compli-

ance with section 529 of the Internal Revenue Code or any other applicable laws and regulations;

(2) Beneficiaries designated in participation agreements shall meet the requirements established by the trustee and section 529 of the Internal Revenue Code;

(3) Payment of benefits provided under participation agreements shall be made in a manner consistent with section 529 of the Internal Revenue Code;

(4) The execution of a participation agreement by the trust shall not guarantee in any way that qualified higher education expenses will be equal to projections and estimates provided by the trust or that the beneficiary named in any participation agreement will (a) be admitted to an eligible educational institution, (b) if admitted, be determined a resident for tuition purposes by the eligible educational institution, (c) be allowed to continue attendance at the eligible educational institution following admission, or (d) graduate from the eligible educational institution;

(5) A beneficiary under a participation agreement may be changed as permitted under the rules and regulations adopted under sections 85-1801 to 85-1817 and consistent with section 529 of the Internal Revenue Code upon written request of the participant as long as the substitute beneficiary is eligible for participation. Participation agreements may otherwise be freely amended throughout their term in order to enable participants to increase or decrease the level of participation, change the designation of beneficiaries, and carry out similar matters as authorized by rule and regulation; and

(6) Each participation agreement shall provide that the participation agreement may be canceled upon the terms and conditions and upon payment of applicable fees and costs set forth and contained in the rules and regulations.

Source: Laws 2000, LB 1003, § 6; Laws 2001, LB 750, § 3; Laws 2012, LB1104, § 6; Laws 2019, LB610, § 10.

85-1807 Deposit of funds; College Savings Plan Program Fund; College Savings Plan Administrative Fund; College Savings Plan Expense Fund; created; use; investment; State Treasurer; report.

(1) The State Treasurer shall deposit money received by the Nebraska educational savings plan trust into three funds: The College Savings Plan Program Fund, the College Savings Plan Expense Fund, and the College Savings Plan Administrative Fund. The State Treasurer shall deposit money received by the trust into the appropriate fund. The State Treasurer and Accounting Administrator of the Department of Administrative Services shall determine the state fund types necessary to comply with section 529 of the Internal Revenue Code and state policy. The money in the funds shall be invested by the state investment officer pursuant to policies established by the Nebraska Investment Council. The program fund, the expense fund, and the administrative fund shall be separately administered. The Nebraska educational savings plan trust shall be operated with no General Fund appropriations.

(2) The College Savings Plan Program Fund is created. All money paid in connection with participation agreements and all investment income earned on such money shall be deposited as received into separate accounts within the program fund. Contributions to the trust may only be made in the form of cash. All funds generated in connection with participation agreements shall be

deposited into the appropriate accounts within the program fund. A participant or beneficiary shall not provide investment direction regarding program contributions or earnings held by the trust. Money accrued in the program fund may be used for the benefit of a beneficiary for payments to any eligible educational institution, but shall not be used to pay expenses associated with attending kindergarten through grade twelve. Any money in the program 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 College Savings Plan Administrative Fund is created. Money from the trust transferred from the expense fund to the administrative fund in an amount authorized by an appropriation from the Legislature shall be utilized to pay for the costs of administering, operating, and maintaining the trust, to the extent permitted by section 529 of the Internal Revenue Code. The administrative fund shall not be credited with any money other than money transferred from the expense fund in an amount authorized by an appropriation by the Legislature or any interest income earned on the balances held in the administrative fund. Any money in the administrative 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)(a) The College Savings Plan Expense Fund is created. The expense fund shall be funded with fees assessed to the program fund. The State Treasurer shall use the expense fund:

- (i) To pay costs associated with the Nebraska educational savings plan trust;
- (ii) For the purposes described in the Meadowlark Act;
- (iii) On or before September 1, 2020, to transfer from the expense fund to the Department of Revenue Miscellaneous Receipts Fund fifty-nine thousand five hundred dollars to defray the costs incurred to implement Laws 2020, LB1042; and
- (iv) To transfer from the expense fund to the State Investment Officer's Cash Fund an amount equal to the pro rata share of the budget appropriated to the Nebraska Investment Council as permitted in section 72-1249.02, to cover reasonable expenses incurred for investment management of the Nebraska educational savings plan trust. Annually and prior to such transfer to the State Investment Officer's Cash Fund, the State Treasurer shall report to the budget division of the Department of Administrative Services and to the Legislative Fiscal Analyst the amounts transferred during the previous fiscal year. The report submitted to the Legislative Fiscal Analyst shall be submitted electronically.

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

Source: Laws 2000, LB 1003, § 7; Laws 2003, LB 574, § 29; Laws 2010, LB197, § 5; Laws 2012, LB782, § 240; Laws 2012, LB1104, § 7; Laws 2019, LB52, § 2; Laws 2019, LB610, § 11; Laws 2020, LB1042, § 3.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

85-1808 Participation agreement; cancellation; when; effect.

(1) A participant may cancel a participation agreement at will by submitting a request to terminate the participation agreement. Additionally, if a participant requests and obtains a nonqualified withdrawal, the participation agreement shall be deemed canceled with respect to the amount of the nonqualified withdrawal. A participation agreement shall not be deemed canceled if a participant requests and obtains a distribution of his or her entire account balance for qualified higher education expenses and subsequently closes his or her account. Furthermore, the State Treasurer shall have the power to terminate, freeze, or suspend a participation agreement if he or she determines that the participant provided false or misleading information to the detriment of the Nebraska educational savings plan trust, if the participant's account has a zero balance, or if the State Treasurer is unable to verify the identity of the participant.

(2) If a participation agreement is canceled for any of the causes listed in this subsection, the participant shall be entitled to receive the principal amount of all contributions made by the participant under the participation agreement plus the actual program fund investment income earned on the contributions, less any losses incurred on the investment, and such distribution will generally not be subject to federal tax penalty:

(a) Death of the beneficiary if the distribution is paid to the estate of the beneficiary or transferred to another beneficiary as set forth in subsection (10) of section 85-1809;

(b) Permanent disability or mental incapacity of the beneficiary;

(c) The beneficiary is awarded a scholarship as defined in section 529 of the Internal Revenue Code, but only to the extent the distribution of earnings does not exceed the scholarship amount; or

(d) A qualified rollover is made as permitted by section 529 of the Internal Revenue Code, except that if a qualified rollover is made into a plan sponsored by another state or entity, the participation agreement shall be deemed to have been canceled for purposes of subdivision (8)(d) of section 77-2716 and federal adjusted gross income shall be increased to the extent previously deducted as a contribution to the trust.

(3) Notwithstanding any other provisions of this section, under no circumstances shall a participant or beneficiary receive a distribution that is more than the fair market value of the specific account on the applicable liquidation date.

(4) If a participant cancels a participation agreement, obtains a rollover into a plan sponsored by another state or entity, or obtains a distribution, a portion of which constitutes a nonqualified withdrawal, the amount of the distribution, rollover, or withdrawal will be subject to recapture of previous Nebraska state income tax deductions as set forth in subdivision (8)(d) of section 77-2716. The transfer of assets among plans sponsored by the State of Nebraska shall be considered an investment option change and not a rollover.

Source: Laws 2000, LB 1003, § 8; Laws 2001, LB 750, § 4; Laws 2003, LB 574, § 30; Laws 2005, LB 216, § 20; Laws 2010, LB197, § 6; Laws 2012, LB1104, § 8; Laws 2020, LB1042, § 4.

85-1809 Ownership rights under participation agreement.

(1) A participant retains ownership of all contributions made under a participation agreement up to the date of utilization for payment of qualified higher education expenses for the beneficiary or, in the case of a qualified education loan payment, for the beneficiary or a sibling of the beneficiary. Notwithstanding any other provision of law, any amount credited to any account is not susceptible to any levy, execution, judgment, or other operation of law, garnishment, or other judicial enforcement, and the amount is not an asset or property of either the participant or the beneficiary for the purposes of any state insolvency or inheritance tax laws. All income derived from the investment of the contributions made by the participant shall be considered to be held in trust for the benefit of the beneficiary.

(2) If the program created by sections 85-1801 to 85-1817 is terminated prior to payment of qualified higher education expenses, the participant is entitled to receive the fair market value of the account established in the program.

(3) If the beneficiary graduates from an eligible educational institution and a balance remains in the participant's account, any remaining funds may be used to make qualified education loan payments for siblings of the beneficiary or transferred as allowed by rule or regulation, subject to the provisions of section 529 of the Internal Revenue Code, as well as any other applicable state or federal laws or regulations.

(4) The eligible educational institution shall obtain ownership of the payments made for the qualified higher education expenses paid to the institution at the time each payment is made to the institution.

(5) Any amounts which may be paid to any person or persons pursuant to the Nebraska educational savings plan trust but which are not listed in this section are owned by the trust.

(6) A participant may transfer ownership rights to another eligible participant, including a gift of the ownership rights to a minor beneficiary. The transfer shall be made and the property distributed in accordance with the rules and regulations or with the terms of the participation agreement.

(7) A participant shall not be entitled to utilize any interest in the Nebraska educational savings plan trust as security for a loan.

(8) The Nebraska educational savings plan trust may accept transfers of cash investments from a custodian under the Nebraska Uniform Transfers to Minors Act or any other similar laws under the terms and conditions established by the trustee.

(9) A participant may designate a successor account owner to succeed to all of the participant's rights, title, and interest in an account, including the right to change the account beneficiary, upon the death or legal incapacity of the participant. If a participant dies or becomes legally incapacitated and has failed to name a successor account owner, the account beneficiary shall become the account owner.

(10) Upon the death of a beneficiary, the participant may change the beneficiary on the account, transfer assets to another beneficiary who is a member of the family of the former beneficiary, or request a nonqualified withdrawal.

Source: Laws 2000, LB 1003, § 9; Laws 2001, LB 750, § 5; Laws 2003, LB 574, § 31; Laws 2012, LB1104, § 9; Laws 2013, LB296, § 3; Laws 2019, LB610, § 12; Laws 2022, LB864, § 3.

Cross References

Nebraska Uniform Transfers to Minors Act, see section 43-2701.

85-1810 Benefits received; employer contributions; effect on other benefits or aid.

(1) A student loan program, student grant program, or other program administered by any agency of the state, except as may be otherwise provided by federal law or the provisions of any specific grant applicable to the federal law, shall not take into account and shall not consider amounts available for the payment of qualified higher education expenses pursuant to the Nebraska educational savings plan trust in determining need and eligibility for student aid.

(2) A government program administered by any agency of the state that provides benefits or aid to individuals based on financial need, except as may be otherwise provided by federal law or the provisions of any specific grant applicable to the federal law, shall not take into account and shall not consider contributions made to a participant's account by the participant's employer in determining the income of such participant.

Source: Laws 2000, LB 1003, § 10; Laws 2012, LB1104, § 10; Laws 2020, LB1042, § 5.

85-1811 Annual audited financial report.

(1) The State Treasurer shall submit an annual audited financial report, prepared in accordance with generally accepted accounting principles, on the operations of the Nebraska educational savings plan trust by November 1 to the Governor and the Legislature. The report submitted to the Legislature shall be submitted electronically. The State Treasurer shall cause the audit to be made either by the Auditor of Public Accounts or by an independent certified public accountant designated by the State Treasurer, and the audit shall include direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other persons who are not state employees.

(2) The annual audit shall be supplemented by all of the following information prepared by the State Treasurer:

- (a) Any related studies or evaluations prepared in the preceding year;
- (b) A summary of the benefits provided by the trust, including the number of participants and beneficiaries in the trust; and
- (c) Any other information which is relevant in order to make a full, fair, and effective disclosure of the operations of the trust, including the investment performance of the funds.

Source: Laws 2000, LB 1003, § 11; Laws 2012, LB782, § 241.

85-1812 Benefits received; tax consequences.

(1) For federal income tax purposes, the Nebraska educational savings plan trust shall be considered a qualified state tuition program exempt from taxation pursuant to section 529 of the Internal Revenue Code. The trust meets the requirements of section 529(b) of the Internal Revenue Code as follows:

- (a) Pursuant to section 85-1806, a participant may make contributions to an account which is established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account or, in the case

of a qualified education loan payment, the designated beneficiary of the account or a sibling of the designated beneficiary;

(b) Pursuant to section 85-1806, a maximum contribution level is established;

(c) Pursuant to section 85-1807, a separate account is established for each beneficiary;

(d) Pursuant to section 85-1807, contributions may only be made in the form of cash;

(e) Pursuant to section 85-1807, a participant or beneficiary shall not provide investment direction regarding program contributions or earnings held by the trust;

(f) Penalties are provided on distributions of earnings which are: (i) Not used for qualified higher education expenses of the beneficiary or, in the case of a qualified education loan payment, the beneficiary or a sibling of the beneficiary; (ii) made on account of the death of the designated beneficiary if the distribution is not transferred to another beneficiary or paid to the estate of the beneficiary; (iii) not made on account of the permanent disability or mental incapacity of the designated beneficiary; or (iv) made due to scholarship, allowance, or payment receipt in excess of the scholarship, allowance, or payment receipt; and

(g) Pursuant to section 85-1809, a participant shall not pledge any interest in the trust as security for a loan.

(2) State income tax treatment of the Nebraska educational savings plan trust shall be as provided in section 77-2716.

(3) For purposes of federal gift and generation-skipping transfer taxes, contributions to an account are considered a completed gift from the contributor to the beneficiary.

Source: Laws 2000, LB 1003, § 12; Laws 2012, LB1104, § 11; Laws 2022, LB864, § 4.

85-1813 Assets of trust; how treated.

The assets of the Nebraska educational savings plan trust, including the program fund and excluding the administrative fund and the expense fund, shall at all times be preserved, invested, and expended solely and only for the purposes of the trust and shall be held in trust for the participants and beneficiaries. No property rights in the trust shall exist in favor of the state. Assets of the trust, including the program fund, the administrative fund, and the expense fund, shall not be transferred or used by the state for any purposes other than the purposes of the trust.

Source: Laws 2000, LB 1003, § 13; Laws 2010, LB197, § 7; Laws 2019, LB52, § 3.

85-1814 Sections; how construed.

Nothing in sections 85-1801 to 85-1813 shall be deemed to prohibit both resident and nonresident participants and designated beneficiaries from being eligible to participate in and benefit from the Nebraska educational savings plan trust and program. It is the intent of the Legislature that funds and income

credited to the program fund are fully portable and may be used at any eligible educational institution.

Source: Laws 2000, LB 1003, § 14; Laws 2012, LB1104, § 12.

85-1815 College Savings Incentive Cash Fund; created; use; investment.

(1) The College Savings Incentive Cash Fund is created. The fund shall be administered by the State Treasurer and shall be used to provide incentive payments under the Employer Matching Contribution Incentive Program established in section 85-1816 and to provide matching scholarships under the College Savings Plan Low-Income Matching Scholarship Program established in section 85-1817. The State Treasurer shall accept contributions from any private individual or private entity and shall credit all such contributions received to the College Savings Incentive Cash Fund for the purpose of providing an ongoing source of funding for the College Savings Plan Low-Income Matching Scholarship Program. The matching contributions for which incentive payments are made under the Employer Matching Contribution Incentive Program and the matching scholarships provided under the College Savings Plan Low-Income Matching Scholarship Program shall not be used to pay expenses associated with attending kindergarten through grade twelve.

(2) The College Savings Incentive Cash Fund shall not be considered an asset of the Nebraska educational savings plan trust.

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

Source: Laws 2019, LB610, § 13.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

85-1816 Employer Matching Contribution Incentive Program; created; purpose; employer; application; State Treasurer; powers and duties.

(1) The Employer Matching Contribution Incentive Program is created. The program shall begin on January 1, 2022, and shall be implemented and administered by the State Treasurer. The purpose of the program is to encourage employers to make matching contributions by providing incentive payments for such contributions.

(2) For purposes of this section:

(a) Employer means any individual, partnership, limited liability company, association, corporation, business trust, legal representative, or organized group of persons employing one or more employees at any one time, but such term does not include the United States, the state, or any political subdivision thereof; and

(b) Matching contribution means a contribution made by an employer to an account established under the Nebraska educational savings plan trust in an amount matching all or part of a contribution made to that same account by an individual who resided in the State of Nebraska during the most recently completed taxable year and is an employee of such employer.

(3) Beginning January 1, 2022, an employer shall be eligible to receive an incentive payment under this section if the employer made matching contributions during the immediately preceding calendar year.

(4) In order to receive an incentive payment under this section, an employer shall submit an application to the State Treasurer on forms prescribed by the State Treasurer. The State Treasurer shall accept applications from January 1 to June 1 of each year beginning in 2022. The application shall include:

(a) The number of employees for whom matching contributions were made in the immediately preceding calendar year;

(b) The amount of the matching contributions made in the immediately preceding calendar year for each employee; and

(c) Any other information required by the State Treasurer.

(5) If the State Treasurer determines that the employer qualifies for an incentive payment under this section, the State Treasurer shall approve the application and shall notify the employer of the approval. The State Treasurer may approve applications until the annual limit provided in subsection (6) of this section has been reached. An employer whose application is approved shall receive an incentive payment equal to twenty-five percent of the total matching contributions made during the immediately preceding calendar year, not to exceed two thousand dollars per contributing employee per year. An employer shall not receive an incentive payment for a matching contribution if the employer claimed an income tax deduction pursuant to subdivision (8)(b) of section 77-2716 for such matching contribution. Employers shall be limited to one incentive payment per beneficiary. The matching contributions for which incentive payments are made shall not be used to pay expenses associated with attending kindergarten through grade twelve.

(6) The State Treasurer may approve a total of two hundred fifty thousand dollars of incentive payments each calendar year.

(7) On or before June 30, 2022, and on or before June 30 of each year thereafter, the State Treasurer shall determine the total amount of incentive payments approved for the year, shall transfer such amount from the College Savings Plan Expense Fund or the Unclaimed Property Trust Fund, as determined by the State Treasurer, to the College Savings Incentive Cash Fund, and shall distribute such incentive payments to the approved employers.

(8) The State Treasurer may adopt and promulgate rules and regulations to carry out the Employer Matching Contribution Incentive Program.

Source: Laws 2019, LB610, § 14; Laws 2021, LB532, § 9.

85-1817 College Savings Plan Low-Income Matching Scholarship Program; established; participation; eligibility; application; State Treasurer; duties.

(1) Beginning January 1, 2022, there is hereby established the College Savings Plan Low-Income Matching Scholarship Program. The purpose of the program is to encourage private contributions to accounts established under the Nebraska educational savings plan trust for the benefit of individuals with limited means. The State Treasurer shall implement and administer the program.

(2) A participant shall be eligible for the program if the beneficiary for whom private contributions are made is part of a family whose household income for the most recently completed taxable year is not more than two hundred fifty

percent of the federal poverty level and the beneficiary is a resident of the State of Nebraska.

(3) Applications for participation in the program shall be submitted to the State Treasurer on forms prescribed by the State Treasurer. If the requirements of subsection (2) of this section are met, the State Treasurer shall approve the application and notify the applicant of the approval. The State Treasurer may approve applications until the annual limit provided in subsection (7) of this section has been reached.

(4) Any participant who is approved for the program under subsection (3) of this section must resubmit an application each year thereafter and be reapproved in order to continue participation in the program.

(5) If a participant is approved for the program, any contribution made by such participant under the program shall be matched with scholarship funds provided by the State of Nebraska. The matching scholarship shall be equal to:

(a) One hundred percent of the participant's contribution if the beneficiary for whom the contribution is made is part of a family whose household income for the most recently completed taxable year is more than two hundred percent of the federal poverty level but not more than two hundred fifty percent of the federal poverty level, not to exceed one thousand dollars annually; or

(b) Two hundred percent of the participant's contribution if the beneficiary for whom the contribution is made is part of a family whose household income for the most recently completed taxable year is not more than two hundred percent of the federal poverty level, not to exceed one thousand dollars annually.

(6) Between January 1 and January 31 of each year, the State Treasurer shall transfer the amount necessary to meet the matching obligations of this section for the preceding calendar year, minus the amount of any private contributions received pursuant to subsection (1) of section 85-1815 during the preceding calendar year, from the College Savings Plan Expense Fund or the Unclaimed Property Trust Fund, as determined by the State Treasurer, to the College Savings Incentive Cash Fund. The State Treasurer shall transfer from the College Savings Incentive Cash Fund to the College Savings Plan Program Fund the amount necessary to meet the matching obligations of this section for the preceding calendar year. The Nebraska educational savings plan trust shall own all scholarships awarded under this section. Neither the participant nor the beneficiary shall have any ownership rights to or interest in, title to, or power or control over such scholarships. Scholarship funds disbursed shall only be used to pay the qualified higher education expenses associated with attending an eligible educational institution located in this state and shall not be used to pay expenses associated with attending kindergarten through grade twelve. Any disbursement of such scholarships shall be made before the beneficiary reaches thirty years of age. Once the beneficiary reaches thirty years of age, any unused scholarship funds shall be transferred to the Meadowlark Endowment Fund.

(7) The State Treasurer may approve a total of two hundred fifty thousand dollars of scholarships each calendar year under the College Savings Plan Low-Income Matching Scholarship Program.

Source: Laws 2019, LB610, § 15; Laws 2021, LB532, § 10.

ARTICLE 19

NEBRASKA OPPORTUNITY GRANT ACT

Section

- 85-1901. Act, how cited.
- 85-1902. Definitions, where found.
- 85-1903. Award, defined.
- 85-1904. Award year, defined.
- 85-1905. Commission, defined.
- 85-1906. Eligible postsecondary educational institution, defined.
- 85-1907. Eligible student, defined.
- 85-1908. Full-time student and full-time-equivalent student, defined.
- 85-1909. Tuition and mandatory fees, defined.
- 85-1910. Undergraduate student, defined.
- 85-1911. Awards; how made.
- 85-1912. Target level of funds; computation.
- 85-1913. Eligible postsecondary educational institutions; duties.
- 85-1914. Commission; awards; duties.
- 85-1915. Award; conditions.
- 85-1916. Recipient; remit award balance; when.
- 85-1917. Commission; duties; rules and regulations.
- 85-1918. Annual report.
- 85-1919. Applicability of act.
- 85-1920. Nebraska Opportunity Grant Fund; created; use; investment.

85-1901 Act, how cited.

Sections 85-1901 to 85-1920 shall be known and may be cited as the Nebraska Opportunity Grant Act.

Source: Laws 2003, LB 574, § 1; Laws 2010, LB956, § 4.

85-1902 Definitions, where found.

For purposes of the Nebraska Opportunity Grant Act, the definitions found in sections 85-1903 to 85-1910 apply.

Source: Laws 2003, LB 574, § 2; Laws 2010, LB956, § 5.

85-1903 Award, defined.

Award means a grant of money by the commission to an eligible student for educational expenses. An award shall not exceed fifty percent of the tuition and mandatory fees for a full-time, resident, undergraduate student for the last completed award year at the University of Nebraska-Lincoln.

Source: Laws 2003, LB 574, § 3; Laws 2004, LB 1107, § 1; Laws 2006, LB 962, § 6; Laws 2007, LB342, § 43; Laws 2010, LB956, § 6; Laws 2013, LB331, § 1.

85-1904 Award year, defined.

Award year means the period beginning on July 1 through the following June 30.

Source: Laws 2003, LB 574, § 4.

85-1905 Commission, defined.

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Commission means the Coordinating Commission for Postsecondary Education.

Source: Laws 2003, LB 574, § 5.

85-1906 Eligible postsecondary educational institution, defined.

(1) Eligible postsecondary educational institution means a public or private postsecondary educational institution:

- (a) Located in Nebraska;
- (b) Primarily engaged in the instruction of students;
- (c) Satisfying the provisions of Nebraska law relating to the approval and licensure of schools, colleges, and universities and maintaining accreditation by an accrediting organization recognized by the United States Department of Education;
- (d) Offering courses of instruction in regularly scheduled classes to regularly enrolled undergraduate students who reside in Nebraska and have received high school diplomas or their equivalent; and
- (e) Which has adopted, and has available for inspection, award refund and repayment policies.

(2) For a postsecondary educational institution not eligible prior to September 2, 2023, for purposes of this section, located in Nebraska means such eligible postsecondary educational institution:

- (a) Has established a physical location in this state where students may receive instruction; and
- (b) Maintains an administrative office in this state for the purposes of enrolling students, providing information to students about the institution, and providing student support services.

Source: Laws 2003, LB 574, § 6; Laws 2023, LB705, § 118.

85-1907 Eligible student, defined.

Eligible student means an undergraduate student who:

- (1) Is enrolled in an eligible postsecondary educational institution;
- (2)(a) For award years through award year 2023-24, has applied for federal financial aid through the Free Application for Federal Student Aid for the applicable award year and has an expected family contribution which is equal to or less than one hundred ten percent of the maximum expected family contribution to qualify for a Federal Pell Grant in that award year; and
- (b) For award year 2024-25 and each award year thereafter, has applied for federal financial aid through the Free Application for Federal Student Aid for the applicable award year and has a student aid index which is equal to or less than one hundred ten percent of the maximum student aid index to qualify for a Federal Pell Grant in that award year;
- (3) Is a resident student who is domiciled in Nebraska as provided by section 85-502; and
- (4) Complies with all other provisions of the Nebraska Opportunity Grant Act and its rules and regulations.

Source: Laws 2003, LB 574, § 7; Laws 2010, LB956, § 7; Laws 2013, LB331, § 2; Laws 2023, LB705, § 119.

85-1908 Full-time student and full-time-equivalent student, defined.

Full-time student and full-time-equivalent student have the definitions found in rules and regulations adopted and promulgated pursuant to the Nebraska Opportunity Grant Act.

Source: Laws 2003, LB 574, § 8; Laws 2010, LB956, § 8.

85-1909 Tuition and mandatory fees, defined.

Tuition and mandatory fees means the lesser of the student costs for tuition and mandatory fees for a full-time, resident, undergraduate student for the last completed award year at the eligible postsecondary educational institution or the student costs for tuition and mandatory fees for a full-time, resident, undergraduate student for the last completed award year at the University of Nebraska-Lincoln.

Source: Laws 2003, LB 574, § 9; Laws 2010, LB956, § 9.

85-1910 Undergraduate student, defined.

Undergraduate student means an individual who has not earned a first baccalaureate or professional degree and is enrolled in a postsecondary educational program which leads to, or is creditable toward, a first baccalaureate degree, associate degree, certificate, diploma, or equivalent.

Source: Laws 2003, LB 574, § 10.

85-1911 Awards; how made.

The Nebraska Opportunity Grant Act shall provide for awards made directly to eligible students based on financial need.

Source: Laws 2003, LB 574, § 11; Laws 2010, LB956, § 10.

85-1912 Target level of funds; computation.

In order to reduce the costs of administering the Nebraska Opportunity Grant Act, the commission shall identify a target level of funds to be distributed to students pursuant to the act at each eligible postsecondary educational institution. The target level of funds shall represent the maximum amount that may be awarded pursuant to the act to eligible students enrolled in such eligible postsecondary educational institution. To determine the target level of funds for each eligible postsecondary educational institution, the commission shall:

- (1) Determine the number of eligible full-time-equivalent students enrolled at the eligible postsecondary educational institution for the last completed award year;
- (2) Multiply the number determined in subdivision (1) of this section by the tuition and mandatory fees as limited pursuant to section 85-1909;
- (3) Divide the product derived pursuant to subdivision (2) of this section for each eligible postsecondary educational institution by the sum of the products derived pursuant to subdivision (2) of this section for all eligible postsecondary educational institutions; and

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(4) Multiply the total of federal and state funds appropriated for purposes of distribution pursuant to the act by the ratio derived pursuant to subdivision (3) of this section.

Source: Laws 2003, LB 574, § 12; Laws 2004, LB 1107, § 2; Laws 2010, LB956, § 11.

85-1913 Eligible postsecondary educational institutions; duties.

Eligible postsecondary educational institutions, acting as agents of the commission, shall:

- (1) Receive and process applications for awards under the Nebraska Opportunity Grant Act;
- (2) Determine eligibility of students based on criteria set forth in the act; and
- (3) At any time prior to June 1 of each award year, make recommendations as often as necessary to the commission for awards to eligible students, including the name of each eligible student, social security number of each eligible student, and recommended award amount for each eligible student.

Source: Laws 2003, LB 574, § 13; Laws 2010, LB956, § 12.

85-1914 Commission; awards; duties.

(1) Within thirty days after receiving recommendations pursuant to section 85-1913, the commission shall review the recommended awards for compliance with the Nebraska Opportunity Grant Act and its rules and regulations and notify each eligible postsecondary educational institution of the approval or disapproval of recommended awards.

(2) The commission shall distribute to each eligible postsecondary educational institution the total award amount approved for eligible students at such institution. The eligible postsecondary educational institution shall act as an agent of the commission to disburse the awards directly to eligible students during the award year.

Source: Laws 2003, LB 574, § 14; Laws 2010, LB956, § 13.

85-1915 Award; conditions.

An award may be granted to an eligible student for attendance at an eligible postsecondary educational institution if:

- (1) The eligible student is accepted for enrollment as follows:
 - (a) In the case of an eligible student beginning his or her first year in attendance at an eligible postsecondary educational institution, such eligible student has satisfied requirements for admission and has enrolled or indicated an intent to enroll in an eligible postsecondary educational institution; or
 - (b) In the case of an eligible student enrolled in an eligible postsecondary educational institution following the successful completion of the student's first year in attendance, such eligible student continues to meet the requirements of the Nebraska Opportunity Grant Act and has maintained the minimum standards of performance as required by the eligible postsecondary educational institution in which the eligible student is enrolled;

(2) The eligible student receiving such award certifies that the award will be used only for educational expenses; and

(3) The eligible student has complied with the act and its rules and regulations.

Source: Laws 2003, LB 574, § 15; Laws 2010, LB956, § 14.

85-1916 Recipient; remit award balance; when.

If an award recipient discontinues attendance before the end of the award year, the award recipient shall remit any award balance allowable to the eligible postsecondary educational institution in accordance with such institution's withdrawal policy. The institution shall remit such award balance to the commission in accordance with such institution's refund policy.

Source: Laws 2003, LB 574, § 16.

85-1917 Commission; duties; rules and regulations.

(1) The commission shall:

(a) Supervise the issuance of public information concerning the Nebraska Opportunity Grant Act; and

(b) Establish a reasonable and fair appeal procedure for students adversely affected by the actions of the commission or an eligible postsecondary educational institution in the distribution of funds or granting of awards pursuant to the act.

(2) The commission may adopt and promulgate rules and regulations necessary to carry out the act, including such rules and regulations for maintenance of fiscal controls and fund accounting procedures as may be necessary to assure proper disbursement of funds and to assure that the eligible postsecondary educational institutions, as agents of the commission, have complied with the act. Such rules and regulations shall be developed in cooperation with representatives of eligible postsecondary educational institutions and shall be designed, to the extent consistent with requirements of the act, to minimize the administrative burden on the eligible postsecondary educational institutions and the commission.

Source: Laws 2003, LB 574, § 17; Laws 2010, LB956, § 15.

85-1918 Annual report.

Each eligible postsecondary educational institution shall file an annual report with the commission. The report shall document that students receiving awards under the Nebraska Opportunity Grant Act have met the eligibility standards and requirements established in the act and rules and regulations. The report shall include an accounting of all state-funded or federally funded student financial aid awarded by the eligible postsecondary educational institution in the previous fiscal year. The report may include other data, including the unmet need as defined by the commission for all Federal-Pell-Grant-eligible students at each eligible postsecondary educational institution.

Source: Laws 2003, LB 574, § 18; Laws 2010, LB956, § 16.

85-1919 Applicability of act.

The Nebraska Opportunity Grant Act does not grant any authority to the commission to (1) control or influence the policies of any eligible postsecondary educational institution because such institution accepts students who receive

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awards or (2) require any eligible postsecondary educational institution to enroll any student receiving an award or, once admitted, to continue in such institution any student receiving an award.

Source: Laws 2003, LB 574, § 19; Laws 2010, LB956, § 17.

85-1920 Nebraska Opportunity Grant Fund; created; use; investment.

The Nebraska Opportunity Grant Fund is created. Money in the fund shall include amounts transferred pursuant to section 79-3501 from the State Lottery Operation Trust Fund or, until June 30, 2024, the Nebraska Education Improvement Fund. All amounts accruing to the Nebraska Opportunity Grant Fund shall be used to carry out the Nebraska Opportunity Grant 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 2003, LB 574, § 20; Laws 2010, LB956, § 18; Laws 2013, LB497, § 6; Laws 2015, LB519, § 38; Laws 2021, LB528, § 56; Laws 2023, LB705, § 120.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 20

COMMUNITY COLLEGE GAP ASSISTANCE PROGRAM ACT

Section

- 85-2001. Act, how cited.
- 85-2002. Terms, defined.
- 85-2003. Community college gap assistance program; created; purpose; eligibility.
- 85-2004. Community college gap assistance; application.
- 85-2005. Community college gap assistance; criteria; denial of application; when.
- 85-2006. Community college gap assistance; eligible costs.
- 85-2007. Applicant; initial assessment.
- 85-2008. Community college gap assistance; recipient; duties; termination of assistance; when.
- 85-2009. Community College Gap Assistance Program Fund; created; use; investment.
- 85-2010. Community college gap assistance program; committee; duties; meetings.
- 85-2011. Rules and regulations.

85-2001 Act, how cited.

Sections 85-2001 to 85-2011 shall be known and may be cited as the Community College Gap Assistance Program Act.

Source: Laws 2015, LB519, § 27.

85-2002 Terms, defined.

For purposes of the Community College Gap Assistance Program Act:

- (1) Accredited college means a not-for-profit, two-year postsecondary institution with a physical presence in this state that has been accredited by an accrediting agency recognized by the United States Department of Education to provide institutional accreditation for degree granting institutions;
- (2) Committee means the Nebraska Community College Student Performance and Occupational Education Grant Committee;

(3) Community college gap assistance program means the program created pursuant to section 85-2003;

(4) Eligible program means a program offered by a community college or other eligible institution that (a) either (i) is not offered for credit and has a duration of not less than sixteen contact hours in length or (ii) is offered for credit but is of insufficient clock, semester, or quarter hours to be eligible for Federal Pell Grants, (b) is aligned with training programs with stackable credentials that lead to a program awarding college credit, an associate’s degree, a diploma, or a certificate in an in-demand occupation, and (c) does any of the following:

- (i) Offers a state, national, or locally recognized certificate;
- (ii) Offers preparation for a professional examination or licensure;
- (iii) Provides endorsement for an existing credential or license;
- (iv) Represents recognized skill standards defined by an industrial sector; or
- (v) Offers a similar credential or training;

(5) In-demand occupation means:

- (a) Financial services;
- (b) Transportation, warehousing, and distribution logistics;
- (c) Precision metals manufacturing;
- (d) Biosciences;
- (e) Renewable energy;
- (f) Agriculture and food processing;
- (g) Business management and administrative services;
- (h) Software and computer services;
- (i) Research, development, and engineering services;
- (j) Health services;
- (k) Hospitality and tourism; and

(l) Any other industry designated as an in-demand occupation by the committee; and

(6) Other eligible institution means an accredited college with which the Coordinating Commission for Postsecondary Education has a contract pursuant to subsection (4) of section 85-2010.

Source: Laws 2015, LB519, § 28; Laws 2019, LB180, § 1; Laws 2021, LB528, § 57.

85-2003 Community college gap assistance program; created; purpose; eligibility.

(1) The community college gap assistance program is created. The program shall be under the direction of the committee and shall be administered by the Coordinating Commission for Postsecondary Education. The purpose of the community college gap assistance program is to provide community college gap assistance to students in eligible programs.

(2) To be eligible for community college gap assistance under the community college gap assistance program, an applicant:

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(a) Shall have a family income which is at or below two hundred fifty percent of Office of Management and Budget income poverty guidelines; and

(b) Shall be a resident of Nebraska as provided in section 85-502.

(3) Eligibility for such tuition assistance shall not be construed to guarantee enrollment in any eligible program.

Source: Laws 2015, LB519, § 29; Laws 2021, LB528, § 58.

85-2004 Community college gap assistance; application.

Application for community college gap assistance under the community college gap assistance program shall be made to the community college or other eligible institution in which the applicant is enrolled or intends to enroll. An application shall be valid for six months from the date of signature on the application. The applicant shall provide documentation of all sources of income. An applicant shall not receive community college gap assistance for more than one eligible program.

Source: Laws 2015, LB519, § 30; Laws 2021, LB528, § 59.

85-2005 Community college gap assistance; criteria; denial of application; when.

(1) An applicant for community college gap assistance under the community college gap assistance program shall demonstrate capacity to achieve the following outcomes:

(a) The ability to be accepted to and complete an eligible program;

(b) The ability to be accepted into and complete a postsecondary certificate, diploma, or degree program for credit;

(c) The ability to obtain full-time employment; and

(d) The ability to maintain full-time employment over time.

(2) The committee may grant community college gap assistance under the community college gap assistance program to an applicant in any amount up to the full amount of eligible costs.

(3) The committee shall deny an application when the community college or other eligible institution receiving the application determines that funding for an applicant's participation in an eligible program is available from any other public or private funding source.

Source: Laws 2015, LB519, § 31; Laws 2021, LB528, § 60.

85-2006 Community college gap assistance; eligible costs.

The eligible costs for which the committee may award community college gap assistance under the community college gap assistance program include, but are not limited to:

(1) Tuition;

(2) Direct training costs;

(3) Required books and equipment; and

(4) Fees, including, but not limited to, fees for industry testing services and background check services.

Source: Laws 2015, LB519, § 32.

85-2007 Applicant; initial assessment.

An applicant for community college gap assistance under the community college gap assistance program shall complete an initial assessment administered by the community college or other eligible institution receiving the application to determine the applicant's readiness to complete an eligible program. The initial assessment shall include any assessments required by the eligible program.

Source: Laws 2015, LB519, § 33; Laws 2021, LB528, § 61.

85-2008 Community college gap assistance; recipient; duties; termination of assistance; when.

(1) A recipient of community college gap assistance under the community college gap assistance program shall:

(a) Maintain regular contact with faculty of the eligible program to document the applicant's progress in the program;

(b) Sign any necessary releases to provide relevant information to case managers or faculty of the community college or other eligible institution, if applicable;

(c) Discuss with faculty of the eligible program any issues that may affect the recipient's ability to complete the eligible program and obtain and maintain employment;

(d) Attend all required courses regularly; and

(e) Meet with faculty of the eligible program to develop a job-search plan.

(2) A community college or other eligible institution may terminate community college gap assistance under the community college gap assistance program for a recipient who fails to meet the requirements of this section.

Source: Laws 2015, LB519, § 34; Laws 2021, LB528, § 62.

85-2009 Community College Gap Assistance Program Fund; created; use; investment.

(1) The Community College Gap Assistance Program Fund is created. The fund shall be under the direction of the committee and shall be administered by the Coordinating Commission for Postsecondary Education. The fund shall consist of money received pursuant to section 79-3501, any other money received by the state in the form of grants or gifts from nonfederal sources, such other amounts as may be transferred or otherwise accrue to the fund, and any investment income earned on the fund. The fund shall be used to carry out the community college gap assistance program pursuant to the Community College Gap Assistance Program 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. Beginning October 1, 2024, any investment earnings from investment of money in the fund shall be credited to the General Fund.

(2) In addition to community college gap assistance awarded to students, money in the Community College Gap Assistance Program Fund may also be used by the committee:

(a) To establish application and funding procedures; and

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(b) To assist other eligible institutions as specified in contracts entered into pursuant to subsection (4) of section 85-2010 in defraying the costs of direct staff support services, including, but not limited to, marketing, outreach, applications, interviews, and assessments related to the community college gap assistance program.

(3) Each community college may use up to ten percent of any money received from the fund to defray the costs of direct staff support services, including, but not limited to, marketing, outreach, applications, interviews, and assessments.

Source: Laws 2015, LB519, § 35; Laws 2021, LB528, § 63; Laws 2023, LB705, § 121; Laws 2024, First Spec. Sess., LB3, § 47.
Effective date August 21, 2024.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

85-2010 Community college gap assistance program; committee; duties; meetings.

(1) The committee shall develop a common applicant tracking system for the community college gap assistance program that shall be implemented consistently by each participating community college and other eligible institution.

(2) The committee shall coordinate statewide oversight, evaluation, and reporting efforts for the community college gap assistance program.

(3) The committee shall meet at least quarterly to evaluate and monitor the performance of the community college gap assistance program to determine if performance measures are being met and shall take necessary steps to correct any deficiencies. Performance measures include, but are not limited to, eligible program completion rates, job attainment rates, and continuing education rates.

(4) With committee approval, the Coordinating Commission for Postsecondary Education may contract with an accredited college to be an other eligible institution and administer the community college gap assistance program for applicants enrolled in or intending to enroll in an eligible program offered by such college.

Source: Laws 2015, LB519, § 36; Laws 2021, LB528, § 64.

85-2011 Rules and regulations.

The Coordinating Commission for Postsecondary Education may adopt and promulgate rules and regulations to carry out the Community College Gap Assistance Program Act.

Source: Laws 2015, LB519, § 37.

ARTICLE 21

ACCESS COLLEGE EARLY SCHOLARSHIP PROGRAM ACT

Section

85-2101. Act, how cited.

85-2102. Terms, defined.

85-2103. Access College Early Scholarship Program established; purpose.

85-2104. Student; eligibility; applications; prioritized.

85-2105. Applicant; application; contents; commission; powers and duties; educational institution receiving payment; report required.

Section	
85-2106.	Report.
85-2107.	Review of adverse decision.
85-2108.	Rules and regulations.

85-2101 Act, how cited.

Sections 85-2101 to 85-2108 shall be known and may be cited as the Access College Early Scholarship Program Act.

Source: Laws 2007, LB192, § 2.

85-2102 Terms, defined.

For purposes of the Access College Early Scholarship Program Act:

(1) Career program of study means a sequence of at least three high school courses that (a) may include dual-credit or college credit courses, (b) are part of a career pathway program of study aligned with (i) the rules and regulations of the State Department of Education adopted and promulgated pursuant to section 79-777, (ii) a professional certification requirement, or (iii) the requirements for a postsecondary certification or diploma, and (c) have at least one local member of business or industry partnering as an official advisor to the program;

(2) Commission means the Coordinating Commission for Postsecondary Education;

(3) Extreme hardship means any event, including fire, illness, accident, or job loss, that has recently resulted in a significant financial difficulty for a student or the student's parent or legal guardian;

(4) Postsecondary educational institution means a two-year or four-year college or university which is a member institution of an accrediting body recognized by the United States Department of Education;

(5) Qualified postsecondary educational institution means a postsecondary educational institution located in Nebraska which has agreed, on a form developed and provided by the commission, to comply with the requirements of the act; and

(6) Student means a student attending a Nebraska high school with a reasonable expectation that such student will meet the residency requirements of section 85-502 upon graduation from a Nebraska high school.

Source: Laws 2007, LB192, § 3; Laws 2015, LB525, § 33.

85-2103 Access College Early Scholarship Program established; purpose.

The Access College Early Scholarship Program is established. The purpose of the program is to provide financial assistance to low-income students for courses to be taken for credit from a qualified postsecondary educational institution while still enrolled in high school. The program shall be administered by the commission.

Source: Laws 2007, LB192, § 4.

85-2104 Student; eligibility; applications; prioritized.

Applications for the Access College Early Scholarship Program shall be prioritized for students qualifying pursuant to subdivision (1) or (2) of this section, and applications for students qualifying only pursuant to subdivision

(3) of this section shall only be considered if funds are available after fulfilling the applications for students qualifying pursuant to subdivision (1) or (2) of this section. Priority dates shall be determined by the commission on a term basis. The Commissioner of Education may verify eligibility for a student described in subdivision (1)(c) of this section when requested by the commission. A student who is applying to take one or more courses for credit from a qualified postsecondary educational institution is eligible for the Access College Early Scholarship Program if:

(1) Such student or the student's parent or legal guardian is eligible to receive:

- (a) Supplemental Security Income;
- (b) Supplemental Nutrition Assistance Program benefits;
- (c) Free or reduced-price lunches under United States Department of Agriculture child nutrition programs;
- (d) Aid to families with dependent children; or
- (e) Assistance under the Special Supplemental Nutrition Program for Women, Infants, and Children;

(2) The student or the student's parent or legal guardian has experienced an extreme hardship; or

(3) Such student is requesting assistance pursuant to the program to cover the cost of tuition and fees for a course that is part of a career plan of study, up to two hundred fifty dollars per term, and the student's family has an annual household income at or below two hundred percent of the federal poverty level.

Source: Laws 2007, LB192, § 5; Laws 2009, LB288, § 45; Laws 2015, LB525, § 34; Laws 2021, LB528, § 65.

85-2105 Applicant; application; contents; commission; powers and duties; educational institution receiving payment; report required.

(1) An applicant for the Access College Early Scholarship Program shall complete an application form developed and provided by the commission and shall submit the form to his or her guidance counselor or other official designated by the school. Such application shall include, but not be limited to, the applicant's high school, social security number, date of birth, grade point average, grade level, qualified postsecondary educational institution, and information necessary to determine the student's eligibility. The guidance counselor or other official designated by the school shall verify the student's eligibility under the Access College Early Scholarship Program Act and shall forward the application to the commission for review within fifteen days following receipt of the form from the student. Notification of tuition and mandatory fees to be accrued by the student shall be provided to the commission by the student, high school, or qualified postsecondary educational institution as determined by the commission.

(2) The commission shall review the application and verify the student's eligibility under the act. The commission shall notify the student and the student's guidance counselor or other official designated by the school of the verification of eligibility and the estimated award amount in writing within thirty days following receipt of the form from the student's guidance counselor or other official designated by the school. The scholarship award shall equal the lesser of tuition and mandatory fees accrued by the student after any discounts

applicable to such student from the qualified postsecondary educational institution or the tuition and mandatory fees that would have been accrued by the student for the same number of credit hours if the student were taking the course as a full-time, resident, undergraduate student from the University of Nebraska-Lincoln. The commission shall forward such amount directly to the qualified postsecondary educational institution as payment of such student's tuition and mandatory fees.

(3) The commission shall make such payments in the order the applications are received, except that the commission may limit the number of scholarships awarded in each term.

(4) The commission may limit the number of scholarships a student may receive.

(5) For any student receiving a scholarship pursuant to the act for tuition and mandatory fees, the qualified postsecondary educational institution receiving the payment shall report either the student's grade for the course or the student's failure to complete the course to the commission within thirty days after the end of the course or within one hundred eighty days after receipt of a payment pursuant to the act if the course for which the scholarship was awarded does not have a specified ending date. The commission shall keep the identity of students receiving scholarships confidential, except as necessary to comply with the requirements of the act.

Source: Laws 2007, LB192, § 6; Laws 2009, LB20, § 1; Laws 2011, LB637, § 33; Laws 2013, LB332, § 1.

85-2106 Report.

The commission shall prepare an annual report on scholarships awarded pursuant to the Access College Early Scholarship Program Act and shall submit the report electronically to the Clerk of the Legislature. The report shall include, but not be limited to, the number and amount of scholarships awarded, the postsecondary educational institutions attended by scholarship recipients, and information regarding the success of scholarship recipients in the courses for which the scholarships were awarded.

Source: Laws 2007, LB192, § 7; Laws 2009, LB20, § 2; Laws 2012, LB782, § 242.

85-2107 Review of adverse decision.

A student or the student's parent or legal guardian may request in writing a review of any adverse decision by requesting such review within twenty days following notice of the adverse decision, addressed to the executive director of the commission. The review shall be pursuant to the Administrative Procedure Act.

Source: Laws 2007, LB192, § 8.

Cross References

Administrative Procedure Act, see section 84-920.

85-2108 Rules and regulations.

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The commission may adopt and promulgate rules and regulations to carry out the Access College Early Scholarship Program Act.

Source: Laws 2007, LB192, § 9.

**ARTICLE 22
COMMUNITY COLLEGE AID ACT**

Section

- 85-2201. Repealed. Laws 2012, LB 946, § 26.
- 85-2202. Repealed. Laws 2012, LB 946, § 26.
- 85-2203. Repealed. Laws 2012, LB 946, § 26.
- 85-2204. Repealed. Laws 2012, LB 946, § 26.
- 85-2205. Repealed. Laws 2012, LB 946, § 26.
- 85-2206. Repealed. Laws 2012, LB 946, § 26.
- 85-2207. Repealed. Laws 2012, LB 946, § 26.
- 85-2208. Repealed. Laws 2012, LB 946, § 26.
- 85-2209. Repealed. Laws 2012, LB 946, § 26.
- 85-2210. Repealed. Laws 2012, LB 946, § 26.
- 85-2211. Repealed. Laws 2012, LB 946, § 26.
- 85-2212. Repealed. Laws 2012, LB 946, § 26.
- 85-2213. Repealed. Laws 2012, LB 946, § 26.
- 85-2214. Repealed. Laws 2008, LB 973, § 10.
- 85-2215. Repealed. Laws 2012, LB 946, § 26.
- 85-2216. Repealed. Laws 2012, LB 946, § 26.
- 85-2217. Repealed. Laws 2012, LB 946, § 26.
- 85-2218. Repealed. Laws 2012, LB 946, § 26.
- 85-2219. Repealed. Laws 2008, LB 973, § 10.
- 85-2220. Repealed. Laws 2012, LB 946, § 26.
- 85-2221. Repealed. Laws 2012, LB 946, § 26.
- 85-2222. Repealed. Laws 2012, LB 946, § 26.
- 85-2223. Repealed. Laws 2012, LB 946, § 26.
- 85-2224. Repealed. Laws 2012, LB 946, § 26.
- 85-2225. Repealed. Laws 2012, LB 946, § 26.
- 85-2226. Repealed. Laws 2008, LB 973, § 10.
- 85-2227. Repealed. Laws 2012, LB 946, § 26.
- 85-2228. Repealed. Laws 2012, LB 946, § 26.
- 85-2229. Repealed. Laws 2012, LB 946, § 26.
- 85-2230. Repealed. Laws 2012, LB 946, § 26.
- 85-2231. Act, how cited.
- 85-2232. Definitions.
- 85-2233. Legislative intent; Coordinating Commission for Postsecondary Education; duties; reduction of distribution; when.
- 85-2234. Allocation of aid.
- 85-2235. Community College Aid Fund; created; use; investment.
- 85-2236. Community college area; annual report.
- 85-2237. Rules and regulations.
- 85-2238. Property tax levy; authorized, when.

85-2201 Repealed. Laws 2012, LB 946, § 26.

85-2202 Repealed. Laws 2012, LB 946, § 26.

85-2203 Repealed. Laws 2012, LB 946, § 26.

85-2204 Repealed. Laws 2012, LB 946, § 26.

85-2205 Repealed. Laws 2012, LB 946, § 26.

85-2206 Repealed. Laws 2012, LB 946, § 26.

85-2207 Repealed. Laws 2012, LB 946, § 26.

85-2208 Repealed. Laws 2012, LB 946, § 26.

85-2209 Repealed. Laws 2012, LB 946, § 26.

85-2210 Repealed. Laws 2012, LB 946, § 26.

85-2211 Repealed. Laws 2012, LB 946, § 26.

85-2212 Repealed. Laws 2012, LB 946, § 26.

85-2213 Repealed. Laws 2012, LB 946, § 26.

85-2214 Repealed. Laws 2008, LB 973, § 10.

85-2215 Repealed. Laws 2012, LB 946, § 26.

85-2216 Repealed. Laws 2012, LB 946, § 26.

85-2217 Repealed. Laws 2012, LB 946, § 26.

85-2218 Repealed. Laws 2012, LB 946, § 26.

85-2219 Repealed. Laws 2008, LB 973, § 10.

85-2220 Repealed. Laws 2012, LB 946, § 26.

85-2221 Repealed. Laws 2012, LB 946, § 26.

85-2222 Repealed. Laws 2012, LB 946, § 26.

85-2223 Repealed. Laws 2012, LB 946, § 26.

85-2224 Repealed. Laws 2012, LB 946, § 26.

85-2225 Repealed. Laws 2012, LB 946, § 26.

85-2226 Repealed. Laws 2008, LB 973, § 10.

85-2227 Repealed. Laws 2012, LB 946, § 26.

85-2228 Repealed. Laws 2012, LB 946, § 26.

85-2229 Repealed. Laws 2012, LB 946, § 26.

85-2230 Repealed. Laws 2012, LB 946, § 26.

85-2231 Act, how cited.

Sections 85-2231 to 85-2238 shall be known and may be cited as the Community College Aid Act.

Source: Laws 2012, LB946, § 1; Laws 2023, LB243, § 22.

85-2232 Definitions.

For purposes of the Community College Aid Act, the definitions in section 85-1503 apply.

Source: Laws 2012, LB946, § 2.

85-2233 Legislative intent; Coordinating Commission for Postsecondary Education; duties; reduction of distribution; when.

(1)(a) The Legislature recognizes that education, as an investment in human resources, is fundamental to the quality of life and the economic prosperity of Nebraskans and that aid to the community colleges furthers these goals.

(b) It is the intent of the Legislature that such appropriations reflect the commitment of the Legislature to join with local governing bodies in a strong and continuing partnership to further advance the quality, responsiveness, access, and equity of Nebraska's community colleges and to foster high standards of performance and service so that every citizen, community, and business will have the opportunity to receive quality educational programs and services regardless of the size, wealth, or geographic location of the community college area or tribally controlled community college by which that citizen, community, or business is served.

(c) In order to promote quality postsecondary education and to avoid excessive and disproportionate taxation upon the taxable property of each community college area, the Legislature may appropriate each biennium from such funds as may be available an amount for aid and assistance to the community colleges. Such funds so appropriated by the Legislature shall be allocated, adjusted, and distributed to the community college boards of governors as provided in the Community College Aid Act.

(2) The Coordinating Commission for Postsecondary Education shall certify aid amounts attributable to the allocations pursuant to subdivisions (1) and (3) of section 85-2234 and report such amounts to the Department of Administrative Services. The commission shall certify such aid amounts on or before September 1 of the fiscal year for which aid is being certified and shall distribute the total of such appropriated and allocated funds to the boards in ten as nearly as possible equal monthly payments between the fifth and twentieth day of each month beginning in September of each year.

(3) Beginning July 1, 2013, the commission shall reduce the amount of the distribution to a board by the amount of funds used by the community college area to provide a program or capital construction project as defined in section 85-1402 which has not been approved or has been disapproved by the Coordinating Commission for Postsecondary Education pursuant to the Coordinating Commission for Postsecondary Education Act.

Source: Laws 2012, LB946, § 3; Laws 2013, LB211, § 6.

Cross References

Coordinating Commission for Postsecondary Education Act, see section 85-1401.

85-2234 Allocation of aid.

Aid appropriated pursuant to the Community College Aid Act for fiscal year 2013-14 and each fiscal year thereafter shall be allocated among community college areas and tribally controlled community colleges as follows:

(1) The initial \$87,870,147 appropriated pursuant to the act shall be allocated to community college areas based on the proportionate share of aid received by each community college area for fiscal year 2012-13. If the amount appropriated for such fiscal year exceeds \$87,870,147, the excess amount shall be allocated as provided in subdivisions (2) and (3) of this section. If the amount appropriated for such fiscal year is less than or equal to \$87,870,147, the

amount appropriated shall be allocated to community college areas based on the proportionate share of aid received by each community college area for fiscal year 2012-13;

(2) Of any amount remaining after the allocation of aid pursuant to subdivision (1) of this section, the next amount, up to but not to exceed \$500,000, shall be allocated as state aid pursuant to section 85-1539; and

(3) Any amount remaining after the allocations provided for in subdivisions (1) and (2) of this section shall be allocated among the community college areas on the following basis:

(a) Twenty-five percent of such amount shall be divided equally based on the number of community college areas designated pursuant to section 85-1504;

(b) Forty-five percent of such amount shall be divided based on each community college area's proportionate share of three-year average full-time equivalent student enrollment. A community college area's proportionate share of three-year average full-time equivalent student enrollment shall equal the sum of a community college area's full-time equivalent student enrollment total for the three fiscal years immediately preceding the fiscal year for which aid is being calculated divided by three, with such quotient divided by the quotient resulting from the sum of the full-time equivalent student enrollment total of all community college areas for the three fiscal years immediately preceding the fiscal year for which aid is being calculated divided by three;

(c) Thirty percent of such amount shall be divided based on each community college area's proportionate share of three-year average reimbursable educational units. A community college area's proportionate share of three-year average reimbursable educational units shall equal the sum of a community college area's reimbursable educational unit total for the three fiscal years immediately preceding the fiscal year for which aid is being calculated divided by three, with such quotient divided by the quotient resulting from the sum of the reimbursable educational unit total of all community college areas for the three fiscal years immediately preceding the fiscal year for which aid is being calculated divided by three; and

(d) Tribally controlled community college state aid amounts shall be allocated pursuant to subdivision (24) of section 85-1503 and subdivision (16) of section 85-1511.

Source: Laws 2012, LB946, § 4; Laws 2013, LB211, § 7; Laws 2015, LB100, § 2.

Note: The Revisor of Statutes, as authorized by section 49-705(2), has corrected a faulty internal reference to subdivision (24) of section 85-1503 to harmonize with former acts of the Legislature.

85-2235 Community College Aid Fund; created; use; investment.

The Community College Aid Fund is created. The fund shall be used to provide state aid to community college areas pursuant to the Community College Aid 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 2012, LB946, § 5.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

85-2236 Community college area; annual report.

Each community college area shall annually report such data as necessary to carry out the Community College Aid Act to the Coordinating Commission for Postsecondary Education.

Source: Laws 2012, LB946, § 6.

85-2237 Rules and regulations.

The Coordinating Commission for Postsecondary Education may adopt and promulgate rules and regulations to carry out the Community College Aid Act.

Source: Laws 2012, LB946, § 7.

85-2238 Property tax levy; authorized, when.

For fiscal year 2024-25 and each fiscal year thereafter, if the amount of aid provided to a community college area pursuant to the Community College Aid Act is less than the amount of aid provided to such community college area in the immediately preceding fiscal year or the amount of aid provided to such community college area in fiscal year 2022-23, whichever is greater, the community college area may, if approved by a majority vote of the community college board of governors, levy an amount under subdivision (2)(a) of section 85-1517 sufficient to generate revenue equal to the difference in aid from the immediately preceding fiscal year or fiscal year 2022-23, whichever is applicable. The property tax levy provided for in this section is in addition to the maximum allowable property tax levy described in subdivision (2)(b) of section 85-1517 and any property tax levied for funding accessibility barrier elimination project costs and abatement of environmental hazards as such terms are defined in section 79-10,110.

Source: Laws 2023, LB243, § 23.

ARTICLE 23

IN THE LINE OF DUTY DEPENDENT EDUCATION ACT

Section

- 85-2301. Act, how cited.
- 85-2302. Legislative findings, declarations, and intent.
- 85-2303. Terms, defined.
- 85-2304. In the Line of Duty Dependent Education Benefit; established; eligibility; waiver of tuition and fees; application; notice; determination; effect.
- 85-2305. Procedures, rules, and regulations.
- 85-2306. Qualification for benefit; how treated.

85-2301 Act, how cited.

Sections 85-2301 to 85-2306 shall be known and may be cited as the In the Line of Duty Dependent Education Act.

Source: Laws 2009, LB206, § 1.

85-2302 Legislative findings, declarations, and intent.

The Legislature finds and declares that:

(1) Nebraska's law enforcement officers and firefighters place their lives at risk in the line of duty to protect the citizens and property of this state;

(2) The services performed by Nebraska law enforcement officers and firefighters are necessary for the protection of the citizens and property of this state;

(3) Nebraska law enforcement officers and firefighters have lost or may lose their lives in the performance of their official duties; and

(4) Nebraska law enforcement officers and firefighters perform dangerous and hazardous acts in order to protect the citizens and property of this state.

It is the intent of the Legislature to recognize the ultimate sacrifice made by Nebraska law enforcement officers and firefighters who are killed in the line of duty on or after April 23, 2009, by providing a postsecondary educational benefit for their surviving children to attend state universities, state colleges, and community colleges located in Nebraska.

Source: Laws 2009, LB206, § 2.

85-2303 Terms, defined.

For purposes of the In the Line of Duty Dependent Education Act:

(1) Associate degree program means a degree program at a community college, state college, or state university which typically requires completion of an organized program of study of at least sixty semester credit hours or an equivalent that can be shown to accomplish the same goal. Associate degree program does not include a baccalaureate degree program;

(2) Baccalaureate degree program means a degree program at a community college, state college, or state university which typically requires completion of an organized program of study of at least one hundred twenty semester credit hours or an equivalent that can be shown to accomplish the same goal;

(3) Child means a resident or nonresident of Nebraska who is the child by birth or adoption of a Nebraska law enforcement officer killed in the line of duty or a Nebraska firefighter killed in the line of duty;

(4) Community college means a public postsecondary educational institution which is part of the community college system and includes all branches and campuses of such institution located within the State of Nebraska;

(5) Education benefit means the In the Line of Duty Dependent Education Benefit established under section 85-2304;

(6) Fatal injury means an event occurring in the line of duty which is a proximate cause of the death of a law enforcement officer or firefighter;

(7) Firefighter means a member of a paid or volunteer fire department in Nebraska, including a member of a rescue squad associated with a paid or volunteer fire department in Nebraska, and a member of an emergency medical services ambulance squad;

(8) Law enforcement officer means any person who is responsible for the prevention or detection of crime or the enforcement of the penal, traffic, or highway laws of the State of Nebraska or any political subdivision of the state for more than one hundred hours per year and who is authorized by law to make arrests;

(9) Line of duty means any action that a Nebraska law enforcement officer or firefighter is authorized or obligated by law, rule, or regulation to perform, related to or as a condition of employment or service;

(10) State college means a public postsecondary educational institution which is part of the Nebraska state college system and includes all branches and campuses of such institution located within the State of Nebraska;

(11) State university means a public postsecondary educational institution which is part of the University of Nebraska and includes all branches and campuses of such institution located within the State of Nebraska;

(12) Tuition and fees means the charges and cost of tuition and fees as set by the governing body of a state university, state college, or community college; and

(13) Volunteer fire department means a volunteer department as defined in section 35-1303 located in Nebraska which provides fire protection services within Nebraska.

Source: Laws 2009, LB206, § 3.

85-2304 In the Line of Duty Dependent Education Benefit; established; eligibility; waiver of tuition and fees; application; notice; determination; effect.

(1) The In the Line of Duty Dependent Education Benefit is established for children of law enforcement officers and firefighters killed in the line of duty. In order for a child to be eligible for the benefit, the law enforcement officer or firefighter must have incurred the fatal injury on or after April 23, 2009.

(2) Notwithstanding the provisions of this section, a death that occurs as the direct and proximate result of a preexisting physical condition, disease, or illness shall be excluded from eligibility under this section unless the aggravation of such condition, disease, or illness caused by being in the line of duty was a direct and proximate cause of death.

(3) Any child who is the child of a law enforcement officer killed in the line of duty as provided in subsection (1) of this section or of a firefighter killed in the line of duty as provided in such subsection shall be eligible for the education benefit if the child is twenty-five years of age or younger. An eligible child shall meet all admission requirements of the state university, state college, or community college to which he or she is applying.

(4) The education benefit shall be provided only for full-time undergraduate students who are pursuing studies leading to a degree from an associate degree program or a baccalaureate degree program. The eligible child may receive the education benefit for up to five years if he or she otherwise continues to be eligible for participation. All education benefits received under the In the Line of Duty Dependent Education Act shall cease when the eligible child reaches twenty-six years of age.

(5) A child becomes eligible for the education benefit after he or she has applied for federal financial aid grants and state scholarships and grants to cover tuition and fees. The child must provide a record of application for such financial aid to the state university, state college, or community college to which he or she is applying.

(6) The state university, state college, or community college shall waive tuition and fees remaining due after subtracting awarded federal financial aid grants and state scholarships and grants for an eligible child during the time the child is enrolled as a full-time student. To remain eligible, the child must comply with all requirements of the institution for continued attendance and award of an associate degree or a baccalaureate degree.

(7) An application for an education benefit shall include a certified copy of the eligible child’s birth certificate or applicable adoption record and verification of the death of the law enforcement officer or firefighter who was the child’s parent.

(8) Verification of the death of the law enforcement officer or firefighter shall be made by obtaining a certificate of eligibility from the following sources: (a) Certificates of eligibility for the children of law enforcement officers shall be obtained from the Superintendent of Law Enforcement and Public Safety; (b) certificates of eligibility for the children of firefighters, except as provided in subdivision (c) of this subsection, shall be obtained from the State Fire Marshal; and (c) certificates of eligibility for the children of members of emergency medical services ambulance squads that are not associated with a paid or volunteer fire department shall be obtained from the Department of Health and Human Services.

(9) Within forty-five days after receipt of a completed application, the state university, state college, or community college shall send written notice of the applicant’s eligibility or ineligibility for the education benefit. If the child is determined not to be eligible for the benefit, the notice shall include the reason or reasons for such determination and an indication that an appeal of the determination may be made pursuant to the Administrative Procedure Act.

(10) Upon a determination of eligibility for the child to obtain the education benefit, the state university, state college, or community college is prohibited from charging the child, the child’s surviving parent, or the child’s guardian any tuition or fees as long as the child remains eligible.

Source: Laws 2009, LB206, § 4.

Cross References

Administrative Procedure Act, see section 84-920.

85-2305 Procedures, rules, and regulations.

Each state university, state college, or community college shall adopt the procedures, rules, and regulations necessary to carry out the In the Line of Duty Dependent Education Act.

Source: Laws 2009, LB206, § 5.

85-2306 Qualification for benefit; how treated.

A finding that a student qualifies for an education benefit pursuant to the In the Line of Duty Dependent Education Act shall not be admissible as evidence for any other purpose.

Source: Laws 2009, LB206, § 6.

ARTICLE 24

POSTSECONDARY INSTITUTION ACT

Section

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Section

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- 85-2426. Guaranty Recovery Cash Fund; use; claim.
- 85-2427. Reference to Guaranty Recovery Cash Fund authorized.
- 85-2428. Commission; report; contents.

85-2401 Act, how cited.

Sections 85-2401 to 85-2428 shall be known and may be cited as the Postsecondary Institution Act.

Source: Laws 2011, LB637, § 1; Laws 2017, LB512, § 28.

85-2402 Purposes of act.

The purposes of the Postsecondary Institution Act are to ensure that minimum standards of operation are met by both private and out-of-state postsecondary institutions operating in Nebraska and to provide for consumer protection for students who enroll in higher education programs in this state.

Source: Laws 2011, LB637, § 2.

85-2403 Terms, defined.

For purposes of the Postsecondary Institution Act:

- (1) Authorization to operate means either an authorization to operate on a continuing basis or a recurrent authorization to operate;
- (2) Authorization to operate on a continuing basis means approval by the commission to operate a postsecondary institution in this state without a renewal requirement and once such authorization has been issued it continues indefinitely unless otherwise suspended, revoked, or terminated, including such authorizations previously deemed to be effective as of May 5, 2011, pursuant to the Postsecondary Institution Act for private and out-of-state public postsecond-

ary institutions that had been continuously offering four-year undergraduate programs with a physical presence in the state for at least twenty academic years and for Nebraska public postsecondary institutions;

(3) Branch facility means a facility in Nebraska (a) which is separate from a principal facility, (b) which offers a full program and full student services, (c) which is under the supervision of an onsite director or administrator, and (d)(i) the ownership, management, and control of which are the same as the principal facility, which principal facility is responsible for the delivery of all services, or (ii) at which education is offered by a franchisee of a franchisor authorized to operate as a postsecondary institution by the act;

(4) Commission means the Coordinating Commission for Postsecondary Education;

(5) Executive director means the executive director of the commission or his or her designee;

(6) For-profit postsecondary institution means any private postsecondary institution that is not exempt for federal tax purposes under section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01;

(7) Nebraska public postsecondary institution means any public postsecondary institution established, operated, and governed by this state or any of its political subdivisions;

(8) Out-of-state public postsecondary institution means any public postsecondary institution established, operated, and governed by another state or any of its political subdivisions;

(9)(a) Physical presence means:

(i) Offering a course for college credit or a degree program in this state that leads to an associate, baccalaureate, graduate, or professional degree, including:

(A) Establishing a physical location in this state where a student may receive synchronous or asynchronous instruction; or

(B) Offering a course or program that requires students to physically meet in one location for instructional purposes more than once during the course term; or

(ii) Establishing an administrative office in this state, including:

(A) Maintaining an administrative office in this state for purposes of enrolling students, providing information to students about the institution, or providing student support services;

(B) Providing office space to staff, whether instructional or noninstructional staff; or

(C) Establishing a mailing address in this state.

(b) Physical presence does not include:

(i) Course offerings in the nature of a short course or seminar if instruction for the short course or seminar takes no more than twenty classroom hours and the institution offers no more than two courses as defined by the commission in a calendar year;

(ii) Course offerings on a military installation solely for military personnel or civilians employed on such installation;

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(iii) An educational experience arranged for an individual student, such as a clinical, practicum, residency, or internship; or

(iv) Courses offered online or through the United States mail or similar delivery service which do not require the physical meeting of a student with instructional staff;

(10) Postsecondary institution means any institution with a physical presence in Nebraska that provides postsecondary education and is exempt from the Private Postsecondary Career School Act;

(11) Principal facility means the primary physical presence in Nebraska of a postsecondary institution;

(12) Private postsecondary institution means any Nebraska or out-of-state nonpublic postsecondary institution including any for-profit postsecondary institution or nonprofit postsecondary institution; and

(13) Recurrent authorization to operate means approval by the commission to operate a postsecondary institution in this state until a renewal of such authorization is required.

Source: Laws 2011, LB637, § 3; Laws 2012, LB1104, § 13; Laws 2013, LB331, § 3; Laws 2017, LB512, § 29.

Cross References

Private Postsecondary Career School Act, see section 85-1601.

85-2404 Act; administration; commission; powers.

The commission shall administer the Postsecondary Institution Act. To fulfill the purposes of the act, the commission may request from any department, division, board, bureau, commission, or other agency of this state, and such entity shall provide, such information as the commission deems necessary to exercise its powers and perform its duties under the act.

Source: Laws 2011, LB637, § 4.

85-2405 Commission; powers and duties.

The commission has the following powers and duties:

(1) To establish levels for recurrent authorizations to operate based on institutional offerings;

(2) To receive, investigate as it may deem necessary, and act upon applications for a recurrent authorization to operate and applications to renew a recurrent authorization to operate;

(3) To establish reporting requirements by campus location either through the federal Integrated Postsecondary Education Data System, 20 U.S.C. 1094(a)(17), as such section existed on January 1, 2011, and 34 C.F.R. 668.14(b)(19), as such regulation existed on January 1, 2011, or directly to the commission for any postsecondary institution which has an authorization to operate;

(4) To maintain a list of postsecondary institutions which have authorization to operate, which list shall be made available to the public;

(5) After consultation with the State Department of Education regarding the potential impact of such agreement and any modifications thereto on Nebraska students who may participate in distance education offered by out-of-state

private postsecondary career schools, to enter into interstate reciprocity agreements for the provision of postsecondary distance education across state boundaries;

(6) To administer interstate reciprocity agreements entered into pursuant to subdivision (5) of this section and to approve or disapprove, consistent with such agreements, participation in such agreements by postsecondary institutions that have their principal place of business in Nebraska and that choose to participate in such agreements;

(7) To establish a notification process when a postsecondary institution which has an authorization to operate changes its address or adds instructional sites within this state;

(8) To conduct site visits of postsecondary institutions to carry out the Postsecondary Institution Act;

(9) To establish fees for applications for a recurrent authorization to operate, applications to renew or modify a recurrent authorization to operate, and applications to participate or continue participation in an interstate postsecondary distance education reciprocity agreement, which fees shall be not more than the cost of reviewing and evaluating the applications;

(10) To receive, evaluate, approve, and pay claims pursuant to section 85-2426, assess for-profit postsecondary institutions pursuant to section 85-2423, and administer the Guaranty Recovery Cash Fund;

(11) To investigate any violations of the act by a postsecondary institution; and

(12) To adopt and promulgate rules, regulations, and procedures to administer the act and the Guaranty Recovery Cash Fund.

Source: Laws 2011, LB637, § 5; Laws 2012, LB1104, § 14; Laws 2013, LB331, § 4; Laws 2014, LB967, § 27; Laws 2017, LB512, § 30.

85-2406 Rules and regulations; minimum standards; established.

The commission shall adopt and promulgate rules and regulations to establish minimum standards according to which a postsecondary institution shall have a recurrent authorization to operate within the state, and upon failure to operate according to such standards, the postsecondary institution shall be subject to the suspension or revocation of the authorization to operate. An institution shall demonstrate that it can be maintained and operated in accordance with such standards. The standards shall include, but not be limited to:

(1) The financial soundness of the institution and its capability to fulfill its proposed commitments and sustain its operations;

(2) The quality and adequacy of teaching faculty, library services, and support services;

(3) The quality of the programs offered, including courses, programs of instruction, degrees, any necessary clinical placements, and the institution's ability to generate and sustain enrollment;

(4) The specific locations where programs will be offered or planned locations and a demonstration that facilities are adequate at the locations for the programs to be offered;

(5) Assurances regarding transfer of credits earned in the program to the main campus of such institution and clear and accurate representations about

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the transferability of credits to other institutions located in Nebraska and elsewhere;

(6) Whether such institution and, when appropriate, the program, are fully accredited, or seeking accreditation, by an accrediting body recognized by the United States Department of Education;

(7) The institution's policies and procedures related to students, including, but not limited to, recruiting and admissions practices;

(8) The tuition refund policy for an institution that does not participate in federal financial aid programs described in Title IV of the federal Higher Education Act of 1965, 20 U.S.C. 1001 et seq., as such act existed on January 1, 2011; and

(9) Any other standards deemed necessary by the commission.

Source: Laws 2011, LB637, § 6; Laws 2012, LB1104, § 15.

85-2407 Act; exemptions.

The following are exempt from the Postsecondary Institution Act:

(1) Any institution or organization which offers education or instruction and which is licensed and regulated solely by an agency of the federal government with respect to curriculum and qualifications of instructional staff; or

(2) Any private postsecondary career school as defined in the Private Postsecondary Career School Act, except for purposes of interstate reciprocity agreements for the provision of postsecondary distance education across state boundaries entered into and administered pursuant to subdivisions (5) and (6) of section 85-2405.

Source: Laws 2011, LB637, § 7; Laws 2014, LB967, § 28.

Cross References

Private Postsecondary Career School Act, see section 85-1601.

85-2408 Postsecondary institution; authorization to operate required.

Except as provided in section 85-2407, no postsecondary institution shall operate in the State of Nebraska by establishing a physical presence in this state until it has received an authorization to operate by the commission.

Source: Laws 2011, LB637, § 8; Laws 2012, LB1104, § 16.

85-2409 Postsecondary institution; charge for tuition or fees; loans; prohibited acts.

No postsecondary institution with an authorization to operate under the Postsecondary Institution Act shall charge tuition or fees for more than one academic term or require a student to sign loan documents for more than one academic year.

Source: Laws 2011, LB637, § 9; Laws 2012, LB1104, § 17.

85-2410 Repealed. Laws 2012, LB 1104, § 26.

85-2411 Repealed. Laws 2012, LB 1104, § 26.

85-2412 Application; review; grant of authorization; terms and conditions; term; renewal; modifications to existing recurrent authorization; application; new campus; public hearing.

(1) Except as otherwise provided in this section, after review of an initial application for a recurrent authorization to operate, including any further information submitted by the applicant as required by the commission and any investigation of the applicant as the commission may deem necessary or appropriate, the commission shall grant or deny the application for an initial recurrent authorization to operate. A grant of an initial recurrent authorization to operate may be on such terms and conditions as the commission may specify. Such authorization shall be for a five-year period unless the commission determines that a shorter period of time is appropriate based on the standards established pursuant to section 85-2406.

(2) After review of an application to renew a recurrent authorization to operate which shall include any further information submitted by the applicant as required by the commission and any investigation of the applicant as the commission may deem necessary or appropriate, the commission shall grant or deny the application. Renewal of a recurrent authorization to operate may be on such terms and conditions as the commission may specify. Such authorization shall be for a five-year period unless the commission determines that a shorter renewal period is appropriate based on the standards established pursuant to section 85-2406.

(3) If an institution has, for at least twenty academic years under the same ownership, continuously offered one or more graduate or four-year undergraduate programs with a physical presence in Nebraska in compliance with state and federal law, the institution may request authorization to operate on a continuing basis. After review of the request which shall include any further information submitted by the applicant as required by the commission and any investigation of the institution as the commission may deem necessary or appropriate, the commission shall grant authorization to operate on a continuing basis unless the commission determines that an additional recurrent authorization to operate is appropriate based on the level of compliance with the standards established pursuant to section 85-2406.

(4) Except as otherwise provided in this section, modifications, as defined by the commission in rules and regulations, to an existing recurrent authorization to operate, but not to an authorization to operate on a continuing basis, shall require an application to the commission. After review of the application, including any further information submitted by the applicant as required by the commission and any investigation of the applicant as the commission may deem necessary or appropriate, the commission shall grant or deny the application. Approval of the application may be on such terms and conditions as the commission may specify. Such recurrent authorization to operate shall replace the existing recurrent authorization to operate and shall be for a five-year period unless the commission determines that a shorter period of time is appropriate based on the standards established pursuant to section 85-2406.

(5) If an application for an initial recurrent authorization to operate or a modification to an existing recurrent authorization to operate includes a request to establish a new campus in this state, as defined by the commission in rules and regulations, the commission shall hold a public hearing. The hearing shall be scheduled following a completed review of the application for a

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recurrent authorization to operate or the modification of a recurrent authorization to operate, including any further information submitted by the applicant as required by the commission and any investigation of the applicant as the commission may deem necessary or appropriate, and shall be conducted according to the Administrative Procedure Act. After the public hearing, the commission shall grant or deny the application. A grant of a recurrent authorization to operate or the modification of a recurrent authorization to operate may be on such terms and conditions as the commission may specify. Such authorization or modification shall be for a five-year period unless the commission determines that a shorter period of time is appropriate based on the standards established pursuant to section 85-2406.

Source: Laws 2011, LB637, § 12; Laws 2012, LB1104, § 18.

Cross References

Administrative Procedure Act, see section 84-920.

85-2413 Recurrent authorization to operate; form; contents.

A recurrent authorization to operate shall be in a form approved by the commission and shall state in a clear and conspicuous manner at least the following information:

- (1) The date of issuance, effective date, and term of the authorization to operate;
- (2) The full and correct name and address of the institution authorized to operate;
- (3) The authority for authorization to operate and the conditions thereof; and
- (4) Any limitation of authorization to operate as deemed necessary by the commission.

Source: Laws 2011, LB637, § 13; Laws 2012, LB1104, § 19.

85-2414 Suspension or revocation of recurrent authorization to operate; procedure; hearing; commission; powers.

Any postsecondary institution with a recurrent authorization to operate which ceases to meet any of the requirements of the Postsecondary Institution Act, any rules or regulations adopted and promulgated under the act, or any terms or conditions specified by the commission for authorization to operate under the act shall be notified in writing of any such specific deficiency by certified mail. A hearing shall be scheduled requiring the institution to show cause why the authorization to operate should not be suspended or revoked. The hearing shall be held according to the Administrative Procedure Act. After the hearing, if the commission determines that any requirements, rules or regulations, or terms and conditions have been violated, the commission may suspend or revoke the recurrent authorization to operate or may require action as a condition of continued authorization.

Source: Laws 2011, LB637, § 14; Laws 2012, LB1104, § 20.

Cross References

Administrative Procedure Act, see section 84-920.

85-2415 Recurrent authorization to operate or authorization to operate on a continuing basis; nontransferable; change in ownership; application for new recurrent authorization; failure to apply; effect.

The recurrent authorization to operate or authorization to operate on a continuing basis shall be issued to the owner or governing body of the postsecondary institution and shall be nontransferable. If there is a change in ownership, as defined by the commission in rules and regulations, the new owner or governing body shall, within thirty days after the change of ownership, apply for a new recurrent authorization to operate under the Postsecondary Institution Act, and if the institution fails to apply within such time period, the original authorization to operate shall terminate. An application for a new recurrent authorization to operate may be deemed an application for renewal of the institution's original authorization, except that such renewal shall be given in the form of a recurrent authorization to operate even if the original authorization was an authorization to operate on a continuing basis. Verification that all student records are transferred intact and in good condition to the new owner shall accompany the application.

Source: Laws 2011, LB637, § 15; Laws 2012, LB1104, § 21.

85-2416 Recurrent authorization to operate; renewal or request to operate on continuing basis.

At least ninety days prior to the expiration of its recurrent authorization to operate, a postsecondary institution shall complete and file with the commission an application form for renewal of its recurrent authorization to operate or a request for an authorization to operate on a continuing basis. Financial stability information shall accompany the application.

Source: Laws 2011, LB637, § 16; Laws 2012, LB1104, § 22.

85-2417 Commission decision; aggrieved party; right to hearing and review; procedure; notice; judicial review.

(1) Any institution denied a recurrent authorization to operate, a renewal of a recurrent authorization to operate, or an authorization to operate on a continuing basis by the commission shall have the right to a hearing and a review of such decision by the commission. If upon written notification of a denial the aggrieved party desires a hearing and review, such party shall notify the commission in writing within ten business days after receipt of notice by the commission. If the aggrieved party does not notify the commission pursuant to this section, the action shall be deemed final. Upon receipt of such notice from the aggrieved party, the commission shall fix the time and place for a hearing and shall notify the aggrieved party of such by certified mail. The hearing shall be conducted according to the Administrative Procedure Act.

(2) A decision of the commission following such hearing shall be deemed final subject to the right of judicial review provided in the Administrative Procedure Act. All matters presented at any such hearing shall be acted upon promptly by the commission, and the commission shall notify all parties in writing of its decision, which shall include a statement of findings and conclusions upon all material issues of fact, law, or discretion presented at the hearing and the appropriate rule, regulation, order, sanction, relief, or denial thereof.

Source: Laws 2011, LB637, § 17; Laws 2012, LB1104, § 23.

Cross References

Administrative Procedure Act, see section 84-920.

85-2418 Complaint authorized; commission; hearing; notice; cease and desist order; additional actions authorized.

(1) Any person claiming damage or loss as a result of any act or practice by a postsecondary institution which is a violation of the Postsecondary Institution Act, of the rules and regulations adopted and promulgated under the act, or of standards established pursuant to section 85-2406 may file with the commission a complaint against such institution. The complaint shall set forth the alleged violation and shall contain such other information as may be required by the commission. A complaint may also be filed with the commission by the executive director or the Attorney General.

(2) If efforts by the commission to resolve the complaint are not successful and if the commission deems it appropriate, the commission may hold a hearing on such complaint after ten days' written notice by certified mail, return receipt requested, to such institution, giving notice of a time and place for the hearing on such complaint. Such hearing shall be conducted in accordance with the Administrative Procedure Act. If, upon all evidence at the hearing, the commission finds that a postsecondary institution has engaged in or is engaging in any act or practice which violates the Postsecondary Institution Act, the rules and regulations adopted and promulgated under the act, or the standards established pursuant to section 85-2406, the commission shall issue and cause to be served upon such institution an order requiring such institution to cease and desist from such act or practice. The commission may also, as appropriate, based on its own investigation or the evidence adduced at such hearing or both, commence an action:

- (a) To revoke an institution's recurrent authorization to operate; or
- (b) To refer the complaint and all related evidence to the Attorney General.

Source: Laws 2011, LB637, § 18; Laws 2012, LB1104, § 24.

Cross References

Administrative Procedure Act, see section 84-920.

85-2419 Final commission action; appeal.

Any person aggrieved or adversely affected by any final commission action may appeal such action. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 2011, LB637, § 19.

Cross References

Administrative Procedure Act, see section 84-920.

85-2420 Enforcement of act; Attorney General or county attorney; powers.

The Attorney General or the county attorney of the county in which a postsecondary institution is located, at the request of the commission or on his or her own accord, may bring any appropriate action or proceeding in any court of competent jurisdiction to enforce the Postsecondary Institution Act.

Source: Laws 2011, LB637, § 20.

85-2421 Violations of act; commission; petition for injunction; additional remedies.

If it appears to the commission that any entity is or has been violating the Postsecondary Institution Act or any of the rules, regulations, or orders of the commission, the commission may file a petition for injunction in the name of the commission in any court of competent jurisdiction in this state against such entity for the purpose of enjoining such violation or for an order directing compliance with the act and any rules, regulations, and orders. The commission shall not be required to allege or prove that there is no adequate remedy at law. The right of injunction provided in this section shall be in addition to any other legal remedy which the commission may possess and shall be in addition to any right of criminal prosecution provided by law. The commission shall not obtain a temporary restraining order without notice to the entity affected. The pendency of commission action with respect to alleged violations shall not operate as a bar to an action for injunctive relief pursuant to this section.

Source: Laws 2011, LB637, § 21.

85-2422 Guaranty Recovery Cash Fund; established; use; investment.

The Guaranty Recovery Cash Fund is hereby established. The fund shall receive assessments imposed by the commission pursuant to section 85-2423 and shall be used by the commission to pay claims authorized pursuant to section 85-2426. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Any interest earned on the money in the fund shall accrue to the fund.

Source: Laws 2017, LB512, § 31.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

85-2423 Commission; assess for-profit postsecondary institution; failure to comply; effect.

(1) The commission shall annually assess each for-profit postsecondary institution one-tenth of one percent of the prior school year's gross tuition revenue until the Guaranty Recovery Cash Fund reaches the minimum fund level. The fund shall be maintained at a minimum fund level of two hundred fifty thousand dollars and a maximum fund level of five hundred thousand dollars. At any time when the fund drops below the minimum fund level, the commission may resume the assessment. Funds in excess of the maximum fund level shall be used as directed by the commission to provide grants or scholarships for students attending for-profit postsecondary institutions in Nebraska.

(2) The commission shall require documentation from each for-profit postsecondary institution to verify the tuition revenue collected by the institution and to determine the amount of the assessment under this section.

(3) Any for-profit postsecondary institution applying for an initial recurrent authorization to operate shall not be assessed under this section for the first year of operation but shall be assessed each year thereafter for four years or until the fund reaches the minimum fund level, whichever occurs last, and shall maintain the surety bond or other security required by section 85-2424.

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(4) If a for-profit postsecondary institution fails to comply with this section, its authorization to operate shall be subject to revocation.

(5) The commission shall remit all funds collected pursuant to this section to the State Treasurer for credit to the Guaranty Recovery Cash Fund.

Source: Laws 2017, LB512, § 32.

85-2424 Bond or other security agreement.

Until the Guaranty Recovery Cash Fund initially reaches the minimum fund level prescribed in section 85-2423, when an application is made for an initial recurrent authorization to operate, the commission may require any for-profit postsecondary institution making such application to file with the commission a good and sufficient surety bond or other security agreement in a penal amount deemed satisfactory by the commission. Such bond or other security shall cover both principal and branch facilities. The bond or agreement shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in the state. The bond or agreement shall be conditioned to provide indemnification to any student or enrollee or his or her parent or guardian determined to have suffered loss or damage by the termination of operations by the for-profit postsecondary institution. The surety shall pay any final judgment rendered by any court of this state having jurisdiction upon receipt of written notification of the judgment. Regardless of the number of years that such bond or agreement is in force, the aggregate liability of the surety thereon shall in no event exceed the penal sum of the bond or agreement. The bond or agreement may be continuous.

Source: Laws 2017, LB512, § 33.

85-2425 Release of bond or other security agreement.

(1) Until the Guaranty Recovery Cash Fund initially reaches the minimum fund level prescribed in section 85-2423, the bond or other security agreement of an institution provided for in section 85-2424 shall cover the period of the recurrent authorization to operate except when a surety is released as provided in this section.

(2) A bond or other security agreement filed under section 85-2424 may be released after such surety serves written notice on the commission thirty days prior to the release. Such release shall not discharge or otherwise affect any claim previously or subsequently filed by a student or enrollee or his or her parent or guardian provided for in section 85-2426 for the termination of operations by the for-profit postsecondary institution during the term for which tuition has been paid while the bond or agreement was in force.

(3) During the term of the bond or agreement and upon forfeiture of the bond or agreement, the commission retains a property interest in the surety's guarantee of payment under the bond or agreement which is not affected by the bankruptcy, insolvency, or other financial incapacity of the operator or principal on the bond or agreement.

Source: Laws 2017, LB512, § 34.

85-2426 Guaranty Recovery Cash Fund; use; claim.

(1) The money in the Guaranty Recovery Cash Fund shall be used in the following order of priority:

(a) To reimburse any student injured by the termination of operations by a for-profit postsecondary institution on or after September 1, 2017, for the cost of tuition and fees. A student injured by the termination of operations by a for-profit postsecondary institution means (i) a student who has paid tuition and fees to the institution for which classes were offered but not finished due to termination of operations, (ii) a student who has paid tuition and fees to the institution for which classes were not offered and no refunds were made, and (iii) a student who ceased to be enrolled in classes at an institution while the institution was in operation and to whom a refund of unearned tuition and fees became due from the institution after the institution terminated operations and no refunds were made within the institution's required time period following the student's withdrawal from the institution;

(b) To reimburse any former student of a for-profit postsecondary institution that has terminated operations on or after September 1, 2017, for the cost of obtaining such student's student records;

(c) To reimburse the University of Nebraska for reasonable expenses directly associated with the storage and maintenance of academic records pursuant to sections 85-173 and 85-174 of those students adversely affected by termination of operations by a for-profit postsecondary institution; and

(d) To reimburse the Nebraska Opportunity Grant Fund for any funds distributed to a for-profit postsecondary institution for an academic term that was not completed by students receiving awards under the Nebraska Opportunity Grant Act due to the termination of operations by a for-profit postsecondary institution after September 1, 2017, to the extent such funds are not returned to the Nebraska Opportunity Grant Fund by the for-profit postsecondary institution.

(2) No claim shall be allowed unless the claim is submitted within one year after the termination of operations by the for-profit postsecondary institution and there are sufficient funds available in the Guaranty Recovery Cash Fund to pay the claim.

Source: Laws 2017, LB512, § 35.

Cross References

Nebraska Opportunity Grant Act, see section 85-1901.

85-2427 Reference to Guaranty Recovery Cash Fund authorized.

A for-profit postsecondary institution may include references to the Guaranty Recovery Cash Fund in advertising or information provided to students or prospective students. Any such reference shall clearly describe the protection and limitations prescribed in section 85-2426 and the relevant rules and regulations adopted and promulgated by the commission.

Source: Laws 2017, LB512, § 36.

85-2428 Commission; report; contents.

On or before November 1 of each year, the commission shall submit electronically a report to the Governor and the Legislature containing:

- (1) The number of claims made against the Guaranty Recovery Cash Fund;
- (2) The institutions against which the claims are made;

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(3) The number of claims that are approved and the associated payouts from the funds;

(4) The number of claims that are denied; and

(5) The amount of money in the Guaranty Recovery Cash Fund used to reimburse the Nebraska Opportunity Grant Fund.

Source: Laws 2017, LB512, § 37.

**ARTICLE 25
SOCIAL WORK STUDENTS**

Section

85-2501. Department of Health and Human Services; establish program to provide stipends; funding; application process.

85-2501 Department of Health and Human Services; establish program to provide stipends; funding; application process.

To facilitate improved quality in the work of employees providing child welfare services, the Department of Health and Human Services, in collaboration with accredited social work education programs at Nebraska's colleges and universities, shall establish a program to provide stipends for undergraduate and graduate social work students enrolled in such colleges and universities who are committed to working in the field of child welfare services. Funds available under Title IV-E of the federal Social Security Act, as such act existed on January 1, 2015, shall be used to pay for such stipends. The department and the governing boards of such colleges and universities shall develop an application process for eligible students and, based on the amount of funds available, shall determine the amount of such stipend to be awarded to each eligible student. The department and the governing boards may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2015, LB199, § 1.

**ARTICLE 26
FIRST RESPONDER RECRUITMENT AND RETENTION ACT**

Section

85-2601. Act, how cited.

85-2602. Terms, defined.

85-2603. Law enforcement officer; legal dependent; waiver of tuition; application; certificate of verification; notice of eligibility or ineligibility; contents.

85-2603.01. Professional firefighter; legal dependent; waiver of tuition; application; certificate of verification; notice of eligibility or ineligibility; contents.

85-2604. State university, state college, or community college; procedures, rules, and regulations.

85-2605. Legal dependent; agreement; terms; residency requirement.

85-2606. Department of Revenue; powers and duties.

85-2607. State university, state college, or community college; duties.

85-2608. Department of Revenue; duties.

85-2601 Act, how cited.

Sections 85-2601 to 85-2608 shall be known and may be cited as the First Responder Recruitment and Retention Act.

Source: Laws 2016, LB906, § 1; Laws 2023, LB727, § 107; Laws 2024, LB1317, § 97.

Operative date July 19, 2024.

85-2602 Terms, defined.

For purposes of the First Responder Recruitment and Retention Act:

(1) Associate degree program means a degree program at a community college, state college, or state university which typically requires completion of an organized program of study of at least sixty semester credit hours or an equivalent that can be shown to accomplish the same goal. Associate degree program does not include a baccalaureate degree program;

(2) Baccalaureate degree program means a degree program at a community college, state college, or state university which typically requires completion of an organized program of study of at least one hundred twenty semester credit hours or an equivalent that can be shown to accomplish the same goal;

(3) Community college means a public postsecondary educational institution which is part of the community college system and includes all branches and campuses of such institution located within the State of Nebraska;

(4) Law enforcement officer means any individual who is a law enforcement officer as defined in section 81-1401;

(5) Legal dependent has the same meaning as it is used for purposes of the Free Application for Federal Student Aid;

(6) Line of duty means any action that a law enforcement officer or professional firefighter is authorized or obligated by law, rule, or regulation to perform, related to or as a condition of employment or service;

(7) Professional firefighter means an individual who is a firefighter or firefighter-paramedic as a full-time career and who is a member of a paid fire department of any of the following entities within Nebraska:

(a) A municipality, including a municipality having a home rule charter or a municipal authority created pursuant to a home rule charter that has its own paid fire department;

(b) A rural or suburban fire protection district; or

(c) A fire service providing fire protection to state military installations;

(8) State college means a public postsecondary educational institution which is part of the Nebraska state college system and includes all branches and campuses of such institution located within the State of Nebraska;

(9) State university means a public postsecondary educational institution which is part of the University of Nebraska and includes all branches and campuses of such institution located within the State of Nebraska; and

(10) Tuition means the charges and cost of tuition as set by the governing body of a state university, state college, or community college.

Source: Laws 2016, LB906, § 2; Laws 2023, LB727, § 108; Laws 2024, LB1317, § 98.

Operative date July 19, 2024.

85-2603 Law enforcement officer; legal dependent; waiver of tuition; application; certificate of verification; notice of eligibility or ineligibility; contents.

(1)(a) A law enforcement officer shall be entitled to a waiver of one hundred percent of the resident tuition charges of any state university, state college, or community college if the officer:

(i) Possesses a law enforcement officer certificate under sections 81-1401 to 81-1414.19, unless the Nebraska Police Standards Advisory Council revoked or suspended such certificate or limited certificate under subdivision (6) of section 81-1403 and the Nebraska Commission on Law Enforcement and Criminal Justice has reviewed and approved such revocation or suspension;

(ii) Meets all admission requirements of the state university, state college, or community college;

(iii) Pursues studies leading to a degree that relates to a career in law enforcement from an associate degree program or a baccalaureate degree program;

(iv) Submits the certificate of verification required by subsection (4) of this section; and

(v) Files with the Department of Revenue documentation showing proof of employment as a law enforcement officer and proof of residence in Nebraska each year such officer or such officer's legal dependent applies for and receives the tuition waiver.

(b) The officer may receive the tuition waiver for up to five years if he or she otherwise continues to be eligible for participation.

(2)(a) Any legal dependent of a law enforcement officer who satisfies subsection (1) of this section shall be entitled to a tuition waiver of one hundred percent of the resident tuition charges of any state university, state college, or community college for an associate or baccalaureate degree program if the legal dependent:

(i) Executes an agreement in accordance with section 85-2605;

(ii) Has not previously earned a baccalaureate degree;

(iii) Completes and submits to the United States Department of Education a Free Application for Federal Student Aid;

(iv) Submits a document to the state university, state college, or community college confirming that the legal dependent has satisfied subdivision (2)(a)(iii) of this section. Such document shall be submitted in a form and manner as prescribed by the state university, state college, or community college; and

(v) Submits the certificate of verification required by subsection (4) of this section.

(b) The legal dependent may receive the tuition waiver for up to five years if the law enforcement officer and the legal dependent continue to be eligible for participation. The five years of tuition waiver eligibility starts once the legal dependent applies for and receives the tuition waiver for the first time and is available to such legal dependent for the next consecutive five years.

(3) The state university, state college, or community college shall waive one hundred percent of the officer's or the legal dependent's tuition remaining due after subtracting awarded federal financial aid grants and state scholarships and grants for an eligible law enforcement officer or legal dependent during the time the officer or legal dependent is enrolled. To remain eligible, the officer or legal dependent must comply with all requirements of the institution for continued attendance and award of an associate degree or a baccalaureate degree.

(4)(a) An application for the tuition waiver shall include a verification of the law enforcement officer's satisfaction of subsection (1) of this section. It shall

be the responsibility of the officer to obtain a certificate of verification from his or her superior attesting to such officer's satisfaction of subsection (1) of this section. The officer shall include the certificate of verification when the officer or the officer's legal dependent is applying to the state university, state college, or community college in order to obtain tuition waiver upon initial enrollment.

(b) The death of a law enforcement officer in the line of duty which occurs after submission of an application for a tuition waiver shall not disqualify such officer's otherwise eligible legal dependent from receiving the tuition waiver. In such case, in lieu of submitting the certificate of verification provided for in subdivision (4)(a) of this section, the legal dependent shall submit a certificate of verification from the officer's superior attesting that:

(i) At the time of such death, such officer satisfied subsection (1) of this section; and

(ii) Such officer died in the line of duty.

(5) Within forty-five days after receipt of a completed application, the state university, state college, or community college shall send written notice of the law enforcement officer's or legal dependent's eligibility or ineligibility for the tuition waiver. If the officer or legal dependent is determined not to be eligible for the tuition waiver, the notice shall include the reason or reasons for such determination.

Source: Laws 2016, LB906, § 3; Laws 2022, LB1273, § 2; Laws 2023, LB727, § 109; Laws 2024, LB1317, § 99.
Operative date July 19, 2024.

85-2603.01 Professional firefighter; legal dependent; waiver of tuition; application; certificate of verification; notice of eligibility or ineligibility; contents.

(1)(a) A professional firefighter shall be entitled to a waiver of one hundred percent of the resident tuition charges of any state university, state college, or community college if the professional firefighter:

(i) Maintains satisfactory performance with such firefighter's fire department;

(ii) Meets all admission requirements of the state university, state college, or community college;

(iii) Pursues studies leading to a degree that relates to a career in professional firefighting from an associate degree program or a baccalaureate degree program;

(iv) Submits the certificate of verification required by subsection (4) of this section; and

(v) Files with the Department of Revenue documentation showing proof of employment as a professional firefighter and proof of residence in Nebraska each year such professional firefighter or such professional firefighter's legal dependent applies for and receives the tuition waiver.

(b) The professional firefighter may receive the tuition waiver for up to five years if such professional firefighter otherwise continues to be eligible for participation.

(2)(a) Any legal dependent of a professional firefighter who maintains satisfactory performance with such professional firefighter's fire department shall be entitled to a tuition waiver of one hundred percent of the resident tuition

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charges of any state university, state college, or community college for an associate or baccalaureate degree program if the legal dependent:

- (i) Executes an agreement in accordance with section 85-2605;
- (ii) Has not previously earned a baccalaureate degree;
- (iii) Completes and submits to the United States Department of Education a Free Application for Federal Student Aid;
- (iv) Submits a document to the state university, state college, or community college confirming that the legal dependent has satisfied subdivision (2)(a)(iii) of this section. Such document shall be submitted in a form and manner as prescribed by the state university, state college, or community college; and
- (v) Submits the certificate of verification required by subsection (4) of this section.

(b) The legal dependent may receive the tuition waiver for up to five years if the professional firefighter and the legal dependent continue to be eligible for participation. The five years of tuition waiver eligibility starts once the legal dependent applies for and receives the tuition waiver for the first time and is available to such legal dependent for the next consecutive five years.

(3) The state university, state college, or community college shall waive one hundred percent of the professional firefighter's or the legal dependent's tuition remaining due after subtracting awarded federal financial aid grants and state scholarships and grants for an eligible professional firefighter or legal dependent during the time the professional firefighter or legal dependent is enrolled. To remain eligible, the professional firefighter or legal dependent must comply with all requirements of the institution for continued attendance and award of an associate degree or baccalaureate degree.

(4)(a) An application for the tuition waiver shall include a verification of the professional firefighter's satisfactory performance as a professional firefighter. It shall be the responsibility of the professional firefighter to obtain a certificate of verification from the fire chief of such professional firefighter's fire department attesting to such professional firefighter's satisfactory performance. The professional firefighter shall include the certificate of verification when the professional firefighter or the professional firefighter's legal dependent is applying to the state university, state college, or community college in order to obtain tuition waiver upon initial enrollment.

(b) The death of a professional firefighter in the line of duty which occurs after submission of an application for a tuition waiver shall not disqualify such firefighter's otherwise eligible legal dependent from receiving the tuition waiver. In such case, in lieu of submitting the certificate of verification provided for in subdivision (4)(a) of this section, the legal dependent shall submit a certificate of verification from the fire chief of such firefighter's fire department attesting that:

- (i) At the time of such death, such firefighter satisfied subsection (1) of this section; and
- (ii) Such firefighter died in the line of duty.

(5) Within forty-five days after receipt of a completed application, the state university, state college, or community college shall send written notice of the professional firefighter's or legal dependent's eligibility or ineligibility for the tuition waiver. If the professional firefighter or legal dependent is determined

not to be eligible for the tuition waiver, the notice shall include the reason or reasons for such determination.

Source: Laws 2023, LB727, § 110; Laws 2024, LB1317, § 100.
Operative date July 19, 2024.

85-2604 State university, state college, or community college; procedures, rules, and regulations.

Each state university, state college, or community college shall adopt and promulgate the procedures, rules, and regulations necessary to carry out the First Responder Recruitment and Retention Act.

Source: Laws 2016, LB906, § 4; Laws 2023, LB727, § 111.

85-2605 Legal dependent; agreement; terms; residency requirement.

(1) Each legal dependent who is a tuition waiver recipient under the First Responder Recruitment and Retention Act shall execute an agreement. Such agreement shall be exempt from the requirements of the State Procurement Act and shall include the following terms, as appropriate:

(a) The tuition waiver recipient agrees to reside within the State of Nebraska for a period of five years following the use of the tuition waiver;

(b) Each year during the five-year period following use of the tuition waiver the tuition waiver recipient agrees to file a tax return with the Department of Revenue to document that such recipient still resides in the State of Nebraska;

(c) If the tuition waiver recipient fails to annually file a tax return to prove residency in the State of Nebraska for the five-year period following the use of the tuition waiver or fails to remain a resident of Nebraska for the five-year period following the use of the tuition waiver, the tuition waiver recipient agrees to repay the community college, state college, or state university that such tuition waiver recipient attended the amount of tuition that was waived for such individual if the community college, state college, or state university requests such payment on the dates and in the amounts requested; and

(d) Any residency, filing, or payment obligation incurred by the tuition waiver recipient under the First Responder Recruitment and Retention Act is canceled in the event of the tuition waiver recipient's total and permanent disability or death.

(2) The five-year residency requirement begins to run after use of the first tuition waiver and:

(a) Completion of the five-year tuition waiver eligibility;

(b) Completion of an undergraduate degree at a state college or state university;

(c) Completion of a two-year degree at a community college and notification by the tuition waiver recipient to the Department of Revenue that such recipient does not intend to pursue an undergraduate degree or additional two-year degree using tuition waivers pursuant to the First Responder Recruitment and Retention Act; or

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(d) Notification by the tuition waiver recipient to the Department of Revenue that such recipient does not plan to use additional tuition waivers pursuant to the First Responder Recruitment and Retention Act.

Source: Laws 2023, LB727, § 112; Laws 2024, LB461, § 48; Laws 2024, LB1317, § 101.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB461, section 48, with LB1317, section 101, to reflect all amendments.

Note: Changes made by LB461 became effective July 19, 2024. Changes made by LB1317 became operative July 19, 2024.

Cross References

State Procurement Act, see section 73-801.

85-2606 Department of Revenue; powers and duties.

The Department of Revenue shall administer and enforce the First Responder Recruitment and Retention Act and may adopt and promulgate rules and regulations to carry out the First Responder Recruitment and Retention Act.

Source: Laws 2023, LB727, § 113.

85-2607 State university, state college, or community college; duties.

On or before December 31 of each year, each state university, state college, and community college shall provide to the Department of Revenue a list of the legal dependents who received a tuition waiver pursuant to the First Responder Recruitment and Retention Act during such year.

Source: Laws 2024, LB1317, § 102.
Operative date July 19, 2024.

85-2608 Department of Revenue; duties.

(1) The Department of Revenue shall maintain a record of the legal dependents who have received tuition waivers pursuant to the First Responder Recruitment and Retention Act.

(2) On or before each August 1, the department shall provide a report to each state university, state college, and community college indicating which tuition waiver recipients have failed to file a tax return with the department to document that such recipients still resided in the State of Nebraska during the preceding year.

Source: Laws 2024, LB1317, § 103.
Operative date July 19, 2024.

ARTICLE 27

**VETERAN AND ACTIVE DUTY SUPPORTIVE
POSTSECONDARY INSTITUTION ACT**

Section

85-2701. Act, how cited.

85-2702. Terms, defined.

85-2703. Veteran and Active Duty Supportive; designation; department; establish process; criteria; duties.

85-2704. Designation; period valid; renewal.

85-2705. Rules and regulations.

85-2706. Qualifying postsecondary institution; assist United States Defense POW/MIA Accounting Agency; grant; pilot program.

85-2701 Act, how cited.

Sections 85-2701 to 85-2706 shall be known and may be cited as the Veteran and Active Duty Supportive Postsecondary Institution Act.

Source: Laws 2019, LB486, § 1; Laws 2024, LB771, § 2.
Effective date March 19, 2024.

85-2702 Terms, defined.

For purposes of the Veteran and Active Duty Supportive Postsecondary Institution Act:

- (1) Department means the Department of Veterans' Affairs;
- (2) Director means the Director of Veterans' Affairs;
- (3) Military student means a student who serves on active duty in the armed forces of the United States other than active duty for training;
- (4) Postsecondary institution has the same meaning as in section 85-2403; and
- (5) Veteran student means a student who served on active duty in the armed forces of the United States other than active duty for training.

Source: Laws 2019, LB486, § 2.

85-2703 Veteran and Active Duty Supportive; designation; department; establish process; criteria; duties.

(1) The department shall establish a process for a postsecondary institution to apply to the director to be designated as Veteran and Active Duty Supportive.

(2) To be eligible to be designated as Veteran and Active Duty Supportive, a postsecondary institution shall meet at least five of the following criteria, with respect to its operations in this state:

- (a) The institution shall have personnel specifically trained and assigned to work with military students and veteran students;
- (b) The institution shall have a student organization that is dedicated to helping veterans, active duty military, and their families;
- (c) The institution shall give college credit for certain types of military training;
- (d) The institution shall have a military leave-of-absence policy;
- (e) The institution shall have counseling and advising services for military students and veteran students;
- (f) The institution shall have an accredited Reserve Officer Training Corps program;
- (g) The institution shall have clearly identifiable on its website a listing of services provided to military students and veteran students; and
- (h) The institution shall specially recognize military students and veteran students during graduation or in other ways which are intended to demonstrate the institution's respect for such students' service.

(3) The department shall maintain on its website a list of postsecondary institutions designated as Veteran and Active Duty Supportive pursuant to this section.

Source: Laws 2019, LB486, § 3.

85-2704 Designation; period valid; renewal.

A designation as Veteran and Active Duty Supportive under section 85-2703 shall be valid for a term of three years. A postsecondary institution may apply to the director to renew its designation through a process established by the department.

Source: Laws 2019, LB486, § 4.

85-2705 Rules and regulations.

The department may adopt and promulgate rules and regulations necessary to carry out the Veteran and Active Duty Supportive Postsecondary Institution Act.

Source: Laws 2019, LB486, § 5.

85-2706 Qualifying postsecondary institution; assist United States Defense POW/MIA Accounting Agency; grant; pilot program.

(1) The department shall implement and develop a pilot program to provide a grant to any qualifying postsecondary institution to assist the United States Defense POW/MIA Accounting Agency with accounting for United States servicemembers and civilians missing from designated past conflicts as such conflicts are determined by such federal agency. The department shall utilize available funding from the Veterans' Aid Income Fund to provide such grants and pay the costs of administering the pilot program.

(2) In order to be a qualifying postsecondary institution, the institution shall have (a) a partnership or service agreement with the United States Defense POW/MIA Accounting Agency to establish or expand undergraduate and graduate student internships to provide such assistance and (b) first received the Veteran and Active Duty Supportive designation under section 85-2703.

(3) On or before November 1, 2025, the director shall electronically submit a report to the Government, Military and Veterans Affairs Committee of the Legislature regarding the pilot program.

(4) It is the intent of the Legislature to appropriate two hundred thousand dollars from the Veterans' Aid Income Fund for FY2024-25 to the department for purposes of this section.

Source: Laws 2024, LB771, § 3.

Effective date March 19, 2024.

ARTICLE 28

MEADOWLARK ACT

Section

85-2801. Act, how cited.

85-2802. Terms, defined.

85-2803. Meadowlark Endowment Fund; established; investment; restrictions; State Treasurer; powers and duties.

85-2804. Meadowlark Program; created; purpose; Department of Health and Human Services; duties; disbursement of funds.

85-2805. Rules and regulations.

85-2801 Act, how cited.

Sections 85-2801 to 85-2805 shall be known and may be cited as the Meadowlark Act.

Source: Laws 2019, LB610, § 1.

85-2802 Terms, defined.

For purposes of the Meadowlark Act:

- (1) Contribution means a donation which is made for the purpose of providing a source of funding for the Meadowlark Program established in section 85-2804;
- (2) Eligible educational institution has the same meaning as in section 85-1802;
- (3) Nebraska educational savings plan trust has the same meaning as in section 85-1802;
- (4) Qualified higher education expenses has the same meaning as in section 85-1802; and
- (5) Qualified individual means an individual born on or after January 1, 2020, who is a resident of this state at the time of birth.

Source: Laws 2019, LB610, § 2; Laws 2020, LB1042, § 6; Laws 2021, LB528, § 66.

85-2803 Meadowlark Endowment Fund; established; investment; restrictions; State Treasurer; powers and duties.

(1) There is hereby established in the state treasury a trust fund to be known as the Meadowlark Endowment Fund. The fund shall be administered by the State Treasurer and shall consist of qualified private contributions and any amounts appropriated or transferred to the fund by the Legislature. No General Funds shall be transferred to the Meadowlark Endowment 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. No portion of the principal of the fund shall be expended for any purpose except investment pursuant to this subsection.

(2) The State Treasurer may accept contributions and shall credit all such contributions received either to the Meadowlark Endowment Fund or to accounts opened under the Meadowlark Program, at the direction of the donor. Such contributions shall not be used to pay expenses associated with attending kindergarten through grade twelve.

(3) On or before April 1 of each year, the State Treasurer shall determine the total amount of contributions received under subsection (2) of this section in the previous calendar year and shall transfer an equal amount from the College Savings Plan Expense Fund or the Unclaimed Property Trust Fund, as determined by the State Treasurer, to the Meadowlark Endowment Fund or to accounts opened under the Meadowlark Program. For any amount transferred from the College Savings Plan Expense Fund or the Unclaimed Property Trust Fund that is not being transferred to the Meadowlark Endowment Fund, the State Treasurer shall evenly distribute such amount to the accounts opened under the Meadowlark Program in the previous calendar year.

Source: Laws 2019, LB610, § 3; Laws 2020, LB1042, § 7; Laws 2021, LB528, § 67; Laws 2021, LB532, § 11.

Cross References

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

85-2804 Meadowlark Program; created; purpose; Department of Health and Human Services; duties; disbursement of funds.

(1) The Meadowlark Program is created. The program shall be administered by the State Treasurer. The purpose of the program is to promote access to postsecondary educational opportunities by providing funds to qualified individuals to help pay the qualified higher education expenses associated with attendance at an eligible educational institution located in this state.

(2) Any qualified individual shall be eligible to participate in the Meadowlark Program. No later than March 1 of each year, the Department of Health and Human Services shall transmit information to the State Treasurer which is necessary to administer the program and to establish whether the children born in the previous calendar year are qualified individuals. Such information shall include, but not be limited to, the full name and residential address of each child's parent or legal guardian and the birthdate of each child. Costs associated with the transfer of information by the Department of Health and Human Services shall be paid from the College Savings Plan Expense Fund.

(3) Following receipt of the information described in subsection (2) of this section, the State Treasurer shall send a notification explaining the Meadowlark Program to the parent or legal guardian of each qualified individual. The State Treasurer shall provide such parent or legal guardian with the opportunity to exclude his or her child from the program. Any child who is not excluded shall be deemed to be enrolled in the program. Upon enrollment into the program, the child shall have an account opened for him or her under the Nebraska educational savings plan trust.

(4) On or before April 1 of each year, the State Treasurer shall determine (a) the number of accounts opened under the Meadowlark Program in the previous calendar year and (b) the amount of investment income generated by the Meadowlark Endowment Fund in the previous calendar year. The State Treasurer shall evenly distribute the investment income from the previous calendar year to the accounts opened in the previous calendar year.

(5) The Nebraska educational savings plan trust shall own all accounts opened under the Meadowlark Program. Neither the qualified individual nor his or her parent or legal guardian shall have any ownership rights or interest in, title to, or power or control over such an account.

(6) Any disbursement from an account opened under the Meadowlark Program shall be made before the qualified individual reaches thirty years of age. Once a qualified individual reaches thirty years of age, any unused funds in his or her account shall be transferred to the Meadowlark Endowment Fund.

(7) Funds disbursed from an account opened under the Meadowlark Program shall only be used to pay the qualified higher education expenses associated with attending an eligible educational institution located in this state and shall not be used to pay expenses associated with attending kindergarten through grade twelve.

(8) The State Treasurer shall take measures to ensure the security and confidentiality of the information received under subsection (2) of this section.

Source: Laws 2019, LB610, § 4.

85-2805 Rules and regulations.

The State Treasurer may adopt and promulgate rules and regulations to carry out the Meadowlark Act.

Source: Laws 2019, LB610, § 5.

**ARTICLE 29
VETERAN PROMISE ACT**

Section

- 85-2901. Act, how cited.
- 85-2902. Terms, defined.
- 85-2903. Eligible military student; eligible veteran student; enrollment; automatic acceptance.
- 85-2904. Public postsecondary institution; information; report; contents; duties.
- 85-2905. Act; how construed.

85-2901 Act, how cited.

Sections 85-2901 to 85-2905 shall be known and may be cited as the Veteran Promise Act.

Source: Laws 2021, LB669, § 1.

85-2902 Terms, defined.

For purposes of the Veteran Promise Act:

- (1) Eligible military student means a student who:
 - (a) Graduated from a Nebraska high school on or after January 1, 2022;
 - (b) Signed enlistment papers to serve in a uniformed service; and
 - (c)(i) At the time of application is serving in such uniformed service under a six-year obligation; or
 - (ii) Has served at least two years of active duty in such uniformed service and at the time of application is serving in such uniformed service or another uniformed service;
- (2) Eligible veteran student means a student who:
 - (a)(i) Graduated from a Nebraska high school on or after January 1, 2002; or
 - (ii) Graduated from a high school in another state on or after January 1, 2002, and served in a uniformed service while assigned to a location in this state;
 - (b) Signed enlistment papers to serve in a uniformed service; and
 - (c) Received either an honorable discharge or a general discharge under honorable conditions from a uniformed service; and
- (3) Uniformed service means an active or reserve component of:
 - (a) The Army, Navy, Air Force, Marine Corps, Coast Guard, Merchant Marine, or Space Force of the United States;
 - (b) The Commissioned Officer Corps of the National Oceanic and Atmospheric Administration or of the Public Health Service of the United States; or
 - (c) The Nebraska National Guard.

Source: Laws 2021, LB669, § 2.

85-2903 Eligible military student; eligible veteran student; enrollment; automatic acceptance.

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(1) Each public postsecondary institution in this state shall, upon application, automatically accept any eligible military student or eligible veteran student who otherwise meets the admissions requirements for such postsecondary institution to enroll as an undergraduate student in virtual and in-person courses and programs.

(2) Except with regard to the acceptance of eligible military students and eligible veteran students as provided in subsection (1) of this section, nothing in the Veteran Promise Act shall be construed to change any policy or practice of any public postsecondary institution in this state, including any additional criteria or prioritization for capped enrollment academic programs.

Source: Laws 2021, LB669, § 3.

85-2904 Public postsecondary institution; information; report; contents; duties.

Each public postsecondary institution in this state shall make information about the Veteran Promise Act available on its official website and electronically submit an annual report to the Clerk of the Legislature on or before December 31, 2022, and on or before December 31 of each year thereafter. Such annual report shall detail the number of applicants under the act, the number of eligible military students and the number of eligible veteran students who are enrolled under the act, the amount of any application fees waived for applicants under the act, and any additional support, service, or assistance that is provided to participating eligible military students and eligible veteran students under the act.

Source: Laws 2021, LB669, § 4.

85-2905 Act; how construed.

The Veteran Promise Act shall be construed in a manner consistent with federal law, including, but not limited to, the United States Department of Defense Tuition Assistance Program and with any Voluntary Education Partnership Memorandum of Understanding entered into by a public postsecondary institution and the United States Department of Defense.

Source: Laws 2021, LB669, § 5.

ARTICLE 30

NEBRASKA CAREER SCHOLARSHIP ACT

Section

- 85-3001. Act, how cited.
- 85-3002. Terms, defined.
- 85-3003. Scholarship; state colleges; eligibility; renewal; Board of Trustees of the Nebraska State Colleges; duties.
- 85-3004. Scholarship; University of Nebraska; eligibility; renewal; Board of Regents of the University of Nebraska; duties.
- 85-3005. Scholarship; community colleges; eligibility; renewal; Coordinating Commission for Postsecondary Education; community college area; duties.
- 85-3006. Scholarship; private colleges; eligibility; renewal; Coordinating Commission for Postsecondary Education; duties.

85-3001 Act, how cited.

Sections 85-3001 to 85-3006 shall be known and may be cited as the Nebraska Career Scholarship Act.

Source: Laws 2022, LB902, § 1.

85-3002 Terms, defined.

For purposes of the Nebraska Career Scholarship Act:

(1) Community college means a public postsecondary educational institution which is part of the community college system and includes all branches and campuses of such institution located within the State of Nebraska;

(2) First-time freshman means a student who enrolled in an eligible program of study, who has not previously been enrolled in a postsecondary institution within three years immediately preceding the application for a scholarship pursuant to the act, and who has not previously earned a postsecondary credential except as a dual-credit or early-college high school student;

(3) Nebraska Career Scholarship means a scholarship awarded under the act or a scholarship awarded as a Nebraska Career Scholarship pursuant to Laws 2021, LB380, or Laws 2020, LB1008;

(4) Nonscholarship student means a student who has never been awarded a Nebraska Career Scholarship for the applicable eligible program of study;

(5) Private college means an accredited private nonprofit institution of postsecondary education located within the State of Nebraska;

(6) Scholarship recipient means a student who has been awarded a Nebraska Career Scholarship;

(7) Standard college admission test means the national assessment instrument that is also used as the standard college admission test selected by the State Board of Education and administered to students in the eleventh grade pursuant to subsection (9) of section 79-760.03; and

(8) Transfer student means a student who has not previously earned a postsecondary credential and who has transferred into an eligible program of study (a) from another postsecondary institution or (b) from another program of study within the same postsecondary institution. A student that previously earned a postsecondary credential, but only as a dual-credit or early-college high school student, shall be considered a transfer student if such student transferred into an eligible program of study from another postsecondary institution or a program within the same postsecondary institution directly following such student's early-college high school enrollment.

Source: Laws 2022, LB902, § 2; Laws 2024, LB1329, § 96.
Effective date July 19, 2024.

85-3003 Scholarship; state colleges; eligibility; renewal; Board of Trustees of the Nebraska State Colleges; duties.

(1)(a) The Board of Trustees of the Nebraska State Colleges shall award a Nebraska Career Scholarship that does not exceed a maximum of fifteen thousand dollars per year to any eligible state college student who achieved a composite score on a standard college admission test equivalent to a score of at least eighteen out of a maximum score of thirty-six and who is enrolled in an eligible program of study.

(b) The Board of Trustees of the Nebraska State Colleges shall allocate funds appropriated to the board under the Nebraska Career Scholarship Act between the state college campuses, determine the eligibility of students enrolled in a state college, receive and process applications for awards to individual students, and disburse funds directly to scholarship recipients during the fiscal

year. Eligibility criteria shall include being a first-time freshman or a transfer student and enrollment in an eligible program of study.

(c) For purposes of this section, an eligible program of study includes the following:

(i) A program of study at a state college in rangeland management, industrial technology, criminal justice, business administration, education, communication, the Reserve Officers' Training Corps, or computer information systems; and

(ii) Beginning with academic year 2024-25, a program of study designated by the Department of Economic Development, in collaboration with the Board of Trustees of the Nebraska State Colleges, based on periodic reviews of workforce needs in the state.

(2) Each scholarship recipient shall register with the appropriate campus office to obtain a Nebraska-based internship, apprenticeship, clinical position, or employment in a major-related field prior to completion of the student's eligible program of study.

(3) A Nebraska Career Scholarship may be used by a scholarship recipient for tuition, fees, required tools and equipment, and room and board.

(4) Each scholarship awarded under this section shall be automatically renewed on an annual basis if the student remains enrolled in good standing in the eligible program of study for which such scholarship was awarded, except that no student shall receive a scholarship renewal after four years of participation in such eligible program of study.

(5) The Board of Trustees of the Nebraska State Colleges shall collect information on each state college scholarship recipient and shall report electronically to the Clerk of the Legislature and the Governor on or before December 1 of each year the following information for the eligible programs of study at a state college in the current or prior academic year:

(a) The total number of students enrolled in each eligible program of study in the immediately prior academic year and the total number of students enrolled in each eligible program of study for the current academic year, based upon official fall census data;

(b) The total number of scholarship recipients in each eligible program of study for the current academic year and the total number of such scholarship recipients who are newly enrolled in each eligible program of study for such academic year, based upon official fall census data;

(c) The total number of newly awarded scholarship recipients retained across all eligible programs of study from the immediately prior academic year to the current academic year and a comparison of the retention rates between those of the newly awarded scholarship recipients and the state college's overall first to second year retention rate reported to the Integrated Postsecondary Education Data System for the same year;

(d) The total number of scholarship recipients who graduated during the immediately prior academic year and a comparison of the four-year graduation rates between the scholarship recipients who graduated and the state college's overall four-year graduate rate reported to the Integrated Postsecondary Education Data System for the same year; and

(e) The number and percent of scholarship recipients who graduated during the immediately prior calendar year who obtained employment in a major-related field in the state.

Source: Laws 2022, LB902, § 3; Laws 2024, LB1329, § 97.

Effective date July 19, 2024.

85-3004 Scholarship; University of Nebraska; eligibility; renewal; Board of Regents of the University of Nebraska; duties.

(1)(a) The Board of Regents of the University of Nebraska shall award a Nebraska Career Scholarship to any eligible university student who is enrolled in an eligible program of study in an amount not to exceed:

(i) Ten thousand dollars per year for any scholarship recipient who is a transfer student; or

(ii) Except as provided in subdivision (1)(a)(i) of this section:

(A) Twenty-five thousand dollars per year for any scholarship recipient who achieved a composite score on a standard college admission test equivalent to a score of at least twenty-eight out of a maximum score of thirty-six; or

(B) Ten thousand dollars per year for any scholarship recipient who achieved a composite score on a standard college admission test equivalent to a score of at least twenty and less than twenty-eight out of a maximum score of thirty-six.

(b) The Board of Regents shall allocate funds appropriated to the board under the Nebraska Career Scholarship Act between the university campuses, determine the eligibility of students enrolled in the university, receive and process applications for awards to individual students, and disburse funds directly to scholarship recipients during the fiscal year. Eligibility criteria shall include (i) being a first-time freshman who achieved a composite score on a standard college admission test equivalent to a score of at least twenty out of a maximum score of thirty-six or a transfer student and (ii) enrollment in an eligible program of study.

(c) For purposes of this section, an eligible program of study means:

(i) Through academic year 2023-24, a program of study offered by the University of Nebraska in mathematics, engineering, health care, and computer information systems;

(ii) Beginning with academic year 2024-25, a program of study designated by the Department of Economic Development, in collaboration with the Board of Regents, based on periodic reviews of workforce needs in the state; and

(iii) Beginning with academic year 2024-25, a program of study in special education.

(2) Each scholarship recipient shall register with the appropriate campus office to obtain a Nebraska-based internship, apprenticeship, clinical position, or employment in a major-related field prior to completion of the student's eligible program of study.

(3) A Nebraska Career Scholarship may be used by a scholarship recipient for tuition, fees, required tools and equipment, and room and board.

(4) Each scholarship awarded under this section shall be automatically renewed on an annual basis if the student remains enrolled in good standing in the eligible program of study for which such scholarship was awarded, except

that no student shall receive a scholarship renewal after four years of participation in such eligible program of study.

(5) The Board of Regents shall collect information on each university scholarship recipient and shall report electronically to the Clerk of the Legislature and the Governor on or before December 1 of each year the following information for the eligible programs of study at the university in the current or prior academic year:

(a) The total number of students enrolled in each eligible program of study in the immediately prior academic year and the total number of students enrolled in each eligible program of study for the current academic year, based upon official fall census data;

(b) The total number of scholarship recipients in each eligible program of study for the current academic year and the total number of such scholarship recipients who are newly enrolled in each eligible program of study for such academic year, based upon official fall census data;

(c) The total number of newly awarded scholarship recipients retained across all eligible programs of study from the immediately prior academic year to the current academic year and a comparison of the retention rates between those of the newly awarded scholarship recipients and the university's overall first to second year retention rate reported to the Integrated Postsecondary Education Data System for the same year;

(d) The total number of scholarship recipients who graduated during the immediately prior academic year and a comparison of the four-year graduation rates between the scholarship recipients who graduated and the university's overall four-year graduate rate reported to the Integrated Postsecondary Education Data System for the same year; and

(e) The number and percent of scholarship recipients who graduated during the immediately prior calendar year who obtained employment in a major-related field in the state.

Source: Laws 2022, LB902, § 4; Laws 2024, LB1284, § 17; Laws 2024, LB1329, § 98.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB1284, section 17, with LB1329, section 98, to reflect all amendments.

Note: Changes made by LB1284 became operative July 19, 2024. Changes made by LB1329 became effective July 19, 2024.

85-3005 Scholarship; community colleges; eligibility; renewal; Coordinating Commission for Postsecondary Education; community college area; duties.

(1)(a) The Coordinating Commission for Postsecondary Education, in collaboration with the community colleges, shall award a Nebraska Career Scholarship that does not exceed a maximum of fifteen thousand dollars per year to any eligible community college student who is enrolled in an eligible program of study in an identified shortage area or skilled trade that meets the workforce needs of the state.

(b) The Coordinating Commission for Postsecondary Education, in consultation with the State Department of Education, the Department of Labor, the Department of Economic Development, and any advisory committee established by the Coordinating Commission for Postsecondary Education for such purpose, shall identify shortage areas and skilled trades that meet workforce needs for purposes of this section and shall periodically review and revise the identification of such shortage areas and skilled trades.

(c) For purposes of this section, an eligible program of study means a program of study offered by a community college in a shortage area or skilled trade identified pursuant to subdivision (b) of this subsection.

(d) Each community college area, acting as an agent of the state, shall determine the eligibility of students enrolled in the community college, receive and process applications for awards to individual students, and disburse funds directly to scholarship recipients during the fiscal year. Eligibility criteria shall include being a first-time freshman or a transfer student and enrollment in an eligible program of study.

(2) Each scholarship recipient enrolled in more than a one-semester or sixteen-credit-hour program of study shall register with the appropriate campus office to obtain a Nebraska-based internship, apprenticeship, clinical position, experiential learning activity, or employment in a major-related field prior to completion of the student's eligible program of study.

(3) A Nebraska Career Scholarship may be used by the scholarship recipient for tuition, fees, required tools and equipment, and room and board.

(4) Each scholarship awarded under this section shall be automatically renewed on an annual basis if the student remains enrolled in good standing in the eligible program of study for which such scholarship was awarded, except that no student shall receive a scholarship renewal after three years of participation in such eligible program of study.

(5) Each community college area shall collect information on each scholarship recipient who has been awarded a Nebraska Career Scholarship by such community college area and shall share such information with the Coordinating Commission for Postsecondary Education.

(6) The Coordinating Commission for Postsecondary Education shall report electronically to the Clerk of the Legislature and the Governor on or before December 1 of each year the following information:

(a) For each eligible program of study at a community college in the current or prior academic year:

(i) The total number of students enrolled in the program in the immediately prior academic year and the total number of students enrolled in the program as of the most recent census date for the community college area; and

(ii) The total number of scholarship recipients in the program as of the most recent census date for the community college area;

(b) The first to second year retention rate of new scholarship recipients for all eligible programs of study from the immediately prior academic year as compared to the community college's overall first to second year retention rate as reported to the Integrated Postsecondary Education Data System for the same year;

(c) The total number of first-time freshman scholarship recipients who complete the program of study by earning the certificate, diploma, or degree that signifies completion and a comparison of the on-time completion rate for scholarship recipients to the overall on-time completion rate for all first-time freshman students; and

(d) The number of scholarship recipients obtaining employment in the state within five fiscal quarters of completion of an eligible program of study using Department of Labor data.

(7) The Coordinating Commission for Postsecondary Education shall allocate to community colleges the amount appropriated to the commission to carry out this section. The commission shall establish a separate budget subprogram for such allocation.

Source: Laws 2022, LB902, § 5; Laws 2024, LB1329, § 99.
Effective date July 19, 2024.

85-3006 Scholarship; private colleges; eligibility; renewal; Coordinating Commission for Postsecondary Education; duties.

(1)(a) The Coordinating Commission for Postsecondary Education, in collaboration with private colleges that elect to participate, shall award a Nebraska Career Scholarship that does not exceed a maximum of ten thousand dollars per year to any private college student who achieved a composite score on a standard college admission test equivalent to a score of at least eighteen out of a maximum score of thirty-six or who had a high school grade-point average of 3.0 or greater on a four-point scale and who is enrolled in an eligible program of study.

(b) Each participating private college, acting as an agent of the state, shall determine the eligibility of students enrolled in the private college, receive and process applications for awards to individual students, and disburse funds directly to scholarship recipients during the fiscal year. Eligibility criteria shall include being a first-time freshman or a transfer student and enrollment in an eligible program of study.

(c) For purposes of this section, an eligible program of study means:

(i) Through academic year 2023-24, a program of study at a private college in mathematics, health care, and computer information systems; and

(ii) Beginning with academic year 2024-25, a program of study in education or engineering and a program of study in shortage areas designated by the Coordinating Commission for Postsecondary Education, in consultation with the State Department of Education, the Department of Labor, the Department of Economic Development, and any advisory committee established by the Coordinating Commission for Postsecondary Education for such purpose, based on periodic reviews of workforce needs in the state.

(2) Each scholarship recipient shall register with the appropriate campus office to obtain a Nebraska-based internship, apprenticeship, clinical position, or employment in a major-related field prior to completion of the student's eligible program of study.

(3) A Nebraska Career Scholarship may be used by the scholarship recipient for tuition, fees, required tools and equipment, and room and board.

(4) Each scholarship awarded under this section shall be automatically renewed on an annual basis if the student remains enrolled in good standing in the eligible program of study for which such scholarship was awarded, except that no student shall receive a scholarship renewal after four years of participation in such eligible program of study.

(5) Each participating private college shall collect information on each scholarship recipient who has been awarded a Nebraska Career Scholarship by such private college and shall share such information with the Coordinating Commission for Postsecondary Education.

(6) The Coordinating Commission for Postsecondary Education shall report electronically to the Clerk of the Legislature and the Governor on or before December 1 of each year the following information for each eligible program of study at a private college in the current or prior academic year:

(a) The total number of students enrolled in the program in the immediately prior academic year and the total number of students enrolled in the program as of September 30 for the current academic year;

(b) The total number of scholarship recipients in the program as of September 30 for the current academic year and the total number of such scholarship recipients who are newly enrolled in the program for such academic year;

(c) The total number of students retained in the program and a comparison of the retention rates between scholarship recipients and nonscholarship students;

(d) The number of students participating in an internship, an apprenticeship, a clinical position, or employment in a major-related field during the immediately prior academic year and a comparison of participation rates for scholarship recipients and nonscholarship students;

(e) The total number of graduates for the immediately prior academic year, the number of scholarship recipient graduates for such academic year, and a comparison of the graduation rates for scholarship recipients and nonscholarship students; and

(f) The number of graduates from the immediately prior academic year who obtained employment in a major-related field in the state within four months after graduation and the average starting salary for such graduates.

(7) The Coordinating Commission for Postsecondary Education shall allocate the amount appropriated to the commission to carry out this section to private colleges that elect to participate under the Nebraska Career Scholarship Act. The commission shall establish a separate budget subprogram for such allocations.

Source: Laws 2022, LB902, § 6; Laws 2024, LB1329, § 100.

Effective date July 19, 2024.

ARTICLE 31

EXCELLENCE IN TEACHING ACT

Section

85-3101. Act, how cited.

85-3102. Transfer of powers, duties, and functions to Coordinating Commission for Postsecondary Education; financial obligations; contracts; documents; funds; appropriations; suit, action, or other proceeding; records; transfer; effect.

85-3103. Attracting Excellence to Teaching Program; created; terms, defined.

85-3104. Attracting Excellence to Teaching Program; purposes.

85-3105. Attracting Excellence to Teaching Program; administration; eligible students.

85-3106. Attracting Excellence to Teaching Program; eligible student; contract requirements; loan payments; suspension; loan forgiveness; amount.

85-3107. Enhancing Excellence in Teaching Program; created; terms, defined.

85-3108. Enhancing Excellence in Teaching Program; purposes.

85-3109. Enhancing Excellence in Teaching Program; administration; eligible student; loans.

85-3110. Enhancing Excellence in Teaching Program; contract requirements; loan payments; suspension; loan forgiveness; amount.

85-3111. Career-Readiness and Dual-Credit Education Grant Program; established; Coordinating Commission for Postsecondary Education; State Department of Education; duties; commission; rules and regulations.

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Section

- 85-3112. Excellence in Teaching Cash Fund; created; use; investment.
- 85-3113. Repayment tracking.
- 85-3114. Attracting Excellence to Teaching Program; Enhancing Excellence in Teaching Program; reports.
- 85-3115. Teacher shortage area; Excellence in Teaching Act; rules and regulations.

85-3101 Act, how cited.

Sections 85-3101 to 85-3115 shall be known and may be cited as the Excellence in Teaching Act and shall include the Attracting Excellence to Teaching Program, the Enhancing Excellence in Teaching Program, and the Career-Readiness and Dual-Credit Education Grant Program.

Source: Laws 2000, LB 1399, § 15; Laws 2009, LB547, § 3; R.S.1943, (2014), § 79-8,132; Laws 2023, LB705, § 13.

85-3102 Transfer of powers, duties, and functions to Coordinating Commission for Postsecondary Education; financial obligations; contracts; documents; funds; appropriations; suit, action, or other proceeding; records; transfer; effect.

(1) On and after July 1, 2024, all powers, duties, and functions that the State Department of Education had pursuant to the Excellence in Teaching Act prior to such date are transferred to the Coordinating Commission for Postsecondary Education.

(2) Any financial obligations of the State Department of Education relating to the Excellence in Teaching Act that remain unpaid as of July 1, 2024, and that are subsequently certified as valid encumbrances to the accounting division of the Department of Administrative Services pursuant to sections 81-138.01 to 81-138.04, shall be paid by the commission from any unexpended balance in the Excellence in Teaching Cash Fund.

(3) On and after July 1, 2024, whenever the State Department of Education is referred to or designated by any contract or other document in connection with any duties and functions under the Excellence in Teaching Act, such reference or designation shall apply to the commission. All contracts entered into by the State Department of Education prior to July 1, 2024, in connection with any duties and functions under the Excellence in Teaching Act are hereby recognized, with the commission succeeding to all rights and obligations under such contracts. Any cash funds, custodial funds, gifts, trusts, and grants and any appropriations of funds from prior fiscal years available to satisfy obligations incurred under such contracts shall be transferred and appropriated to the commission for the payment of such obligations. All documents and records transferred, or copies of the same, may be authenticated or certified by the commission for all legal purposes.

(4) No suit, action, or other proceeding, judicial or administrative, lawfully commenced prior to July 1, 2024, or which could have been commenced prior to such date, by or against the State Department of Education, the Commissioner of Education, or any employee of the State Department of Education, in relation to the discharge of duties under the Excellence in Teaching Act, shall abate by reason of the transfer of duties and functions under the Excellence in Teaching Act from the State Department of Education to the commission.

(5) On July 1, 2024, all documents and records of the State Department of Education pertaining to duties and functions under the Excellence in Teaching

Act shall be transferred to the commission and shall become the property of the commission.

Source: Laws 2023, LB705, § 14.

85-3103 Attracting Excellence to Teaching Program; created; terms, defined.

The Attracting Excellence to Teaching Program is created. For purposes of the Attracting Excellence to Teaching Program:

(1) Commission means the Coordinating Commission for Postsecondary Education;

(2) Eligible institution means a not-for-profit college or university which (a) is located in Nebraska, (b) is accredited by an accrediting agency recognized by the United States Department of Education as determined to be acceptable by the State Board of Education, (c) has a teacher education program, and (d) if a privately funded college or university, has not opted out of the program pursuant to rules and regulations;

(3) Eligible student means an individual who (a) is a full-time student, (b) is enrolled in an eligible institution in an undergraduate or a graduate teacher education program working toward his or her initial certificate to teach in Nebraska, (c) if enrolled at a state-funded eligible institution, is a resident student as described in section 85-502 or, if enrolled in a privately funded eligible institution, would be deemed a resident student if enrolled in a state-funded eligible institution, and (d) is a student majoring in a shortage area;

(4) Full-time student means, in the aggregate, the equivalent of a student who in a twelve-month period is enrolled in twenty-four semester credit hours for undergraduate students or eighteen semester credit hours for graduate students of classroom, laboratory, clinical, practicum, or independent study course work;

(5) Majoring in a shortage area means pursuing a degree which will allow an individual to be properly endorsed to teach in a shortage area;

(6) Shortage area means a secular field of teaching for which there is a shortage, as determined by the State Department of Education, of properly endorsed teachers at the time the borrower first receives funds pursuant to the program;

(7) Student-teaching semester means a semester of full-time enrollment for clinical practice which provides initial preparation for a student enrolled in an eligible institution and pursuing a certificate to teach that includes a culminating supervised experience to demonstrate competence in the professional teaching role for which such student is applying; and

(8) Teacher education program means a program of study approved by the State Board of Education pursuant to subdivision (5)(g) of section 79-318.

Source: Laws 2000, LB 1399, § 16; Laws 2003, LB 685, § 20; Laws 2009, LB547, § 4; Laws 2011, LB333, § 6; Laws 2014, LB967, § 8; Laws 2021, LB528, § 32; R.S.Supp.,2022, § 79-8,133; Laws 2023, LB705, § 15; Laws 2024, LB1284, § 18.

Operative date July 1, 2024.

85-3104 Attracting Excellence to Teaching Program; purposes.

The purposes of the Attracting Excellence to Teaching Program are to:

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- (1) Attract outstanding students to major in shortage areas at the teacher education programs of Nebraska's postsecondary educational institutions;
- (2) Retain resident students and graduates as teachers in the accredited school districts, educational service units, and private schools or approved private schools of Nebraska; and
- (3) Establish a loan contract that requires a borrower to obtain employment as a teacher in this state after graduation.

Source: Laws 2000, LB 1399, § 17; Laws 2009, LB547, § 5; Laws 2015, LB519, § 3; R.S.Supp.,2022, § 79-8,134; Laws 2023, LB705, § 16.

85-3105 Attracting Excellence to Teaching Program; administration; eligible students.

- (1) The commission shall administer the Attracting Excellence to Teaching Program either directly or by contracting with public or private entities.
- (2) To be eligible for the program, an eligible student shall:
 - (a) Graduate in the top quarter of his or her high school class or have a minimum cumulative grade-point average of 3.0 on a four-point scale in an eligible institution;
 - (b) Agree to complete a teacher education program at an eligible institution and to complete the major on which the applicant's eligibility is based; and
 - (c) Commit to teach in an accredited or approved public or private school in Nebraska upon (i) successful completion of the teacher education program for which the applicant is applying to the Attracting Excellence to Teaching Program and (ii) becoming certified pursuant to sections 79-806 to 79-815.
- (3) An eligible student may apply on an annual basis for a loan in an amount of not more than three thousand dollars per year, except that an eligible student who is enrolling for a student-teaching semester may apply for an additional loan of up to three thousand dollars for the student-teaching semester and receive up to a total of six thousand dollars for the year. Loans awarded to individual students shall not exceed a cumulative period exceeding five consecutive years. Loans shall only be awarded through an eligible institution. Loans shall be funded pursuant to section 85-3112.

Source: Laws 2000, LB 1399, § 18; Laws 2003, LB 685, § 21; Laws 2009, LB547, § 6; R.S.1943, (2014), § 79-8,135; Laws 2023, LB705, § 17; Laws 2024, LB1284, § 19.
Operative date July 1, 2024.

85-3106 Attracting Excellence to Teaching Program; eligible student; contract requirements; loan payments; suspension; loan forgiveness; amount.

- (1)(a) Prior to receiving any money from a loan pursuant to the Attracting Excellence to Teaching Program, an eligible student shall enter into a contract with the commission. Such contract shall be exempt from the requirements of the State Procurement Act.
- (b) For eligible students who applied for the first time prior to April 23, 2009, the contract shall require that if (i) the borrower is not employed as a teacher in Nebraska for a time period equal to the number of years required for loan forgiveness pursuant to subsection (2) of this section and is not enrolled as a

full-time student in a graduate program within six months after obtaining an undergraduate degree for which a loan from the program was obtained or (ii) the borrower does not complete the requirements for graduation within five consecutive years after receiving the initial loan under the program, then the loan must be repaid, with interest at the rate fixed pursuant to section 45-103 accruing as of the date the borrower signed the contract, and an appropriate penalty as determined by the commission may be assessed. If a borrower fails to remain enrolled at an eligible institution or otherwise fails to meet the requirements of an eligible student, repayment of the loan shall commence within six months after such change in eligibility. The commission may by rules and regulations provide for exceptions to the conditions of repayment pursuant to this subdivision based upon mitigating circumstances.

(c) For eligible students who apply for the first time on or after April 23, 2009, the contract shall require that if (i) the borrower is not employed as a full-time teacher teaching in an approved or accredited school in Nebraska and teaching at least a portion of the time in the shortage area for which the loan was received for a time period equal to the number of years required for loan forgiveness pursuant to subsection (3) of this section or is not enrolled as a full-time student in a graduate program within six months after obtaining an undergraduate degree for which a loan from the program was obtained or (ii) the borrower does not complete the requirements for graduation within five consecutive years after receiving the initial loan under the program, then the loan shall be repaid with interest at the rate fixed pursuant to section 45-103 accruing as of the date the borrower signed the contract and actual collection costs as determined by the commission. If a borrower fails to remain enrolled at an eligible institution or otherwise fails to continue to be an eligible student, repayment of the loan shall commence within six months after such change in eligibility. The commission may by rule and regulation provide for exceptions to the conditions of repayment pursuant to this subdivision based upon mitigating circumstances.

(2) If the borrower applied for the first time prior to April 23, 2009, and (a) successfully completes the teacher education program and becomes certified pursuant to sections 79-806 to 79-815, (b) becomes employed as a teacher in this state within six months of becoming certified, and (c) otherwise meets the requirements of the contract, payments shall be suspended for the number of years that the borrower is required to remain employed as a teacher in this state under the contract. For each year that the borrower teaches in Nebraska pursuant to the contract, payments shall be forgiven in an amount equal to the amount borrowed for one year, except that if the borrower teaches in a school district that is in a local system classified as very sparse as defined in section 79-1003 or teaches in a school district in which at least forty percent of the students are poverty students as defined in section 79-1003, payments shall be forgiven each year in an amount equal to the amount borrowed for two years.

(3)(a) If the borrower applies for the first time on or after April 23, 2009, and (i) successfully completes the teacher education program and major for which the borrower is receiving a forgivable loan pursuant to the program and becomes certified pursuant to sections 79-806 to 79-815 with an endorsement in the shortage area for which the loan was received, (ii) becomes employed as a full-time teacher teaching at least a portion of the time in the shortage area for which the loan was received in an approved or accredited school in this state within six months of becoming certified, and (iii) otherwise meets the

requirements of the contract, payments shall be suspended for the number of years that the borrower is required to remain employed as a teacher in this state under the contract.

(b) Beginning after the first two years of teaching full-time in Nebraska following graduation for the degree for which the loan was received, for each year that the borrower teaches full-time in Nebraska pursuant to the contract, the loan shall be forgiven in an amount equal to three thousand dollars, except that if the borrower teaches full-time in a school district that is in a local system classified as very sparse as defined in section 79-1003, teaches in a school building that provides free meals to all students pursuant to the community eligibility provision, teaches in a school building in which at least forty percent of the formula students are poverty students as defined in section 79-1003, or teaches in an accredited or approved private school in Nebraska in which at least forty percent of the enrolled students qualified for free lunches as determined by the most recent data available from the commission, payments shall be forgiven each year in an amount equal to six thousand dollars.

(4) Beginning on August 1, 2022, if the borrower provides service as a pre-service teacher intern for a full academic semester as part of a clinical experience within an accredited or approved public, private, denominational, or parochial school in Nebraska and subsequently passes all related semester requirements, then the loan shall be forgiven in an amount equal to one thousand dollars for such borrower.

Source: Laws 2000, LB 1399, § 20; Laws 2003, LB 685, § 22; Laws 2008, LB988, § 7; Laws 2009, LB547, § 7; Laws 2012, LB858, § 14; Laws 2013, LB497, § 4; Laws 2015, LB519, § 4; Laws 2015, LB525, § 15; Laws 2022, LB1218, § 16; R.S.Supp.,2022, § 79-8,137; Laws 2023, LB705, § 18; Laws 2024, LB461, § 49. Effective date July 19, 2024.

Cross References

State Procurement Act, see section 73-801.

85-3107 Enhancing Excellence in Teaching Program; created; terms, defined.

The Enhancing Excellence in Teaching Program is created. For purposes of the Enhancing Excellence in Teaching Program:

(1) Approval to teach postsecondary courses by a Nebraska postsecondary educational institution means official documentation issued by a Nebraska postsecondary educational institution declaring that an individual has met the graduate degree or course requirements necessary to teach courses in a specific subject or subjects offered by the Nebraska postsecondary educational institution for postsecondary degree credit;

(2) Commission means the Coordinating Commission for Postsecondary Education;

(3) Eligible graduate program means (a) a program of study offered by an eligible institution which results in obtaining a graduate degree, (b) a graduate course of study leading to an endorsement in a shortage area specified by the State Department of Education, or (c) a graduate course of study leading to approval to teach postsecondary courses by a Nebraska postsecondary educational institution;

(4) Eligible institution means a not-for-profit college or university which (a) is located in Nebraska, (b) is accredited by an accrediting agency recognized by the United States Department of Education as determined to be acceptable by the State Board of Education, (c) has a teacher education program, and (d) if a privately funded college or university, has not opted out of the Enhancing Excellence in Teaching Program pursuant to rules and regulations;

(5) Eligible student means an individual who (a) is a certificated teacher employed to teach in an approved or accredited school in Nebraska, (b) is enrolled in an eligible graduate program, (c) if enrolled at a state-funded eligible institution, is a resident student as described in section 85-502 or, if enrolled in a privately funded eligible institution, would be deemed a resident student if enrolled in a state-funded eligible institution, (d)(i) is majoring in a shortage area, curriculum and instruction, a subject area in which the individual already holds a secular teaching endorsement, or a subject area that will result in an additional secular teaching endorsement or (ii) is applying for approval to teach postsecondary courses by a Nebraska postsecondary educational institution, which the superintendent of the school district or head administrator of the private, denominational, or parochial school employing the individual believes will be beneficial to the students of such school district or school as evidenced by a statement signed by the superintendent or head administrator, and (e) is applying for a loan pursuant to the Enhancing Excellence in Teaching Program to be received at a time other than during fiscal year 2011-12 or 2012-13;

(6) Majoring in a shortage area or subject area means pursuing a degree or course of study which will allow an individual to be properly endorsed to teach in such shortage area or subject area;

(7) Nebraska postsecondary educational institution means any Nebraska public postsecondary institution as defined in section 85-2403 and any private, nonprofit postsecondary institution with a principal facility in Nebraska that is exempt from the Private Postsecondary Career School Act; and

(8) Shortage area means a secular field of teaching or endorsement area for which there is a shortage, as determined by the State Department of Education, of properly endorsed teachers at the time the borrower first receives funds pursuant to the Enhancing Excellence in Teaching Program.

Source: Laws 2009, LB547, § 8; Laws 2010, LB1071, § 8; Laws 2011, LB333, § 7; Laws 2014, LB967, § 9; Laws 2015, LB519, § 5; Laws 2016, LB1066, § 13; Laws 2021, LB528, § 33; R.S.Supp.,2022, § 79-8,137.01; Laws 2023, LB705, § 19.

Cross References

Private Postsecondary Career School Act, see section 85-1601.

85-3108 Enhancing Excellence in Teaching Program; purposes.

The purposes of the Enhancing Excellence in Teaching Program are to:

(1) Retain teachers in the accredited school districts, educational service units, and private schools or approved private schools of Nebraska;

(2) Improve the skills of existing teachers in Nebraska through the graduate education or endorsement programs of Nebraska's postsecondary educational institutions; and

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(3) Establish a loan contract that requires a borrower to continue employment as a teacher in this state after graduation from an eligible graduate or endorsement program.

Source: Laws 2009, LB547, § 9; Laws 2010, LB1071, § 9; Laws 2015, LB519, § 6; R.S.Supp.,2022, § 79-8,137.02; Laws 2023, LB705, § 20.

85-3109 Enhancing Excellence in Teaching Program; administration; eligible student; loans.

(1) The commission shall administer the Enhancing Excellence in Teaching Program either directly or by contracting with public or private entities.

(2) To be eligible for the program, an eligible student shall:

(a) Agree to complete an eligible graduate program at an eligible institution and to complete the program on which the applicant's eligibility is based as determined by the State Department of Education; and

(b) Commit to teach in an accredited or approved public or private school in Nebraska upon successful completion of the eligible graduate program for which the applicant is applying to the Enhancing Excellence in Teaching Program and to maintaining certification pursuant to sections 79-806 to 79-815.

(3) Eligible students may apply on an annual basis for loans in an amount of not more than one hundred seventy-five dollars per credit hour. Loans awarded to individual students shall not exceed a cumulative period exceeding five consecutive years. Loans shall only be awarded through the commission. Loans shall be funded pursuant to section 85-3112.

Source: Laws 2009, LB547, § 10; Laws 2010, LB1071, § 10; Laws 2015, LB519, § 7; Laws 2016, LB1066, § 14; R.S.Supp.,2022, § 79-8,137.03; Laws 2023, LB705, § 21.

85-3110 Enhancing Excellence in Teaching Program; contract requirements; loan payments; suspension; loan forgiveness; amount.

(1) Prior to receiving any money from a loan pursuant to the Enhancing Excellence in Teaching Program, an eligible student shall enter into a contract with the commission. Such contract shall be exempt from the requirements of the State Procurement Act. The contract shall require that if (a) the borrower is not employed as a full-time teacher teaching in an approved or accredited school in Nebraska for a time period equal to the number of years required for loan forgiveness pursuant to subsection (2) of this section or (b) the borrower does not complete the requirements for graduation, for the additional secular teaching endorsement, or for the approval to teach postsecondary courses by a Nebraska postsecondary educational institution within five consecutive years after receiving the initial loan under the program, then the loan shall be repaid, with interest at the rate fixed pursuant to section 45-103 accruing as of the date the borrower signed the contract and actual collection costs as determined by the commission. If a borrower fails to remain enrolled at an eligible institution or otherwise fails to meet the requirements of an eligible student, repayment of the loan shall commence within six months after such change in eligibility. The commission may by rules and regulations provide for exceptions to the condi-

tions of repayment pursuant to this subsection based upon mitigating circumstances.

(2)(a) If the borrower (i) successfully completes the eligible graduate program for which the borrower is receiving a forgivable loan pursuant to the Enhancing Excellence in Teaching Program and maintains certification pursuant to sections 79-806 to 79-815, (ii) maintains employment as a teacher in an approved or accredited school in this state, and (iii) otherwise meets the requirements of the contract, payments shall be suspended for the number of years that the borrower is required to remain employed as a teacher in this state under the contract.

(b) For recipients who received funds for the first time prior to July 1, 2016, beginning after the first two years of teaching full-time in Nebraska following graduation for the degree for which the loan was received, for each year that the borrower teaches full-time in Nebraska pursuant to the contract, the loan shall be forgiven in an amount equal to three thousand dollars, except that if the borrower teaches full-time in a school district that is in a local system classified as very sparse as defined in section 79-1003, teaches in a school building that provides free meals to all students pursuant to the community eligibility provision, teaches in a school building in which at least forty percent of the students are poverty students as defined in section 79-1003, or teaches in an accredited or approved private school in Nebraska in which at least forty percent of the enrolled students qualified for free lunches as determined by the most recent data available from the State Department of Education, payments shall be forgiven each year in an amount equal to six thousand dollars.

(c) For recipients who received funds for the first time on or after July 1, 2016, beginning after the first two years of teaching full-time in Nebraska following completion of the eligible graduate program for which the loan was received, for each year that the borrower teaches full-time in Nebraska pursuant to the contract, the loan shall be forgiven in an amount equal to one thousand five hundred dollars, except that if the borrower teaches full-time in a school district that is in a local system classified as very sparse as defined in section 79-1003, teaches in a school building in which at least forty percent of the students are poverty students as defined in section 79-1003, teaches in a school building that provides free meals to all students pursuant to the community eligibility provision, or teaches in an accredited private school or educational service unit or an approved private school in Nebraska in which at least forty percent of the enrolled students qualified for free lunches as determined by the most recent data available from the State Department of Education, payments shall be forgiven each year in an amount equal to one thousand five hundred dollars for the first year of loan forgiveness and three thousand dollars for each year of loan forgiveness thereafter.

Source: Laws 2009, LB547, § 11; Laws 2010, LB1071, § 11; Laws 2012, LB858, § 15; Laws 2013, LB497, § 5; Laws 2015, LB519, § 8; Laws 2015, LB525, § 16; Laws 2016, LB1066, § 15; R.S.Supp.,2022, § 79-8,137.04; Laws 2023, LB705, § 22; Laws 2024, LB461, § 50.
Effective date July 19, 2024.

Cross References

State Procurement Act, see section 73-801.

85-3111 Career-Readiness and Dual-Credit Education Grant Program; established; Coordinating Commission for Postsecondary Education; State Department of Education; duties; commission; rules and regulations.

(1) The Career-Readiness and Dual-Credit Education Grant Program is established. The program shall be administered by the Coordinating Commission for Postsecondary Education. The commission, in consultation with the State Department of Education, the Department of Labor, and any advisory committee established by the commission for such purpose, shall:

(a) Create and establish teacher education pathways enabling the instruction of dual-credit courses and career and technical education courses;

(b) Correlate and prioritize teacher education pathways with Nebraska workforce demand;

(c) Establish a grant program beginning on or after July 1, 2024, to distribute money from the Excellence in Teaching Cash Fund to teachers enrolled in education pathways leading to qualification to teach dual-credit courses and career and technical education courses;

(d) Establish a directory of available teacher education pathways in Nebraska identified by sequence and location; and

(e) On December 31, 2025, and each December 31 thereafter, electronically submit an annual report on grants awarded pursuant to the Career-Readiness and Dual-Credit Education Grant Program to the Clerk of the Legislature. The report shall include, but not be limited to, the number and amount of grants awarded, the postsecondary educational institutions attended by grant recipients, and information regarding the completion of instructor requirements to teach dual-credit courses and career and technical education courses.

(2) The Coordinating Commission for Postsecondary Education may adopt and promulgate rules and regulations to carry out the Career-Readiness and Dual-Credit Education Grant Program.

Source: Laws 2023, LB705, § 23.

85-3112 Excellence in Teaching Cash Fund; created; use; investment.

(1) The Excellence in Teaching Cash Fund is created. The fund shall consist of transfers by the Legislature, transfers pursuant to section 79-3501, and loan repayments, penalties, and interest payments received in the course of administering the Attracting Excellence to Teaching Program and the Enhancing Excellence in Teaching Program.

(2)(a) For all fiscal years beginning on and after July 1, 2024, the commission shall allocate on an annual basis up to two hundred fifty thousand dollars of the funds transferred pursuant to section 79-3501 for grants to teachers pursuant to the Career-Readiness and Dual-Credit Education Grant Program.

(b) For all fiscal years beginning on and after July 1, 2024, the commission shall allocate on an annual basis up to five hundred thousand dollars of the funds transferred pursuant to section 79-3501 exclusively for loans to any eligible student who is enrolling in a student-teaching semester during the award year pursuant to the Attracting Excellence to Teaching Program. The funds shall be distributed to all eligible institutions according to the distribution formula as determined by rule and regulation. The eligible institutions shall act as agents of the commission in the distribution of the funds to any eligible student for a student-teaching semester.

(c) Of the funds remaining in the Excellence in Teaching Cash Fund after the distributions pursuant to subdivisions (a) and (b) of this subsection, for all fiscal years, the commission shall allocate on an annual basis up to four hundred thousand dollars in the aggregate of the funds to be distributed for the Attracting Excellence to Teaching Program to all eligible institutions according to the distribution formula as determined by rule and regulation. The eligible institutions shall act as agents of the commission in the distribution of the funds for the Attracting Excellence to Teaching Program to eligible students. The commission shall allocate on an annual basis up to eight hundred thousand dollars of the remaining available funds to be distributed to eligible students for the Enhancing Excellence in Teaching Program. Funding amounts granted in excess of one million two hundred thousand dollars shall be evenly divided for distribution between the two programs.

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

Source: Laws 2000, LB 1399, § 19; Laws 2001, Spec. Sess., LB 3, § 6; R.S.1943, (2008), § 79-8,136; Laws 2009, LB547, § 12; Laws 2011, LB333, § 8; Laws 2014, LB967, § 10; Laws 2015, LB519, § 9; Laws 2021, LB528, § 34; R.S.Supp.,2022, § 79-8,137.05; Laws 2023, LB705, § 24; Laws 2024, LB1284, § 20.
Operative date July 1, 2024.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

85-3113 Repayment tracking.

The commission has the administrative responsibility to track borrowers and to develop repayment tracking and collection mechanisms for the Attracting Excellence to Teaching Program and the Enhancing Excellence in Teaching Program. The commission may contract for such services. When a loan has been forgiven pursuant to section 85-3106 or 85-3110, the amount forgiven may be taxable income to the borrower and the commission shall provide notification of the amount forgiven to the borrower, the Department of Revenue, and the United States Internal Revenue Service if required by the Internal Revenue Code.

Source: Laws 2000, LB 1399, § 21; Laws 2009, LB547, § 13; R.S.1943, (2014), § 79-8,138; Laws 2023, LB705, § 25.

85-3114 Attracting Excellence to Teaching Program; Enhancing Excellence in Teaching Program; reports.

(1) Each eligible institution shall file an annual report with the commission for the Attracting Excellence to Teaching Program and the Enhancing Excellence in Teaching Program for any fiscal year in which the eligible institution receives funding to distribute to students pursuant to either or both of such programs containing such information as required by rule and regulation. On or before December 31 of each even-numbered year, the commission shall submit a report to the Governor, the Clerk of the Legislature, and the Education Committee of the Legislature on the status of the programs, the status of the borrowers, and the impact of the programs on the number of teachers in

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shortage areas in Nebraska and on the number of teachers receiving graduate degrees in teaching endorsement areas in Nebraska or receiving approval to teach postsecondary courses by a Nebraska postsecondary educational institution. The report submitted to the Clerk of the Legislature and the committee shall be submitted electronically. Each report shall include information on an institution-by-institution basis, the status of borrowers, and a financial statement with a description of the activity of the Excellence in Teaching Cash Fund.

(2) Any report pursuant to this section which includes information about borrowers shall exclude confidential information or any other information which specifically identifies a borrower.

Source: Laws 2000, LB 1399, § 22; Laws 2009, LB547, § 14; Laws 2011, LB333, § 9; Laws 2012, LB782, § 154; R.S.1943, (2014), § 79-8,139; Laws 2023, LB705, § 26.

85-3115 Teacher shortage area; Excellence in Teaching Act; rules and regulations.

The State Board of Education may adopt and promulgate rules and regulations to determine teacher shortage areas. The commission may adopt and promulgate rules and regulations to carry out the Excellence in Teaching Act.

Source: Laws 2000, LB 1399, § 23; Laws 2009, LB547, § 15; R.S.1943, (2014), § 79-8,140; Laws 2023, LB705, § 27.

ARTICLE 32

DOOR TO COLLEGE SCHOLARSHIP ACT

Section

- 85-3201. Act, how cited.
- 85-3202. Terms, defined.
- 85-3203. Awards to eligible students.
- 85-3204. Eligible postsecondary educational institutions; duties; awards; prohibited acts.
- 85-3205. Awards; review; distribute to eligible postsecondary educational institutions.
- 85-3206. Award; conditions.
- 85-3207. Award; recipient; requirements; termination.
- 85-3208. Award recipient; discontinue attendance; award termination; remit award balance.
- 85-3209. Commission; powers and duties.
- 85-3210. Act; limitations.
- 85-3211. Door to College Scholarship Fund; created; use; investment.

85-3201 Act, how cited.

Sections 85-3201 to 85-3211 shall be known and may be cited as the Door to College Scholarship Act.

Source: Laws 2023, LB705, § 28.

85-3202 Terms, defined.

For purposes of the Door to College Scholarship Act:

(1) Award means a grant of money under the act by the commission in the form of a Door to College Scholarship to an eligible student for educational expenses;

(2) Award year means the period beginning on July 1 through the following June 30;

(3) Commission means the Coordinating Commission for Postsecondary Education;

(4) Educational expenses means student costs for tuition, mandatory fees, other education-related fees, room and board, books, and other costs related to a student's education;

(5) Eligible postsecondary educational institution means a public or private postsecondary educational institution:

(a) Located in Nebraska;

(b) Primarily engaged in the instruction of students;

(c) Satisfying state statutory requirements relating to the approval and licensure of schools, colleges, and universities and maintaining accreditation by an accrediting organization recognized by the United States Department of Education;

(d) Offering courses of instruction in regularly scheduled classes to regularly enrolled undergraduate students who reside in Nebraska and have received a high school diploma or the equivalent; and

(e) Which has adopted, and has available for inspection, award refund and repayment policies;

(6) Eligible student means an undergraduate student who:

(a) Graduated from high school from an accredited education program at a youth rehabilitation and treatment center operated and utilized in compliance with state law or graduated from an approved or accredited public, private, denominational, or parochial school after being discharged from a youth rehabilitation and treatment center operated and utilized in compliance with state law;

(b) Is enrolled in an eligible postsecondary educational institution;

(c) Has applied for federal financial aid through the Free Application for Federal Student Aid for the applicable award year;

(d) Is a resident student who is domiciled in Nebraska as provided by section 85-502; and

(e) Complies with all other provisions of the Door to College Scholarship Act and any rules and regulations adopted and promulgated pursuant to the act;

(7) Full-time status means enrollment in at least twenty-four semester credit hours, thirty-six quarter credit hours, or nine hundred clock hours per award year;

(8) Part-time status means enrollment in at least twelve semester credit hours, eighteen quarter credit hours, or four hundred fifty clock hours per award year; and

(9) Undergraduate student means an individual who has not earned a first baccalaureate or professional degree and is enrolled in a postsecondary educational program which leads to, or is creditable toward, a first baccalaureate degree, associate degree, certificate, diploma, or the equivalent.

Source: Laws 2023, LB705, § 29; Laws 2024, LB1270, § 1.
Effective date July 19, 2024.

85-3203 Awards to eligible students.

The commission shall, as provided in the Door to College Scholarship Act, provide for awards to be made directly to eligible students beginning with the 2024-25 school year. An award shall not exceed a maximum of five thousand dollars annually to an eligible student with a full-time status and shall be prorated for eligible students with a part-time status. The commission may adjust the value of awards annually to make awards to all eligible applicants who apply by the application deadline set by the commission.

Source: Laws 2023, LB705, § 30.

85-3204 Eligible postsecondary educational institutions; duties; awards; prohibited acts.

(1) Eligible postsecondary educational institutions, acting as agents of the commission, shall:

(a) Receive and process applications for awards under the Door to College Scholarship Act;

(b) Determine eligibility of students based on criteria set forth in the act, except that such institutions shall not be responsible for determining if a student meets the requirements of subdivision (6)(a) of section 85-3202; and

(c) No later than the application deadline set by the commission, make recommendations to the commission for awards to eligible students, including the name and social security number of each eligible student.

(2) An award under the Door to College Scholarship Act shall not be used by a postsecondary educational institution to reduce institutional scholarships, grants, or tuition or fee waivers that a student would otherwise be eligible to receive if such student did not receive an award under the act.

Source: Laws 2023, LB705, § 31; Laws 2024, LB1270, § 2.
Effective date July 19, 2024.

85-3205 Awards; review; distribute to eligible postsecondary educational institutions.

(1) Within thirty days after receiving recommendations pursuant to section 85-3204, the commission shall review the recommended awards for compliance with the Door to College Scholarship Act and any rules and regulations adopted and promulgated pursuant to the act and notify each eligible postsecondary educational institution of the approval or disapproval of recommended awards.

(2) For purposes of such approval or disapproval of recommended awards, the submission of an application by a student for a scholarship pursuant to the Door to College Scholarship Act shall authorize the Department of Health and Human Services to verify for the commission the applicant's name and previous status at a youth rehabilitation and treatment center in order to determine a student's eligibility under subdivision (6)(a) of section 85-3202.

(3) The commission shall distribute to each eligible postsecondary educational institution the total award amount approved for eligible students at such institution. The eligible postsecondary educational institution shall act as an

agent of the commission to disburse the awards directly to eligible students during the award year.

Source: Laws 2023, LB705, § 32; Laws 2024, LB1270, § 3.
Effective date July 19, 2024.

85-3206 Award; conditions.

An award may be granted to an eligible student for attendance at an eligible postsecondary educational institution if:

(1) The eligible student is accepted for enrollment as follows:

(a) In the case of an eligible student beginning the first year in attendance at an eligible postsecondary educational institution, such eligible student has satisfied requirements for admission and has enrolled or indicated an intent to enroll in an eligible postsecondary educational institution; or

(b) In the case of an eligible student enrolled in an eligible postsecondary educational institution following the successful completion of the student's first year in attendance, such eligible student continues to meet the requirements of the Door to College Scholarship Act and has maintained the minimum standards of performance as required by the eligible postsecondary educational institution in which the eligible student is enrolled;

(2) The eligible student receiving such award certifies that the award will be used only for educational expenses; and

(3) The eligible student has complied with the act and any rules and regulations adopted and promulgated pursuant to the act.

Source: Laws 2023, LB705, § 33.

85-3207 Award; recipient; requirements; termination.

(1) A recipient of an award shall:

(a) Attend all required courses regularly;

(b) Meet with an assigned advisor at regular intervals to discuss academic progress and to develop a job-search plan; and

(c) Maintain good academic standing at the eligible postsecondary educational institution without any disciplinary action by such institution.

(2) An award may be terminated if such person fails to meet the requirements of this section.

Source: Laws 2023, LB705, § 34.

85-3208 Award recipient; discontinue attendance; award termination; remit award balance.

If an award recipient discontinues attendance before the end of the award year or the award is terminated pursuant to section 85-3207, the award recipient shall remit any award balance allowable to the eligible postsecondary educational institution in accordance with such institution's withdrawal policy. The institution shall remit such award balance to the commission in accordance with such institution's refund policy.

Source: Laws 2023, LB705, § 35.

85-3209 Commission; powers and duties.

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(1) The commission shall:

(a) Supervise the issuance of public information concerning the Door to College Scholarship Act; and

(b) Establish a reasonable and fair appeal procedure for students adversely affected by the actions of the commission or an eligible postsecondary educational institution in the distribution of funds or granting or termination of awards pursuant to the act.

(2) The commission may adopt and promulgate rules and regulations necessary to carry out the act.

Source: Laws 2023, LB705, § 36.

85-3210 Act; limitations.

The Door to College Scholarship Act does not grant any authority to the commission to:

(1) Control or influence the policies of any eligible postsecondary educational institution because such institution accepts students who receive awards; or

(2) Require any eligible postsecondary educational institution to enroll any student receiving an award or, once admitted, to permit continued enrollment in such institution by any student receiving an award.

Source: Laws 2023, LB705, § 37.

85-3211 Door to College Scholarship Fund; created; use; investment.

The Door to College Scholarship Fund is created. The commission shall administer the fund, which shall consist of amounts transferred from the State Lottery Operation Trust Fund pursuant to section 79-3501 prior to July 1, 2029, as well as any money transferred by the Legislature and gifts, grants, or bequests from any source, including federal, state, public, and private sources. All amounts accruing to the Door to College Scholarship Fund shall be used to carry out the Door to College Scholarship 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 2023, LB705, § 38.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

CHAPTER 86

TELECOMMUNICATIONS AND TECHNOLOGY

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§ 86-101

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Section

(h) RAILROAD CARRIER WIRE-CROSSING AGREEMENT

86-164. Telecommunications carrier; placement of line, wire, or cable across railroad right-of-way; application; petition; hearing; expedited wire-crossing permit; procedure; order; standard crossing fee; expenses; agreement.

(i) SALE OF EXCHANGE

86-165. Sale of exchange; application; notice; commission; considerations; order.

(j) BROADBAND DATA IMPROVEMENT PROGRAM

86-166. Broadband Data Improvement Program; purpose; commission, powers and duties.

(a) GENERAL PROVISIONS

86-101 Act, how cited.

Sections 86-101 to 86-166 shall be known and may be cited as the Nebraska Telecommunications Regulation Act.

Source: Laws 2002, LB 1105, § 2; Laws 2003, LB 2, § 1; Laws 2010, LB181, § 1; Laws 2010, LB183, § 1; Laws 2012, LB715, § 1; Laws 2019, LB462, § 17; Laws 2020, LB996, § 2.

86-102 Legislative policy.

The Legislature declares that it is the policy of the state to:

- (1) Preserve affordable telecommunications services;
- (2) Maintain and advance the efficiency and availability of telecommunications services;
- (3) Ensure that consumers pay only reasonable charges for telecommunications services;
- (4) Promote diversity in the supply of telecommunications services and products throughout the state; and
- (5) Promote fair competition in all Nebraska telecommunications markets in a manner consistent with the federal act.

Source: Laws 1986, LB 835, § 1; Laws 1997, LB 660, § 5; R.S.1943, (1999), § 86-801; Laws 2002, LB 1105, § 3.

Sections 86-801 to 86-811 (recodified in 2002 as provisions of the Nebraska Telecommunications Regulatory Act, sections 86-101 to 86-163) apply only to common carriers. Nebraska Pub. Serv. Comm. v. Nebraska Pub. Power Dist., 256 Neb. 479, 590 N.W.2d 840 (1999).

Sections 86-801 to 86-811 (recodified in 2002 as provisions of the Nebraska Telecommunications Regulatory Act, sections 86-101 to 86-163) are constitutional. State ex rel. Spire v. Northwestern Bell Tel. Co., 233 Neb. 262, 445 N.W.2d 284 (1989).

86-103 Definitions, where found.

For purposes of the Nebraska Telecommunications Regulation Act, unless the context otherwise requires, the definitions found in sections 86-104 to 86-121.01 apply.

Source: Laws 1986, LB 835, § 2; Laws 1993, LB 121, § 554; Laws 1997, LB 660, § 6; Laws 1999, LB 150, § 14; R.S.1943, (1999), § 86-802; Laws 2002, LB 1105, § 4; Laws 2012, LB715, § 2; Laws 2019, LB462, § 18; Laws 2021, LB338, § 1.

86-103.01 Repealed. Laws 2021, LB338, § 10.

86-104 Basic local exchange rate, defined.

Basic local exchange rate means the flat monthly charge for an access line, whether the telecommunications service is provided on a flat or measured basis, imposed by a telecommunications company for basic local exchange service but does not include any charge or tax imposed by or resulting from action by a governmental body which is billed by a telecommunications company to its customers.

Source: Laws 2002, LB 1105, § 5.

86-105 Basic local exchange service, defined.

Basic local exchange service means the access and transmission of two-way switched voice communications within a local exchange area.

Source: Laws 2002, LB 1105, § 6.

86-106 Business service, defined.

Business service means telecommunications service which is used for occupational, professional, or institutional purposes.

Source: Laws 2002, LB 1105, § 7.

86-107 Class of subscribers, defined.

Class of subscribers means a group of customers for which a telecommunications company has established a distinct pricing plan for telecommunications service.

Source: Laws 2002, LB 1105, § 8.

86-108 Commission, defined.

Commission means the Public Service Commission.

Source: Laws 2002, LB 1105, § 9.

86-109 Extended area service, defined.

Extended area service means a telecommunications service which groups two or more exchanges to allow subscribers of one exchange in the group to place and receive two-way switched communications to and from subscribers in one or more other exchanges in the group without an interexchange toll charge.

Source: Laws 2002, LB 1105, § 10.

86-110 Federal act, defined.

Federal act means the federal Communications Act of 1934, as amended, including the federal Telecommunications Act of 1996, as such acts existed on January 1, 2002.

Source: Laws 2002, LB 1105, § 11.

86-111 Interexchange service, defined.

Interexchange service means the access and transmission of communications between two or more local exchange areas, except for two-way switched

communications between local exchanges that are grouped for extended area service.

Source: Laws 2002, LB 1105, § 12.

86-111.01 Internet-protocol-enabled service, defined.

Internet-protocol-enabled service or IP-enabled service means any service, capability, functionality, or application provided using Internet protocol, or any successor protocol, that enables a service user to send or receive a communication in Internet protocol format, including, but not limited to, voice, data, or video.

Source: Laws 2019, LB462, § 19.

86-112 Inter-LATA interexchange service, defined.

Inter-LATA interexchange service means interexchange service originating and terminating in different LATAs.

Source: Laws 2002, LB 1105, § 13.

86-113 Intra-LATA interexchange service, defined.

Intra-LATA interexchange service means interexchange service originating and terminating within the same LATA.

Source: Laws 2002, LB 1105, § 14.

86-114 LATA, defined.

LATA means local access and transport area as defined by 47 U.S.C. 153(25), as such section existed on January 1, 2002.

Source: Laws 2002, LB 1105, § 15.

86-115 Local exchange area, defined.

Local exchange area means a territorial unit established by a telecommunications company for the administration of telecommunications service within a specific area generally encompassing a city or village and its environs as described in maps filed with and approved by the commission.

Source: Laws 2002, LB 1105, § 16.

86-116 Residence service, defined.

Residence service means telecommunications service which is furnished to a dwelling and which is used for personal or domestic purposes and not for business, professional, or institutional purposes.

Source: Laws 2002, LB 1105, § 17.

86-117 Telecommunications, defined.

Telecommunications means the transmission, between or among points specified by the subscriber, of information of the subscriber's choosing, without a change in the form or content of the information as sent or received.

Source: Laws 2002, LB 1105, § 18.

86-118 Telecommunications common carrier, defined.

Telecommunications common carrier means a provider of telecommunications service for hire which offers telecommunications service to the general public at large in Nebraska intrastate commerce.

Source: Laws 2002, LB 1105, § 19.

86-119 Telecommunications company, defined.

Telecommunications company means any person, firm, partnership, limited liability company, corporation, association, or governmental entity offering telecommunications service in Nebraska intrastate commerce.

Source: Laws 2002, LB 1105, § 20.

86-120 Telecommunications contract carrier, defined.

Telecommunications contract carrier means a provider of telecommunications service for hire, other than as a common carrier, in Nebraska intrastate commerce.

Source: Laws 2002, LB 1105, § 21.

86-121 Telecommunications service, defined.

Telecommunications service means the offering of telecommunications for a fee.

Source: Laws 2002, LB 1105, § 22.

86-121.01 Voice over Internet protocol service, defined.

Voice over Internet protocol service means an interconnected voice over Internet protocol service as defined in 47 C.F.R. part 9, as such regulations existed on January 1, 2019.

Source: Laws 2019, LB462, § 20.

(b) REGULATORY AUTHORITY

86-122 Interconnection agreements; administrative fine.

(1) The commission shall implement the federal Telecommunications Act of 1996, as such act existed on January 1, 2002, including section 252 of the act which establishes specific procedures for negotiation and arbitration of interconnection agreements between telecommunications companies. Interconnection agreements approved by the commission pursuant to section 252 of the act may contain such enforcement mechanisms and procedures that the commission determines to be consistent with the establishment of fair competition in Nebraska telecommunications markets.

(2) The commission shall not mandate any arrangement that requires interconnecting telecommunications companies to engage in mutual recovery of costs through offsetting of reciprocal obligations. This subsection shall not prohibit telecommunications companies from entering into voluntary agreements to engage in such an agreement.

(3) In addition, the commission may administratively fine pursuant to section 75-156 any person who violates any enforcement mechanism or procedure established pursuant to this section. The authority granted to the commission

pursuant to this section shall be broadly construed in a manner consistent with the federal Telecommunications Act of 1996.

Source: Laws 2002, LB 1105, § 23.

86-123 Quality and rate regulation; appeal.

(1) The commission shall regulate the quality of telecommunications service provided by telecommunications companies and shall investigate and resolve subscriber complaints concerning quality of telecommunications service, subscriber deposits, and disconnection of telecommunications service. If such a complaint cannot be resolved informally, then, upon petition by the subscriber, the commission shall set the matter for hearing in accordance with the commission's rules and regulations for notice and hearing. The commission may by order grant or deny, in whole or in part, the subscriber's petition or provide such other relief as is reasonable based on the evidence presented at the hearing. Any such order of the commission may be enforced against any telecommunications company as provided in sections 75-140 to 75-144, and such order may be appealed by an interested party. The appeal shall be in accordance with section 75-136.

(2) The commission may regulate telecommunications company rates pursuant to sections 86-139 to 86-157.

(3) The Nebraska Telecommunications Regulation Act shall preempt and prohibit any regulation of a telecommunications company by counties, cities, villages, townships, or any other local governmental entity.

Source: Laws 1986, LB 835, § 9; Laws 1997, LB 660, § 10; R.S.1943, (1999), § 86-809; Laws 2002, LB 1105, § 24; Laws 2003, LB 187, § 26; Laws 2013, LB545, § 10.

86-124 Nonregulated activities; section, how construed.

(1) The commission shall not regulate the following:

(a) One-way broadcast or cable television transmission of television or radio signals;

(b) Mobile radio services, radio paging services, and wireless telecommunications service;

(c) Interexchange services; and

(d) Internet-protocol-enabled service and voice over Internet protocol service, including rates, service or contract terms, conditions, or requirements for entry for such service.

(2) This section shall not affect or modify:

(a) The enforcement of criminal or civil laws, including, but not limited to, laws concerning consumer protection and unfair or deceptive trade practices which apply generally to the conduct of business;

(b)(i) Any entity's obligations or rights or commission authority under section 86-122 and under 47 U.S.C. 251 and 252, as such sections existed on January 1, 2019, and (ii) any carrier-to-carrier tariff rates, service quality standards, interconnection agreements, or other obligations for which the commission has jurisdiction under state or federal law;

(c) Any requirement to contribute to any fund administered by the commission authorized by the Enhanced Wireless 911 Services Act or the Nebraska Telecommunications Universal Service Fund Act;

(d) Any commission jurisdiction over intrastate switched access rates, terms, and conditions, including the resolution of disputes arising from, and implementation of federal and state law with respect to, intercarrier compensation;

(e) The eligibility and requirements for the receipt of funds from the Nebraska Telecommunications Universal Service Fund and the rules, regulations, and orders under the Nebraska Telecommunications Universal Service Fund Act or the receipt of funds from the federal universal service fund, regardless of the unregulated status of the provider's service under this section;

(f) Any entity's rights and obligations with respect to (i) registration under section 86-125, (ii) the use of public streets, roads, highways, and rights-of-way, or (iii) a certificate of public convenience and necessity or a permit; and

(g) The commission's authority under section 86-1029.04.

Source: Laws 1986, LB 835, § 8; Laws 1997, LB 660, § 9; Laws 2001, LB 389, § 2; R.S.Supp.,2001, § 86-808; Laws 2002, LB 1105, § 25; Laws 2019, LB462, § 21; Laws 2024, LB1031, § 2.
Operative date July 19, 2024.

Cross References

Enhanced Wireless 911 Services Act, see section 86-442.

Nebraska Telecommunications Universal Service Fund Act, see section 86-316.

86-125 Communications provider; registration; requirements; administrative fine.

Notwithstanding the provisions of section 86-124:

(1) Any communications provider providing service in Nebraska shall file a registration form with and pay a registration fee to the Public Service Commission. Any communications provider shall register with the commission prior to providing service. The commission shall prescribe the registration form to be filed pursuant to this section;

(2) A communications provider providing the services described in subdivision (7)(a) of this section shall provide the commission with the name, address, telephone number, and email address of a contact person concerning:

(a) The Nebraska Telecommunications Universal Service Fund Act and related surcharges, if applicable;

(b) The Telecommunications Relay System Act and related surcharges, if applicable;

(c) The Enhanced Wireless 911 Services Act and related surcharges, if applicable; and

(d) Consumer complaints and inquiries;

(3) A communications provider providing the services described in subdivision (7)(b) of this section shall provide the commission with the name, address, telephone number, and email address of a person with managerial responsibility for Nebraska operations;

(4) A communications provider shall:

(a) Submit a registration fee at the time of submission of the registration form. The commission shall set the fee in an amount sufficient to cover the costs of administering the registration process but not to exceed fifty dollars;

(b) Keep the information required by this section current and notify the commission of any changes to such information within sixty days after the change; and

(c) Certify to the commission by January 1 each year that such communications provider does not use or provide any communications equipment or service deemed to pose a threat to national security identified on the Covered List developed pursuant to 47 C.F.R. 1.50002, as such regulation existed on January 1, 2023, and published by the Public Safety and Homeland Security Bureau of the Federal Communications Commission pursuant to the federal Secure and Trusted Communications Networks Act of 2019, 47 U.S.C. 1601 et seq., as such act existed on January 1, 2023, and the rules adopted pursuant to such act by the Federal Communications Commission on November 11, 2022, in its Report and Order FCC 22-84;

(5) The commission may, pursuant to section 75-156, administratively fine any communications provider which violates this section;

(6) This section applies to all communications providers providing service in Nebraska except for those communications providers otherwise regulated under the Nebraska Telecommunications Regulation Act; and

(7) For purposes of this section, communications provider means any entity that:

(a) Uses telephone numbers or Internet protocol addresses or their functional equivalents or successors to provide information of a user's choosing by aid of wire, cable, wireless, satellite, or other like connection, whether part of a bundle of services or offered separately, (i) which provides or enables real-time or interactive voice communications and (ii) in which the voice component is the primary function; or

(b) Provides any service, whether part of a bundle of services or offered separately, used for transmission of information of a user's choosing regardless of the transmission medium or technology employed, that connects to a network that permits the end user to engage in electronic communications, including, but not limited to, service provided directly (i) to the public or (ii) to such classes of users as to be effectively available directly to the public.

Source: Laws 2002, LB 1211, § 8; Laws 2007, LB661, § 1; Laws 2023, LB683, § 19.

Cross References

Enhanced Wireless 911 Services Act, see section 86-442.

Nebraska Telecommunications Universal Service Fund Act, see section 86-316.

Telecommunications Relay System Act, see section 86-301.

86-126 Regulation of competition.

Except for requirements established by statute, the commission may limit, remove, or waive regulatory requirements for telecommunications companies when it determines that competition will serve the same purposes as public interest regulation. The commission may revoke any waivers it grants or reinstate regulations if such revocation or reinstatement would protect the public interest upon a finding that the telecommunications company is restrict-

ing market output, impairing customer interest, or engaging in unlawful anti-competitive activity.

Source: Laws 1986, LB 835, § 7; R.S.1943, (1999), § 86-807; Laws 2002, LB 1105, § 26.

86-127 Repealed. Laws 2023, LB818, § 45.

(c) CERTIFICATION AND PERMIT REQUIREMENTS

86-128 Certificate or permit of convenience and necessity.

(1)(a) To preserve the integrity of a ubiquitous network, to preserve and advance universal service, and to ensure the delivery of essential and emergency telecommunications service, telecommunications common carriers and telecommunications contract carriers in Nebraska are subject to regulation by the commission. In addition to the requirements of section 86-129, a person shall file an application and receive either a certificate of convenience and necessity as a telecommunications common carrier or a permit as a telecommunications contract carrier before such person may (i) offer any telecommunications service or (ii) construct new telecommunications facilities in, or extend existing telecommunications facilities into, the territory of another telecommunications company to provide any telecommunications service.

(b) The commission may only issue a certificate of convenience and necessity as a telecommunications common carrier or a permit as a telecommunications contract carrier after due notice and hearing pursuant to commission rules and regulations. The commission shall not issue a certificate or a permit to an agency or political subdivision of the state.

(2) If a telecommunications company holds a certificate of convenience and necessity as a telecommunications common carrier, it shall not be required to obtain a permit as a telecommunications contract carrier.

(3) The commission may establish such just and reasonable classifications of groups of telecommunications common carriers and telecommunications contract carriers taking into consideration the special nature of the telecommunications service performed by such carriers. The commission may adopt and promulgate rules, regulations, and requirements to be observed by a carrier so classified or grouped as the commission deems necessary or desirable and in the public interest.

(4) The commission may waive applicability of subsection (1) of this section as to the provision of intra-LATA interexchange service under rules and regulations applicable to all telecommunications companies providing such interexchange service. After such waiver, the certificate or permit for and provision of intra-LATA interexchange service shall be governed by the statutes, rules, and regulations for a certificate or permit for and provision of inter-LATA interexchange service.

Source: Laws 1963, c. 425, art. VI, § 4, p. 1418; Laws 1986, LB 835, § 13; Laws 1993, LB 121, § 468; Laws 1997, LB 660, § 3; Laws 1999, LB 150, § 13; Laws 2001, LB 827, § 19; R.S.Supp.,2001, § 75-604; Laws 2002, LB 1105, § 27.

1. Certificate of convenience and necessity
2. Miscellaneous

1. Certificate of convenience and necessity

The appellant's application seeking authority to operate a mobile telephone service to subscribers was denied by the court. Before granting a certificate of convenience and necessity, the commission must find that the portion of the territory of another telephone company into which the applicant proposes to construct new lines or extend existing lines does not or will not, within a reasonable time, receive reasonably adequate telephone service from the telephone company already serving the territory. In re Application of Best, 209 Neb. 524, 308 N.W.2d 726 (1981).

Under the facts in this case, the Nebraska Public Service Commission had no jurisdiction to order a motel to cease and desist from offering or providing telephone service on its in-house telephone system without first obtaining from it a certificate of public convenience and necessity. Sherdon v. Dann, 193 Neb. 768, 229 N.W.2d 531 (1975).

This section (formerly section 75-604) does not prevent State Railway Commission from authorizing service under 1969 act by telephone company to applicant residing in another telephone company's service area without an application by former company to extend its certificate of public convenience and necessity. Schoen v. American Communication Co., Inc., 189 Neb. 78, 199 N.W.2d 716 (1972).

The territory of a certificated telephone service company cannot be invaded by a mobile telephone service company unless it first applies for and receives a certificate of public convenience and necessity. Radio-Fone, Inc. v. A.T.S. Mobile Telephone, Inc., 187 Neb. 637, 193 N.W.2d 442 (1972).

The invasion of the territory of a telephone company rendering long distance service by another telephone company is prohibited unless the invading company applies for and receives a certificate of convenience and necessity. Northwestern Bell Tel. Co. v. Consolidated Tel. Co., 180 Neb. 268, 142 N.W.2d 324 (1966).

Before State Railway Commission can issue certificate of convenience and necessity allowing one telephone company to invade the territory of another, it must make specific findings required by this section (formerly section 75-604). Chambers Rural Tel. Co., Inc. v. K. & M. Tel. Co., Inc., 179 Neb. 735, 140 N.W.2d 400 (1966).

The grant of a certificate of convenience and necessity to invade the territory of another company must be on the application of the invading company. Sherdon v. American Communication Co., 178 Neb. 454, 134 N.W.2d 42 (1965).

2. Miscellaneous

Subsection (1)(b) of this section is preempted by federal law and is unconstitutional. In re Application of Lincoln Electric System, 265 Neb. 70, 655 N.W.2d 363 (2003).

Sections 75-604 to 75-616 apply only to common carriers. Nebraska Pub. Serv. Comm. v. Nebraska Pub. Power Dist., 256 Neb. 479, 590 N.W.2d 840 (1999).

Where evidence sustains a compliance with this section (formerly section 75-604), and a valid reason for denial is not shown, railway commission should grant application. Northwestern Bell Tel. Co. v. Pleasant Valley Tel. Co., 181 Neb. 799, 150 N.W.2d 922 (1967).

86-129 Certificates or permits for inter-LATA interexchange services.

(1) The commission may issue a certificate or permit authorizing any telecommunications company which files an application to offer and provide inter-LATA interexchange service. The application shall include such information as required by the rules and regulations of the commission. The commission may as a precondition to issuing a certificate or permit: (a) Require the procurement of a performance bond sufficient to cover amounts due or to become due to other telecommunications companies providing access to the local exchange networks for the applicant and (b) require the procurement of a performance bond sufficient to protect any advances or deposits the telecommunications company may collect from its customers or order that such advances or deposits be held in escrow or trust.

(2) The commission may deny a certificate or permit to any telecommunications company which:

- (a) Does not provide the information required by the commission;
- (b) Fails to provide a performance bond, if required;
- (c) Does not possess adequate financial resources to provide the proposed interexchange service; or
- (d) Does not possess adequate technical competency to provide the proposed interexchange service.

(3) Within thirty days after receiving an application, the commission shall approve a certificate or permit or issue a notice of hearing concerning the application. A hearing is only required to deny an application.

(4) Any telecommunications company or its affiliate that has been authorized by the commission to offer an interexchange service prior to January 1, 1987, shall continue to have such authority. Such telecommunications company or

affiliate need not file a new application to provide the interexchange service previously authorized by the commission.

Source: Laws 1986, LB 835, § 5; R.S.1943, (1999), § 86-805; Laws 2002, LB 1105, § 28.

86-130 Territorial maps.

(1) Every telecommunications company in Nebraska shall file with the commission (a) maps of the territory in Nebraska in which the telecommunications company offers local exchange telephone service and (b) amended maps to continuously keep current the information shown on such maps.

(2) Rules and regulations of the commission shall include: The style, size, and kind of maps; the information to be shown on such maps; the time and place for filing the maps; and a requirement that the maps be kept current.

(3) The commission may revoke or suspend the certificate of convenience and necessity as a telecommunications common carrier or the permit as a telecommunications contract carrier of any telecommunications company who violates this section.

Source: Laws 1963, c. 425, art. VI, § 5, p. 1418; Laws 1993, LB 121, § 469; Laws 1994, LB 414, § 100; R.S.1943, (1996), § 75-605; Laws 2002, LB 1105, § 29.

Anyone operating an exchange offering telephone service is required to file a map of the territory in which service is offered. *Chambers Rural Tel. Co., Inc. v. K. & M. Tel. Co., Inc.*, 179 Neb. 735, 140 N.W.2d 400 (1966).

Filing of territorial maps under this section (formerly section 75-605) was made. *Sherdon v. American Communication Co.*, 178 Neb. 454, 134 N.W.2d 42 (1965).

(d) PROVISION OF TELECOMMUNICATION SERVICES

86-131 Trunk and toll line; connection requirements.

Every telecommunications company shall take the calls or messages coming from any other telecommunications company and switch and connect its equipment so that any telephone message from any point in Nebraska may be delivered to any subscriber served by its telephone exchange or switched through and so that any message may be passed on to another exchange over such trunk or toll lines as may be available and designated by the exchange or switching station where the call originated, regardless of the ownership of such lines. Such telecommunications company shall also take calls from its subscribers and public pay stations and pass such calls through its exchange toward destination and over the lines and the route designated by the person making such telephone call if there are competing lines existing between such points. If the person making such telephone call does not designate a route for such message or no competing lines exist between points of origination and destination, the telecommunications company may, by its operator at originating point, make such designation of route, but calls or messages shall be switched through to destination if the point can be reached by any connecting equipment.

Source: Laws 1963, c. 425, art. VI, § 7, p. 1419; Laws 1994, LB 414, § 102; R.S.1943, (1996), § 75-607; Laws 2002, LB 1105, § 30.

86-132 Trunk and toll lines; consolidation requirements.

Whenever any competing telephone plant or exchange has been consolidated with or absorbed by another so that the remaining plant or exchange has a monopoly of or exclusive telephone business of any city or village, the telecommunications company operating the exclusive exchange or plant shall cause all toll or trunk lines formerly terminating in the eliminated exchange to be placed on or connected to its exclusive exchange, shall make and keep such connection in a good and efficient manner, and shall maintain an interchange of business with such trunk or toll lines the same as its own, in a fair and impartial manner, upon the terms set forth in this section and sections 86-131, 86-140, and 86-153. During the period intervening between the time when the first subscribers are taken from the eliminated exchange until the time all have been removed, if such period is more than thirty days, a temporary trunk line shall be established between the two exchanges so that calls may come into both exchanges from the trunk or toll lines of the exchange so absorbed or eliminated and that calls from both exchanges may go out over the lines.

Source: Laws 1963, c. 425, art. VI, § 8, p. 1420; Laws 1994, LB 414, § 103; R.S.1943, (1996), § 75-608; Laws 2002, LB 1105, § 31.

86-133 Exchange abandonment.

An existing telephone exchange or central office shall not be abandoned or removed to another city or village except by the written consent of at least sixty percent of the subscribers who had rental service contracts with the telecommunications company which seeks to change service six months before an application to change telecommunications service is filed with the commission. The commission shall hold a hearing and issue an order before the change is effected.

Source: Laws 1963, c. 425, art. VI, § 11, p. 1421; Laws 1994, LB 414, § 107; R.S.1943, (1996), § 75-611; Laws 2002, LB 1105, § 32.

86-134 Discontinuation of service.

(1) No telecommunications company which provides intrastate interexchange service or basic local exchange service may abandon or otherwise discontinue such service in or to a local exchange area which it serves unless:

(a) The commission finds upon application and hearing, if such hearing is deemed necessary by the commission, that one or more other telecommunications companies or communications providers (i) are furnishing comparable wireline telecommunications service, including voice over Internet protocol service, to the subscribers in such local exchange area or (ii) have been designated as eligible telecommunications carriers in such local exchange area at the time of discontinuance or abandonment; and

(b) The telecommunications company discontinuing telecommunications service to such local exchange area:

(i) Notifies its subscribers in the local exchange area in writing of the abandonment, which notice shall be sent at least thirty days prior to the effective date of such abandonment;

(ii) Refunds any unused prepaid subscription charges or other unused prepaid charges to each customer in the local exchange area prior to the effective date of the abandonment; and

(iii) Prior to the effective date of the abandonment, reimburses its customers in the local exchange area for service charges which its customers incur in obtaining substitute service from another telecommunications company or communications provider or, in lieu thereof, pays other telecommunications companies or communications providers directly for such service charges on behalf of its customers making changes in their service as a result of the abandonment.

(2) For purposes of this section:

(a) Communications provider has the same meaning as in section 86-125; and

(b) Eligible telecommunications carrier means an eligible telecommunications carrier as designated under 47 U.S.C. 214(e), as such section existed on January 1, 2022.

Source: Laws 1986, LB 835, § 6; Laws 1997, LB 660, § 8; R.S.1943, (1999), § 86-806; Laws 2002, LB 1105, § 33; Laws 2022, LB1144, § 3.

86-135 Advanced telecommunications capability service; application; notice; commission; considerations.

(1) For purposes of sections 86-135 to 86-138, advanced telecommunications capability service means high-speed, broadband service at a minimum download speed of one hundred megabits per second and a minimum upload speed of twenty megabits per second provided by a local exchange carrier that enables users to originate and receive high-quality voice, data, graphics, and video communications using any technology.

(2) Any person may file an application with the commission to obtain advanced telecommunications capability service furnished by a telecommunications company in the local exchange area adjacent to the local exchange area in which the applicant resides.

(3) The commission shall serve upon each telecommunications company directly affected a copy of the application and notice of the hearing at least thirty days prior to the hearing on the application, which shall be held if all of the telecommunications companies involved do not consent to the application.

(4) If an application for the revision of an exchange service area includes more than one customer in a particular exchange, the commission shall consider the circumstances of each customer and the impact to the obligations of any affected telecommunications company which has not consented to the application.

Source: Laws 1969, c. 601, § 1, p. 2457; Laws 1993, LB 121, § 471; Laws 1994, LB 414, § 108; R.S.1943, (1996), § 75-612; Laws 2002, LB 1105, § 34; Laws 2012, LB715, § 4; Laws 2021, LB338, § 2.

Applicants are required, irrespective of whether phone company currently providing service participates, to present evidence to establish their case. In re Application of Jantzen, 245 Neb. 81, 511 N.W.2d 504 (1994).

An order of the Public Service Commission will be affirmed if it acted within the scope of its authority, if its order is reasonable and not arbitrary, and if there is evidence to support its findings. In re Application of The Mickow Corp., 210 Neb. 580, 316 N.W.2d 66 (1982).

Intent of statute is to permit users to petition for telephone service outside the exchange of residence. Hartman v. Glen-

wood Tel. Membership Corp., 197 Neb. 359, 249 N.W.2d 468 (1977).

Subsection (1) of this section permits a person to file an application with the Public Service Commission to seek service from a telecommunications company in the local exchange area adjacent to the local exchange area in which the applicant resides, which, in this instance, meant the Public Service Commission necessarily interpreted the words "the local exchange area in which the applicant resides" to include property an applicant presently owns and on which the applicant does not presently reside, but has demonstrated an intent to reside on

such property in the future. In re Application No. C-4981, 27 Neb. App. 773, 936 N.W.2d 365 (2019).

86-136 Commission; application approval.

Upon the completion of the hearing on such an application made pursuant to section 86-135, if a hearing is required, the commission may grant the application, in whole or in part, if the evidence establishes the following:

(1) That such applicant is not receiving, and at the time of the application is not able to receive, advanced telecommunications capability service from the telecommunications company which furnishes telecommunications service in the local exchange area in which the applicant resides;

(2) That the revision of the exchange service area required to grant the application is economically sound, will not impair the capability of any telecommunications company affected to serve the remaining subscribers in any affected exchanges, and will not impose an undue and unreasonable technological or engineering burden on any affected telecommunications company; and

(3) That the applicant is willing and, unless waived by the affected telecommunications company, will pay such construction and other costs and rates as are fair and equitable and will reimburse the affected telecommunications company for any undepreciated investment in existing property as determined by the commission. The amount of any payment by the applicant for construction and other costs associated with providing service to the applicant may be negotiated between the applicant and the affected telecommunications company.

Source: Laws 1969, c. 601, § 2, p. 2457; Laws 1982, LB 229, § 1; Laws 1994, LB 414, § 109; R.S.1943, (1996), § 75-613; Laws 2002, LB 1105, § 35; Laws 2012, LB715, § 5; Laws 2019, LB268, § 1.

Applicants are required, irrespective of whether phone company currently providing service participates, to present evidence to establish their case. Public Service Commission may consider, in determining the adequacy of service the applicant receives, the evidence that toll charges deter others in the applicant's community of interest from calling him. In re Application of Jantzen, 245 Neb. 81, 511 N.W.2d 504 (1994).

A toll charge as contemplated in subsection (1) of this statute (formerly section 75-613) is a charge for a single long-distance call, not a monthly flat fee for service. In re Application of George Farm Co., 233 Neb. 23, 443 N.W.2d 285 (1989).

The determination of what is economically sound under this section (formerly section 75-613) is peculiarly within the discretion and expertise of the Public Service Commission. Where the evidence is in conflict, the weight of the evidence is for the determination of the commission and not the appellate court. Reis v. Glenwood Telephone Membership Corp., 207 Neb. 575, 299 N.W.2d 771 (1980).

Terminology of this section (formerly section 75-613) has acquired new meanings requiring case-by-case evaluation. Hartman v. Glenwood Tel. Membership Corp., 197 Neb. 359, 249 N.W.2d 468 (1977).

An applicant may obtain authority from the State Railway Commission for telephone service furnished in adjacent service area without proving inadequacy of service or unfairness of rates in the tradition of public utility law. Schoen v. American Communication Co., Inc., 189 Neb. 78, 199 N.W.2d 716 (1972).

Subsection (1) of this section relates to whether an applicant is receiving, or will receive within a reasonable time, broadband service from the telecommunications company which furnishes telecommunications service in the local exchange area in which the applicant resides; a timeframe of nearly 8 months did not meet the requirement of "within a reasonable time." Note that this section was amended effective September 1, 2019, to place the focus on when the application to change exchange boundaries is filed, rather than whether service can be made available within a reasonable time. In re Application No. C-4981, 27 Neb. App. 773, 936 N.W.2d 365 (2019).

86-137 Certificate of convenience and necessity.

After the commission has lawfully granted an application pursuant to section 86-136, the telecommunications company ordered to provide the advanced telecommunications capability service shall be issued a certificate of convenience and necessity to serve that area added to its local exchange area by the commission, if necessary. The commission shall set the date when the service granted shall take effect and, in doing so, shall take into consideration any

construction or major repair which will be required of the telecommunications company involved.

Source: Laws 1969, c. 601, § 3, p. 2458; Laws 1994, LB 414, § 110; R.S.1943, (1996), § 75-614; Laws 2002, LB 1105, § 36; Laws 2012, LB715, § 6.

86-138 Application denial.

If the commission refuses to grant an application made pursuant to section 86-135, no new application for the same advanced telecommunications capability service shall be filed or shall be considered by the commission until one year has elapsed after the date of mailing of the commission order.

Source: Laws 1969, c. 601, § 4, p. 2458; Laws 1994, LB 414, § 111; R.S.1943, (1996), § 75-615; Laws 2002, LB 1105, § 37; Laws 2012, LB715, § 7.

(e) RATES AND CHARGES

86-139 Scope of rate regulation.

Except as provided in the Nebraska Telecommunications Regulation Act, telecommunications companies shall not be subject to rate regulation by the commission and shall not be subject to provisions as to rates and charges prescribed in sections 75-101 to 75-158.

Source: Laws 1986, LB 835, § 3; Laws 1991, LB 286, § 1; Laws 1991, LB 618, § 4; Laws 1997, LB 660, § 7; Laws 2000, LB 1285, § 15; R.S.Supp.,2000, § 86-803; Laws 2002, LB 1105, § 38.

86-140 Access charge regulation.

(1) Access charges imposed by telecommunications companies for access to a local exchange network for interexchange service shall be negotiated by the telecommunications companies involved. Any affected telecommunications company may apply for review of such charges by the commission, or the commission may make a motion to review such charges. Upon such application or motion and unless otherwise agreed to by all parties thereto, the commission shall, upon proper notice, hold and complete a hearing thereon within ninety days of the filing. The commission may, within sixty days after the close of the hearing, enter an order setting access charges which are fair and reasonable. The commission shall set an access charge structure for each local exchange carrier but may order discounts where there is not available access of equal type and quality for all interexchange carriers, except that the commission shall not order access charges which would cause the annual revenue to be realized by the local exchange carrier from all interexchange carriers to be less than the annual costs, as determined by the commission based upon evidence received at hearing, incurred or which will be incurred by the local exchange carrier in providing such access services. Any actions taken pursuant to this subsection shall be substantially consistent with the federal act and federal actions taken under its authority.

(2) Reductions made to access charges pursuant to subsection (1) of this section shall be passed on to the customers of interexchange service carriers in Nebraska whose payment of charges has been reduced. The commission shall have the power and authority to (a) ensure that any access charge reductions

made pursuant to subsection (1) of this section are passed on in a manner that is fair and reasonable and (b) review actions taken by any telecommunications company to ensure that this subsection is carried out.

(3) For purposes of this section, access charges means the charges paid by telecommunications companies to local exchange carriers in order to originate and terminate calls using local exchange facilities.

Source: Laws 1963, c. 425, art. VI, § 9, p. 1420; Laws 1982, LB 573, § 1; Laws 1986, LB 835, § 14; Laws 1994, LB 414, § 104; Laws 1999, LB 514, § 2; Laws 2000, LB 1285, § 11; R.S.Supp.,2000, § 75-609; Laws 2002, LB 1105, § 39; Laws 2007, LB661, § 2.

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

86-141 Telecommunications companies not subject to regulation; requirements.

(1) Telecommunications companies which serve less than five percent of the state's subscriber lines in the aggregate statewide shall not be subject to rate regulation by the commission pursuant to sections 86-140 and 86-153 unless (a) the telecommunications company elects by action of its board of directors to be subject to such rate regulation by the commission, (b) the proposed rate increase exceeds thirty percent in any one year, (c) five percent of the subscribers petition the commission to regulate rates pursuant to subsections (2) through (4) of this section, or (d) the commission declares that the telecommunications company shall be subject to rate regulation by the commission pursuant to subsection (5) of this section.

(2) Each such telecommunications company not subject to rate regulation shall, at least ninety days before the effective date of any proposed rate change, notify the commission and each of the telecommunications company's subscribers of the proposed rate change. Notice to the commission shall include a list of the telecommunications company's published subscribers. Notice by the telecommunications company to all subscribers shall be in a form prescribed by the commission, shall be by first-class mail, and shall include a schedule of the proposed rates, the effective date of the rates, and the procedure necessary for the subscribers to petition the commission to determine rates in lieu of the proposed rates.

(3) The subscribers of a telecommunications company not subject to the commission's rate regulation may petition the commission to determine rates in lieu of any rate change proposed by the telecommunications company pursuant to subsection (2) of this section. A petition substantially in compliance with the rules and regulations of the commission shall not be deemed invalid due to minor errors in its form.

(4) If, by the effective date of the telecommunications company's proposed rate change, the commission has received petitions from less than five percent of the subscribers requesting that the commission determine rates, the commission shall certify such fact to the telecommunications company and the telecommunications company's proposed rates shall become effective as published in the notice to subscribers. If, on or before the effective date of the proposed rate change, the commission has received petitions from five percent or more of the subscribers requesting that the commission determine rates, the commis-

sion shall notify the telecommunications company that it will determine rates for the telecommunications company in lieu of the telecommunications company's proposed rate change. Rates established by the commission or by a telecommunications company pursuant to subsections (2) through (4) of this section shall be in force for at least one year.

(5) In addition to the procedure for petition prior to any proposed rate change pursuant to subsections (2) through (4) of this section, the subscribers of a telecommunications company not subject to the commission's rate regulation may at any time petition the commission to declare that the telecommunications company shall be subject to such rate regulation. If the commission determines that at least fifty-one percent of a telecommunications company's subscribers have properly petitioned that the telecommunications company be subject to the commission's rate regulation, the commission shall certify such fact to the telecommunications company and thereafter the telecommunications company shall be subject to rate regulation by the commission until at least fifty-one percent of the telecommunications company's subscribers properly petition that the telecommunications company no longer shall be subject to the commission's rate regulation. This section shall not be construed to exempt any local exchange carrier from regulation of its access charges pursuant to section 86-140.

Source: Laws 1982, LB 573, § 2; Laws 1994, LB 414, § 105; Laws 1997, LB 660, § 4; Laws 1999, LB 514, § 3; R.S.Supp.,2000, § 75-609.01; Laws 2002, LB 1105, § 40.

86-142 Incentives authorized.

A telecommunications company may offer special incentives, discounts, packaged offerings, temporary price waivers, or other promotions and may introduce new telecommunications service and discontinue existing telecommunications service by filing rate lists which shall be effective after ten days' notice to the commission.

Source: Laws 2002, LB 1105, § 41.

86-143 Local competition determination; rate list filing requirements.

(1)(a) Except as provided in subdivision (b) of this subsection, in an exchange in which local competition exists, telecommunications companies shall file rate lists for each telecommunications service which shall be effective after ten days' notice to the commission.

(b) Notwithstanding any other provision of Chapter 86, a telecommunications company shall not be required to file rate lists, tariffs, or contracts for any telecommunications service, including local exchange and interexchange services, provided as a business service. Upon written notice to the commission, a telecommunications company may withdraw any rate list, tariff, or contract not required to be filed under this subdivision if the telecommunications company posts the rates, terms, and conditions of its telecommunications service on the company's website.

(2) Local competition shall be deemed to exist in an exchange if a telecommunications company files an application with the commission requesting a determination as to whether local competition exists in one or more exchanges specified in the application and the commission enters an order after public notice and a hearing which determines that local competition exists in such

exchange or exchanges. Notwithstanding any other provision of the Nebraska Telecommunications Regulation Act, the commission may consider any wireless telecommunications service provided in the exchange or exchanges when determining whether local competition exists.

(3) The notice of the hearing on the telecommunications company's application shall be given once each week for two consecutive weeks in a newspaper of general circulation in the affected area and shall state that a determination of local competition may result in the freeing of the telecommunications company from rate regulation by the commission. The notice of the hearing on the commission's motion shall be sent to the telecommunications company by certified mail, return receipt requested, and notice of such hearing shall be published in a newspaper of general circulation in the exchange area. The hearing on the commission's motion shall be held no sooner than ten days after the receipt of notice by the telecommunications company.

(4) The commission may, on its own motion at any time after a determination as to whether local competition exists, reexamine and redetermine the determination after notice and a hearing on the issue.

Source: Laws 2002, LB 1105, § 42; Laws 2011, LB257, § 1.

86-144 Rate list filing requirements.

Telecommunications companies shall file rate lists for telecommunications service. The rate lists shall be effective after (1) ten days' notice to the commission or (2) for basic local exchange rate increases, at least sixty days' notice to the commission and all impacted subscribers. Upon written notice to the commission, a telecommunications company may withdraw any rate list, tariff, or contract not required to be filed under this section if the telecommunications company posts the rates, terms, and conditions of its telecommunications service on the company's website.

Source: Laws 2002, LB 1105, § 43; Laws 2011, LB257, § 2; Laws 2019, LB462, § 22.

86-145 No local competition; rate review initiated by subscriber complaint.

(1) Basic local exchange rates increased by any telecommunications company pursuant to section 86-144 shall be reviewed by the commission only upon formal complaint. The complaint shall specifically set forth the particular rate as to which review is requested, the reasons for the requested review, and the relief which the complainants desire. The complaint shall be signed by (a) five percent of all affected subscribers if the telecommunications company has up to fifty thousand access lines affected by the rate increase, (b) three percent of all affected subscribers if the telecommunications company has fifty thousand but not more than two hundred fifty thousand access lines affected by the rate increase, or (c) two percent of all affected subscribers if the telecommunications company has more than two hundred fifty thousand access lines affected by the rate increase.

(2) If a proper complaint is presented to the commission within ninety days from the date notice of the rate change was sent to affected subscribers of a telecommunications company that has up to fifty thousand access lines in service or within one hundred twenty days from the date notice of the rate change was sent to affected subscribers of a telecommunications company that has fifty thousand or more access lines in service, the commission (a) shall

accept and file the complaint, (b) upon proper notice, may suspend the rates at issue during the pendency of the proceedings and reinstate the rates previously in effect, and (c) shall hold and complete a hearing thereon within ninety days after filing to determine if the rates as proposed are fair, just, and reasonable.

(3) The commission may, within sixty days after close of the hearing, enter an order adjusting the rates at issue, except that the commission shall not set any rate below the actual cost of providing such service, which may include a reasonable profit, as established by the evidence received at the hearing. In such order, the commission may order a refund of amounts collected in excess of the rates as approved at the hearing which may be reimbursed as a credit against billings for future services.

(4) A telecommunications company shall not increase its basic local exchange rates without the approval of the commission for six months from the date the commission enters an order pursuant to subsection (3) of this section. If the complaint is denied, the commission shall enter an order denying the complaint within sixty days after the close of the hearing, and the rates proposed by the telecommunications company shall be deemed approved for all purposes, including for purposes of appeal.

(5) For purposes of this section, actual cost includes a ratable portion of administrative expenses and overhead incurred by the telecommunications company in its operations and the appropriate amortization of previously deferred accounting costs.

Source: Laws 2002, LB 1105, § 44.

86-146 No local competition; rate review initiated by commission.

(1) In an exchange in which local competition does not exist, the commission may, on its own motion, review basic local exchange rates of any telecommunications company if the company has increased such rates by more than ten percent within any consecutive twelve-month period. The commission shall hold and complete a hearing on such rates within ninety days after first giving notice of such hearing to the telecommunications company to determine if the rates as proposed are fair, just, and reasonable.

(2) The commission may, within sixty days after close of the hearing, enter an order adjusting the rates at issue, except that the commission shall not set any rate for providing such telecommunications service below its actual cost as defined in section 86-145, which may include a reasonable profit, as established by the evidence received at the hearing. In such order, the commission may order a refund of amounts collected in excess of the rates as approved at the hearing which may be reimbursed as a credit against billings for future services.

(3) If the commission fails to enter any order within sixty days after the close of the hearing, the rates proposed by the telecommunications company shall be deemed approved for all purposes, including for purposes of appeal.

(4) No telecommunications company may change its basic local exchange rates within ninety days after entry of a final order adjusting such rates pursuant to this section.

Source: Laws 2002, LB 1105, § 45.

86-147 No local competition; rate review request by telecommunications company.

Notwithstanding the provisions of sections 86-144 to 86-146, a telecommunications company may at any time file an application with the commission requesting the commission to prescribe fair, just, and reasonable rates for the telecommunications company or a telecommunications company may elect to proceed, if eligible, under section 86-141. Such proceedings shall be governed by sections 75-101 to 75-158, 86-140, 86-141, and 86-153 and shall not be limited by section 86-144. Any rate so set may thereafter be adjusted as provided in sections 86-144 and 86-145, however no telecommunications company may change its basic local exchange rate within ninety days after entry of a final order adjusting such rate pursuant to this section.

Source: Laws 2002, LB 1105, § 46.

86-148 No local competition; automatic rate review.

(1) Notwithstanding the procedures governing review of basic local exchange rate increases in sections 86-144 to 86-146, when a telecommunications company files a rate list to increase its basic local exchange rates by more than ten percent within any consecutive twelve-month period, the commission shall conduct only the limited review provided in this section if (a) such increase, when considered together with all other rate changes which the telecommunications company proposes to implement simultaneously with the basic local exchange rate increase, does not increase the telecommunications company's aggregate annual revenue resulting from such rate changes in this state by more than one percent and (b) the basic local exchange rates specified in the rate list do not exceed the telecommunications company's actual cost as defined in section 86-145 of providing basic local exchange service to the affected subscribers.

(2) A telecommunications company filing rate lists in accordance with the procedures provided in this section shall submit to the commission with such filing: (a) Documentation to demonstrate that the combined effect of the proposed rate changes, in the aggregate, will not increase the telecommunications company's annual revenue resulting from such rate changes in this state by more than one percent and (b) if the commission so requires, documentation to demonstrate that the proposed basic local exchange rates do not exceed the telecommunications company's actual cost as defined in section 86-145 of providing basic local exchange service to the affected subscribers.

(3) The commission shall hold a public hearing to receive evidence concerning the basic local exchange rate increase proposed by the telecommunications company. Unless an extension is granted, such hearing shall be held within sixty days after the date on which the rate list providing for such increase was filed with the commission or, if the commission requires further documentation to be filed with the rate list filing, within sixty days after the date of receipt by the telecommunications company of notice for further documentation from the commission. The commission upon its own motion may grant a one-time, thirty-day extension for the hearing date. If the telecommunications company presents evidence at the hearing that such increase is in accordance with this section, not more than sixty days after the close of such hearing the commission shall enter an order approving or disapproving the proposed basic local

exchange rate increase and, if approved, the revised basic local exchange rates shall become effective upon the entry of such order.

Source: Laws 2002, LB 1105, § 47.

86-149 Rate averaging.

In setting rates for interexchange service, telecommunications companies that provide interexchange service shall continue to average their rates for all interexchange service on a statewide basis unless the commission, upon application and hearing, orders otherwise. This section shall not prohibit volume discounts or other discounts based on reasonable business purposes. With regard to interexchange service, nothing in the Nebraska Telecommunications Regulation Act shall preempt or affect any right, liability, cause of action, duty, or obligation arising from any law with regard to unfair business practices or anticompetitive activity.

Source: Laws 2002, LB 1105, § 48.

86-150 Rate deaveraging.

No telecommunications company shall be required to deaverage its wholesale basic local exchange rates to reflect the differences in the costs of providing basic local exchange service in the various exchanges that the telecommunications company serves until the retail basic local exchange rates for those exchanges are also deaveraged or until funds are disbursed to such telecommunications company from federal or state universal service or high-cost funds to offset the higher-than-average costs which such telecommunications company incurs in serving high-cost exchanges.

Source: Laws 2002, LB 1105, § 49.

86-151 Wholesale rate restrictions.

A telecommunications company that obtains at wholesale rates basic local exchange service from another telecommunications company that is available at retail to a specific class of subscribers shall not offer such basic local exchange service to a different class of subscribers.

Source: Laws 2002, LB 1105, § 50.

86-152 Flat rates authorized.

The commission may order that flat rate service shall be available whenever measured service is implemented and that for such service the price restrictions prescribed in the Nebraska Telecommunications Regulation Act shall be retained. Measured service means basic local exchange service, the rate for which is a combination of a flat rate access line charge plus usage charges which may be based upon number of calls, length of calls, distance of calls, and time of day.

Source: Laws 2002, LB 1105, § 51.

86-153 Joint service agreements.

When two or more telecommunications companies jointly furnish interexchange service or extended area service, the revenue from such jointly furnished service shall be divided in such manner as may be agreed upon by the telecommunications companies furnishing such service. In the event of inability

to agree, any one of the telecommunications companies jointly furnishing such service may file an application with the commission requesting that the commission enter an order prescribing an equitable division of revenue from such jointly furnished service.

Source: Laws 2002, LB 1105, § 52.

86-154 Rate change based on tax increases.

The commission shall approve the disposition of revenue resulting from decreases in federal or state income taxes or property taxes due to a tax law change that results in a reduction in the tax liability of a telecommunications company of twenty percent or more in any taxable year. Any telecommunications company so affected shall file a plan with the commission proposing the disposition of the revenue at the same time that it files its annual report with the commission. The commission shall schedule a public hearing within thirty days after the filing of the plan or the plan shall be deemed approved.

Source: Laws 2002, LB 1105, § 53.

86-155 Rate change; when effective.

Applications for commission approval of specific new rates or charges or changes in existing rates or charges for telecommunications service which have not been heard and determined within six months and thirty days from the date the application was filed may be put into effect by the telecommunications company, in an amount not to exceed seventy-five percent of the total amount of the application, subject to refund of any amount collected in excess of the amount which would have been collected under the new or changed rates or charges as finally approved by the commission. The refund shall include an interest payment at a rate of interest determined by the commission, except that the rate of interest shall not exceed the overall rate of return which the telecommunications company is authorized to earn. When making its final determination on the application, the commission shall not consider the rates and charges of the telecommunications company put into effect pending such final determination. This section shall not apply to tariffs placed into effect under section 86-156.

Source: Laws 2002, LB 1105, § 54.

Thirty-day limit for Public Service Commission to file decision is discretionary, not mandatory. *Hartman v. Glenwood Tel. Membership Corp.*, 197 Neb. 359, 249 N.W.2d 468 (1977).

86-156 Specific tariffs.

Whenever any telecommunications company files a specific tariff for any new equipment, new telecommunications service feature of existing equipment, or rate not previously offered and the commission has not finally determined the tariff within sixty days thereafter, it shall become effective as filed. The tariff shall remain in effect until the commission determines an appropriate interim tariff or finally determines the matter. This section shall not apply to services of a type offered only by regulated telecommunications companies.

Source: Laws 1976, LB 768, § 1; Laws 1994, LB 414, § 112; R.S.1943, (1996), § 75-616; Laws 2002, LB 1105, § 55.

86-157 Pro rata billing of local tax.

Whenever any municipality or any other local governmental entity imposes upon a telecommunications company any tax or fee as described in section 86-704, such tax or fee shall, insofar as practicable, be billed pro rata to the telecommunications company's customers receiving telecommunications service within the territorial limits of such municipality or other local governmental entity.

Source: Laws 1986, LB 835, § 10; R.S.1943, (1999), § 86-810; Laws 2002, LB 1105, § 56.

(f) PROCEDURAL REQUIREMENTS

86-158 Appeals.

(1) Except as otherwise provided in section 86-123, any order of the commission entered pursuant to authority granted in the Nebraska Telecommunications Regulation Act may be appealed by any interested party to the proceeding. The appeal shall be in accordance with section 75-136.

(2) In an original action concerning a violation of the Nebraska Telecommunications Regulation Act by a telecommunications company, the commission shall have jurisdiction as set forth in section 75-132.01. After all administrative remedies before the commission have been exhausted, an appeal may be brought by an interested party to an action. Such appeal shall be in accordance with section 75-136.

Source: Laws 1986, LB 835, § 11; Laws 1991, LB 732, § 159; Laws 1997, LB 660, § 11; Laws 2000, LB 1285, § 16; R.S.Supp.,2000, § 86-811; Laws 2002, LB 1105, § 57; Laws 2003, LB 187, § 27; Laws 2013, LB545, § 11.

All appeals from orders of the Nebraska Public Service Commission are to follow the procedural requirements of the Administrative Procedure Act. Chase 3000, Inc. v. Nebraska Pub. Serv. Comm., 273 Neb. 133, 728 N.W.2d 560 (2007).

86-159 Records retention; enforcement.

A telecommunications company shall:

- (1) Keep accounts according to commission rules and regulations;
- (2) File financial reports in a form and at times prescribed by the commission;
- (3) File current price lists and service standards prescribed by the commission; and
- (4) Cooperate with commission investigations of customer complaints.

Source: Laws 2002, LB 1105, § 58.

(g) PENALTIES

86-160 Administrative fine.

The commission may administratively fine pursuant to section 75-156 any person who violates the Nebraska Telecommunications Regulation Act.

Source: Laws 2000, LB 1285, § 13; R.S.Supp.,2000, § 75-617; Laws 2002, LB 1105, § 59.

86-161 Territorial maps; violations; penalty.

Any person who violates section 86-130 is guilty of a Class V misdemeanor. The commission shall enforce such section, and the Attorney General or any county attorney shall, upon request of the commission, assist in the prosecution of any violations of such section.

Source: Laws 1963, c. 425, art. VI, § 6, p. 1419; Laws 1993, LB 121, § 470; Laws 1994, LB 414, § 101; Laws 2000, LB 1285, § 10; R.S.Supp.,2000, § 75-606; Laws 2002, LB 1105, § 60.

86-162 Violations; penalty.

Any telecommunications company or its agent who fails or neglects to comply with section 86-131, 86-132, 86-140, 86-141, or 86-153 or who violates any of the provisions of such sections is guilty of a Class IV misdemeanor.

Source: Laws 1963, c. 425, art. VI, § 10, p. 1421; Laws 1982, LB 573, § 3; Laws 1994, LB 414, § 106; Laws 2000, LB 1285, § 12; R.S.Supp.,2000, § 75-610; Laws 2002, LB 1105, § 61.

86-163 Commission; duties.

The commission shall file with the Clerk of the Legislature an annual report on or before September 30 of each year on the status of the Nebraska telecommunications industry. The report shall be submitted in electronic format. The report shall:

- (1) Describe the quality of telecommunications service being provided to the citizens of Nebraska;
- (2) Describe the availability of diverse and affordable telecommunications service to all of the people of Nebraska;
- (3) Describe the level of telecommunications service rates;
- (4) Describe the use and continued need for the Nebraska Telecommunications Universal Service Fund;
- (5) Describe the availability and location of 911 service and E-911 service as required by section 86-437;
- (6) Describe the availability and location of wireless 911 service or enhanced wireless 911 service as required by section 86-460;
- (7) Address the need for further legislation to achieve the purposes of the Nebraska Telecommunications Regulation Act; and
- (8) Assess, based on information provided by public safety answering points, the level of wireless E-911 location accuracy compliance for wireless carriers.

Source: Laws 1986, LB 835, § 4; Laws 1991, LB 286, § 2; Laws 1997, LB 686, § 12; Laws 2001, LB 389, § 1; Laws 2001, LB 585, § 15; R.S.Supp.,2001, § 86-804; Laws 2002, LB 1105, § 62; Laws 2002, LB 1211, § 12; Laws 2012, LB782, § 243; Laws 2016, LB938, § 31; Laws 2023, LB818, § 35.

(h) RAILROAD CARRIER WIRE-CROSSING AGREEMENT

86-164 Telecommunications carrier; placement of line, wire, or cable across railroad right-of-way; application; petition; hearing; expedited wire-crossing permit; procedure; order; standard crossing fee; expenses; agreement.

- (1)(a) Any telecommunications carrier that intends to place a line, wire, or cable across a railroad right-of-way shall request permission for such place-

ment from the railroad carrier. The request shall be in the form of a completed crossing application, including engineering specifications. Upon receipt of such application, the railroad carrier and the telecommunications carrier may enter into a binding wire-crossing agreement. If the railroad carrier and the telecommunications carrier are unable to negotiate a binding wire-crossing agreement within sixty days after receipt of the crossing application by the railroad carrier, either party may submit a petition to the commission for a hearing on the disputed terms and conditions of the purported wire-crossing agreement.

(b) Except as provided in subdivision (a) of this subsection in the case of good faith negotiation or hearing, if a railroad carrier does not respond to a completed crossing application by a telecommunications carrier in writing within thirty days after receipt of such application, the telecommunications carrier may petition the commission to enter an order for an expedited wire-crossing permit. The commission shall enter such order within fifteen days after the petition is filed, with notice of such order issued to the railroad carrier and telecommunications carrier. The expedited wire-crossing permit shall allow a telecommunications carrier to place a line, wire, or cable across the railroad right-of-way within a public road crossing in a manner that is not unreasonable or against the public interest, taking into account safety, engineering, and access requirements of the railroad carrier as such requirements are prescribed by the Federal Railroad Administration and established by rail industry standards.

(2)(a) Unless otherwise agreed to by all parties, the commission shall, after providing proper notice, hold and complete the hearing provided for under subdivision (1)(a) of this section within sixty days after receipt of the petition. The commission shall issue an order of its decision within thirty days after the hearing. In rendering its decision, the commission shall consider whether the terms and conditions at issue are unreasonable or against the public interest, taking into account safety, engineering, and access requirements of the railroad carrier as such requirements are prescribed by the Federal Railroad Administration and established rail industry standards.

(b) Upon issuance of an order by the commission under subdivision (a) of this subsection, the railroad carrier and the telecommunications carrier shall have fifteen days after the date of issuance to file a conforming wire-crossing agreement with the commission. The commission shall have fifteen days after the date of such filing to approve or reject the agreement. If the commission does not issue an approval or rejection of such agreement within the fifteen-day requirement, the agreement shall be deemed approved. The commission may reject a wire-crossing agreement if it finds that the agreement does not conform to the order issued by the commission. If the commission enters such a finding, the parties shall revise the agreement to comply with the commission's order and shall refile the agreement to the commission for further review. If the commission does not approve or reject the revised agreement within fifteen days after the date of refiling, the agreement shall be deemed approved.

(3)(a) Except as provided in subsection (4) of this section or as otherwise agreed to by all parties, if a telecommunications carrier places a line, wire, or cable across a railroad right-of-way pursuant to this section, it shall pay the railroad carrier, owner, manager, agent, or representative of the railroad carrier a one-time standard crossing fee of one thousand two hundred fifty dollars for each applicable crossing. In addition to the standard crossing fee, the telecommunications carrier shall reimburse the railroad carrier for any

actual flagging expenses associated with the placement of the line, wire, or cable.

(b) The standard crossing fee shall be in lieu of any license fee or any other fees or charges to reimburse the railroad carrier for any direct expense incurred as a result of the placement of the line, wire, or cable.

(4) If a railroad carrier or telecommunications carrier believes a special circumstance exists for the placement of a line, wire, or cable across a railroad right-of-way, the railroad carrier or telecommunications carrier may petition the commission for additional requirements or for modification of the standard crossing fee in its initial petition to the commission pursuant to subsection (1) of this section. If the petition is filed with the request for additional requirements or modification, the commission shall determine if a special circumstance exists that necessitates additional requirements for such placement or a modification of the standard crossing fee.

(5) This section applies to any telecommunications carrier certified by the commission pursuant to section 86-128. This section does not apply to any longitudinal encumbrance or any line, wire, or cable within any public right-of-way and does not change, modify, or supersede any rights or obligations created pursuant to sections 86-701 to 86-707.

(6)(a) A wire-crossing agreement between a railroad carrier and a telecommunications carrier that includes a provision, clause, covenant, or agreement contained in, collateral to, or affecting such wire-crossing agreement that purports to indemnify, defend, or hold harmless the railroad carrier from any liability for loss or damage resulting from the negligence or willful and wanton misconduct of the carrier or its agents, employees, or independent contractors who are directly responsible to such carrier or has the effect of indemnifying, defending, or holding harmless such carrier from the negligence or willful and wanton misconduct of the carrier or its agents, employees, or independent contractors who are directly responsible to the carrier is against the public policy of this state and is unenforceable.

(b) Nothing in this section shall affect a provision, clause, covenant, or agreement in which the telecommunications carrier indemnifies, defends, or holds harmless a railroad carrier against liability for loss or damage to the extent that the loss or damage results from the negligence or willful and wanton misconduct of the telecommunications carrier or its agents, employees, or independent contractors who are directly responsible to the telecommunications carrier.

(7) For purposes of this section:

(a) Railroad carrier has the same meaning as in section 75-402; and

(b) Telecommunications carrier means a telecommunications common carrier as defined in section 86-118 or a telecommunications contract carrier as defined in section 86-120.

Source: Laws 2010, LB181, § 2; Laws 2011, LB47, § 1; Laws 2022, LB1144, § 4.

(i) SALE OF EXCHANGE

86-165 Sale of exchange; application; notice; commission; considerations; order.

(1) A telecommunications company that proposes to sell any exchange owned by the company shall submit an application to the commission on a form provided by the commission for approval of the sale. Within twenty days after receipt of the application, the commission shall publish notice of the proposed sale in a newspaper of general circulation in each county in which an exchange proposed for sale provides basic local exchange service. The notice shall inform the residents of this state of their right to file a petition of intervention or submit a comment. Such filing or submission shall occur within fifteen days after publication of the notice. The telecommunications company shall reimburse the commission for the cost of such publication.

(2) In approving or rejecting the application, the commission shall consider the protection of the public interest and to the extent applicable to the exchange proposed to be sold, (a) the adequacy of local telephone service, (b) the reasonableness of rates for the local telephone service, (c) the provision of 911 service, enhanced-911 service, and other public safety services, (d) the payment of taxes by the company, and (e) the ability of the telecommunications company to provide modern, state-of-the-art telecommunications services. If the commission does not hold a hearing on the application, it shall issue an order of approval or rejection within forty-five days after the publication of the notice pursuant to subsection (1) of this section. If the commission holds a hearing on the application, it shall issue an order of approval or rejection within one hundred twenty days after the publication of such notice. The order may include conditions that the commission deems necessary to ensure protection of the public interest pursuant to the criteria set forth in this subsection.

(3) For purposes of this section:

(a) Exchange means (i) switching, transmission, and other equipment and (ii) facilities and associated permits, authorizations, service rights, customer contracts, and related assets by which a telecommunications company provides basic local exchange service within a local exchange area; and

(b) Sell or sale means the transfer, for consideration, of title to the assets comprising an exchange. Sell or sale does not include a transaction such as a merger, a consolidation, stock sale, financing transaction, or other non-asset sale transaction.

Source: Laws 2010, LB183, § 2.

(j) BROADBAND DATA IMPROVEMENT PROGRAM

86-166 Broadband Data Improvement Program; purpose; commission, powers and duties.

(1) To ensure that the State of Nebraska is accurately represented in federal broadband grant programs, including grants from the federal Universal Service Fund, the Broadband Data Improvement Program is created. The Broadband Data Improvement Program shall be administered by the commission.

(2) The purpose of the Broadband Data Improvement Program is to:

(a) Complement the granular broadband availability data submitted by service providers to the Federal Communications Commission or the Universal Service Administrative Company;

(b) Leverage the Federal Communication Commission's Digital Opportunity Data Collection to improve Nebraska's broadband map; and

(c) Encourage Nebraskans to participate in crowdsourcing efforts developed to enhance federal broadband mapping.

(3) In administering the Broadband Data Improvement Program, the commission may:

(a) Participate in the Federal Communication Commission’s Digital Opportunity Data Collection, as such collection existed on January 1, 2020;

(b) In the absence of a federal program to crowdsource broadband data, develop a state-based broadband data crowdsource program if it is determined by the commission that doing so would improve Nebraska’s broadband map;

(c) Develop a statewide outreach plan to promote citizen participation in a state or federal broadband data crowdsource program;

(d) Allocate resources to areas of the state where public feedback, crowdsourcing, or other evidence suggests that the federal broadband data may be inaccurate;

(e) Prioritize data improvement in rural areas, including those areas within any city of the first class, city of the second class, village, or unincorporated area of a county; and

(f) Adhere to any guidelines established by the Federal Communications Commission for states to improve data.

(4) The commission may adopt and promulgate rules and regulations to carry out the purposes of this section.

Source: Laws 2020, LB996, § 3.

ARTICLE 2

TELECOMMUNICATIONS CONSUMER PROTECTION

Cross References

Drainage district assessments, see section 31-335.

Franchise tax, report, see sections 77-801 to 77-804.

Use of party lines, regulation, penalty, see section 28-1309.

(a) TELEPHONE CONSUMER SLAMMING PREVENTION ACT

Section

- 86-201. Act, how cited.
- 86-202. Statement of policy.
- 86-203. Definitions, where found.
- 86-204. Act; applicability.
- 86-205. Change in service; requirements.
- 86-206. Change in service; confirmation.
- 86-207. Unauthorized change in service; claim procedures.
- 86-208. Unauthorized change; corrective action authorized.
- 86-209. Violations; penalties; appeal.
- 86-210. Rules and regulations.
- 86-211. Unauthorized additional services; provider; duties.

(b) TELEMARKETING AND PRIZE PROMOTIONS ACT

- 86-212. Act, how cited.
- 86-213. Definitions, where found.
- 86-214. Consumer, defined.
- 86-215. Consumer goods or services, defined.
- 86-216. Consumer telephone call, defined.
- 86-217. Prize, defined.
- 86-218. Prize promotion, defined.
- 86-219. Seller, defined.
- 86-220. Solicitor, defined.

TELECOMMUNICATIONS CONSUMER PROTECTION

Section

- 86-221. Sponsor, defined.
- 86-222. Unsolicited consumer telephone call, defined.
- 86-223. Verifiable retail value, defined.
- 86-224. Payment; consumer's express verifiable authorization required.
- 86-225. Consumer rights.
- 86-226. Restriction on obtaining consumer's payment.
- 86-227. Restriction on advance payment.
- 86-228. Prize promotions; information required.
- 86-229. Solicitor, sponsor, or seller; prohibited acts.
- 86-230. Records required.
- 86-231. Burden of proof.
- 86-232. Act; how construed.
- 86-233. Consumer; remedies.
- 86-234. Violation; penalty.
- 86-235. Violation; civil penalty.

(c) AUTOMATIC DIALING-ANNOUNCING DEVICES

- 86-236. Act, how cited.
- 86-237. Definitions, where found.
- 86-238. Automatic dialing-announcing device, defined.
- 86-239. Commission, defined.
- 86-240. Emergency purposes, defined.
- 86-241. Established business relationship, defined.
- 86-242. Telephone solicitation, defined.
- 86-243. Unsolicited advertisement, defined.
- 86-244. Telephone solicitations; restrictions.
- 86-245. Unsolicited advertisement to telephone facsimile machine; prohibited.
- 86-246. Automatic dialing-announcing device; certain use prohibited.
- 86-247. Telephone solicitation message; requirements.
- 86-248. Telephone solicitation to residential line; limitations.
- 86-249. Automatic dialing-announcing device; release of telephone line; requirements.
- 86-250. Permit required; procedure; liability; filing required.
- 86-251. Sequential dialing prohibited.
- 86-252. Commission; adopt rules and regulations.
- 86-253. Commission; enforcement.
- 86-254. Seizure of automatic dialing-announcing devices; when; destruction; liability.
- 86-255. Commission decision; appeal.
- 86-256. Automatic dialing-announcing device; registration required; when; message requirements; liability; filing required.
- 86-257. Violations; administrative fine.

(d) INTRASTATE PAY-PER-CALL REGULATION

- 86-258. Act, how cited.
- 86-259. Definitions, where found.
- 86-260. Commission, defined.
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- 86-264. Common carrier; provide information to consumers.
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- 86-269. Enforcement; appeal.
- 86-270. Violations; administrative fine.

(e) INTERCEPTED COMMUNICATIONS

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Section

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- 86-275. Electronic, mechanical, or other device, defined.
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- 86-290. Unlawful acts; penalty.
- 86-291. Interception; court order.
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- 86-293. Interception; procedure; appeal.
- 86-294. Interception; reports.
- 86-295. Violations; penalty.
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- 86-298. Pen register; trap-and-trace device; restrictions on use; penalty.
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(f) PROHIBITED ACTS AND SERVICES

- 86-2,116. Diversion of service; provisions applicable.

(g) NEIGHBOR SPOOFING PROTECTION ACT

- 86-2,117. Telecommunications service or IP-enabled voice service; prohibited acts; penalty; appeal.

(a) TELEPHONE CONSUMER SLAMMING PREVENTION ACT

86-201 Act, how cited.

Sections 86-201 to 86-211 shall be known and may be cited as the Telephone Consumer Slamming Prevention Act.

Source: Laws 1999, LB 150, § 1; R.S.1943, (1999), § 86-1901; Laws 2002, LB 1105, § 63.

86-202 Statement of policy.

It is the policy of this state to ensure that all subscribers are protected from the unauthorized switching of a telecommunications company selected by the subscriber to provide telecommunications service.

Source: Laws 1999, LB 150, § 2; R.S.1943, (1999), § 86-1902; Laws 2002, LB 1105, § 64.

86-203 Definitions, where found.

For purposes of the Telephone Consumer Slamming Prevention Act, the definitions found in the Nebraska Telecommunications Regulation Act apply.

Source: Laws 1999, LB 150, § 3; R.S.1943, (1999), § 86-1903; Laws 2002, LB 1105, § 65.

Cross References

Nebraska Telecommunications Regulation Act, see section 86-101.

86-204 Act; applicability.

Except as provided in section 86-124, the Telephone Consumer Slamming Prevention Act shall apply to all telecommunications companies providing basic local exchange service, intra-LATA interexchange service, inter-LATA interexchange service, and any other telecommunications service to subscribers in this state.

Source: Laws 1999, LB 150, § 4; R.S.1943, (1999), § 86-1904; Laws 2002, LB 1105, § 66.

86-205 Change in service; requirements.

(1)(a) Except as provided in subsection (2) of this section, no telecommunications company shall submit on behalf of a subscriber a change of the subscriber's provider of basic local exchange service, intra-LATA interexchange service, or inter-LATA interexchange service without:

- (i) Written change authorization from the subscriber;
- (ii) Toll-free electronic authorization placed from the telephone number which is the subject of the change of service order; or
- (iii) Oral authorization obtained by an independent third party.

(b) A separate and distinct authorization shall be required to submit a change of service order for any or all of the following telecommunications services provided to subscribers in this state: Basic local exchange service, intra-LATA interexchange service, inter-LATA interexchange service, or any other telecommunications service.

(2) The requirements of this section shall not apply to a change of a subscriber's provider of basic local exchange service, intra-LATA interexchange service, or inter-LATA interexchange service that results from any merger or sale of exchanges or transfer of authority approved by the commission.

Source: Laws 1999, LB 150, § 5; Laws 2001, LB 389, § 5; R.S.Supp.,2001, § 86-1905; Laws 2002, LB 1105, § 67.

86-206 Change in service; confirmation.

Within thirty days after a subscriber changes his or her authorized provider of basic local exchange service, intra-LATA interexchange service, or inter-LATA interexchange service, the new authorized service provider shall provide to such subscriber written confirmation of such change of service. The written confirmation shall (1) describe clearly and simply the nature of the change of service, (2) not be a part of, or attached to, any other document, (3) not contain any promotion, offer, or inducement, and (4) be mailed to the subscriber's billing address.

Source: Laws 1999, LB 150, § 6; R.S.1943, (1999), § 86-1906; Laws 2002, LB 1105, § 68.

86-207 Unauthorized change in service; claim procedures.

(1) Nothing in the Telephone Consumer Slamming Prevention Act shall preclude a subscriber from electing to resolve an unauthorized change of service directly with the unauthorized telecommunications company. If the subscriber is unsatisfied with the resolution from the unauthorized telecommunications company, the subscriber may file a complaint with the commission. The complaint may be made by letter, fax, online notification, or telephone call to the commission. The subscriber may be required to provide a copy of the subscriber's telephone bill that contains the alleged unauthorized telecommunications company's charges.

(2) The commission, consistent with federal regulations for changing long distance service under subpart K of 47 C.F.R. part 64, as such regulations existed on January 1, 2002, shall adopt and promulgate rules and regulations necessary for resolution of subscriber complaints of an unauthorized change of service.

Source: Laws 1999, LB 150, § 7; Laws 2001, LB 389, § 6; R.S.Supp.,2001, § 86-1907; Laws 2002, LB 1105, § 69.

86-208 Unauthorized change; corrective action authorized.

If the commission finds that a telecommunications company has violated section 86-205, the commission shall order the telecommunications company to take corrective action as necessary and consistent with 47 C.F.R. 64.1150, as such regulation existed on January 1, 2002, and rules and regulations adopted and promulgated by the commission.

Source: Laws 1999, LB 150, § 8; Laws 2001, LB 389, § 7; R.S.Supp.,2001, § 86-1908; Laws 2002, LB 1105, § 70.

86-209 Violations; penalties; appeal.

(1) Notwithstanding section 75-156, the commission may, after hearing, impose an administrative penalty for a violation of the Telephone Consumer Slamming Prevention Act. The penalty for a violation shall not exceed two thousand dollars. Every violation associated with a specific access line within the state shall be considered a separate and distinct violation.

(2) The amount of an administrative penalty shall be based on:

- (a) The nature, circumstances, extent, and gravity of a prohibited act;
- (b) The history of previous violations;
- (c) The amount necessary to deter future violations; and

(d) Any efforts to correct the violation.

(3) The commission shall remit any administrative penalty collected under this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(4) Any administrative penalty may be appealed. The appeal shall be in accordance with section 75-136.

Source: Laws 1999, LB 150, § 9; Laws 2000, LB 1285, § 24; Laws 2001, LB 389, § 8; R.S.Supp.,2001, § 86-1909; Laws 2002, LB 1105, § 71; Laws 2008, LB755, § 7; Laws 2013, LB545, § 12.

86-210 Rules and regulations.

The commission shall adopt and promulgate competitively neutral rules and regulations necessary to implement the Telephone Consumer Slamming Prevention Act, including rules and regulations that:

(1) Ensure that subscribers are protected from deceptive practices in the obtaining of authorizations and verifications required by section 86-205;

(2) Are applicable to all basic local exchange service, intra-LATA interexchange service, inter-LATA interexchange service, and any other telecommunications service provided by telecommunications companies in this state;

(3) Maintain records, provide procedures, and establish performance standards for telecommunications companies with respect to changes of an authorized telecommunications company pursuant to the act;

(4) Establish and administer a slamming complaint system for subscribers of telecommunications service and enforce the provisions of the act; and

(5) Are consistent with 47 C.F.R. 64.1100, 64.1120, 64.1130, and 64.1190, as such regulations existed on January 1, 2002, for the selection of telecommunications companies. The Public Service Commission may adopt and promulgate rules and regulations consistent with the federal regulations for changing long distance service under subpart K of 47 C.F.R. part 64, as such regulations existed on January 1, 2002.

Source: Laws 1999, LB 150, § 10; R.S.1943, (1999), § 86-1910; Laws 2002, LB 1105, § 72.

86-211 Unauthorized additional services; provider; duties.

(1) No telecommunications company shall initiate or bill additional telecommunications services not required by the commission to be offered and for which the subscriber did not explicitly request or subscribe. The providing telecommunications company shall initiate a refund of a charge or apply the charge as a credit to the subscriber's next monthly bill if (a) a charge is assessed on a per-use basis for a telecommunications service described in this subsection and (b) the subscriber notifies the providing telecommunications company that the subscriber did not utilize the telecommunications service or the subscriber did not authorize the utilization of the telecommunications service.

(2) If a providing telecommunications company receives a notification pursuant to subdivision (1)(b) of this section, the telecommunications company shall inform the subscriber of the ability to block the telecommunications service from future use by the subscriber and shall block the telecommunications

service from future use by the subscriber if the subscriber so requests. If a subscriber requests that the company not block the service or later requests to have the block lifted, the subscriber shall be responsible for charges caused by the future utilization of the telecommunications service. The company shall not charge a recurring fee for blocking the telecommunications service.

Source: Laws 1999, LB 150, § 11; R.S.1943, (1999), § 86-1911; Laws 2002, LB 1105, § 73.

(b) TELEMARKETING AND PRIZE PROMOTIONS ACT

86-212 Act, how cited.

Sections 86-212 to 86-235 shall be known and may be cited as the Telemarketing and Prize Promotions Act.

Source: Laws 1999, LB 469, § 1; Laws 2001, LB 165, § 1; R.S.Supp.,2001, § 86-2001; Laws 2002, LB 1105, § 74.

86-213 Definitions, where found.

For purposes of the Telemarketing and Prize Promotions Act, the definitions found in sections 86-214 to 86-223 apply.

Source: Laws 1999, LB 469, § 2; R.S.1943, (1999), § 86-2002; Laws 2002, LB 1105, § 75.

86-214 Consumer, defined.

Consumer means an actual or prospective purchaser, lessee, or recipient of consumer goods or services bought primarily for use for personal, family, or household purposes.

Source: Laws 2002, LB 1105, § 76.

86-215 Consumer goods or services, defined.

Consumer goods or services means any tangible personal property, merchandise, or services normally used for personal, family, or household purposes and not for resale or for use or consumption in trade or business.

Source: Laws 2002, LB 1105, § 77.

86-216 Consumer telephone call, defined.

Consumer telephone call means a telephone call made by a seller for the purpose of soliciting a sale of any consumer goods or services to the person called, for the purpose of soliciting an extension of credit for consumer goods or services to the person called, or for the purpose of obtaining information that may be used for the direct solicitation of a sale of consumer goods or services to the person called or an extension of credit for such purposes.

Source: Laws 2002, LB 1105, § 78.

86-217 Prize, defined.

Prize means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. Prize does not include an item offered in a promotion for a book, recording, video, multimedia, or similar club in compliance with 16 C.F.R. part 425, as such regulations existed on January 1, 2002,

or a continuity plan or single sale of merchandise or service where there is no minimum purchase required.

Source: Laws 2002, LB 1105, § 79.

86-218 Prize promotion, defined.

Prize promotion means (1) a sweepstakes or other game of chance or (2) an oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

Source: Laws 2002, LB 1105, § 80.

86-219 Seller, defined.

Seller means any person or organization who individually or through salespersons initiates unsolicited consumer telephone calls in order to (1) sell, lease, or rent consumer goods or services, (2) offer gifts or prizes with the intent to sell, lease, or rent consumer goods or services, or (3) represent to a consumer that the consumer has won or will receive a prize by telephonic means or by written notice sent through the mail in which the goods and services and all the material terms of the transaction are not fully described and which require that the consumer contact the seller by telephone to learn about or initiate the transaction. Seller does not include a telecommunications company as defined in section 86-119 when the telecommunications company is offering telecommunications service of any kind which are subject to the verification provisions of (i) the Telephone Consumer Slamming Prevention Act or (ii) the federal regulations for changing long distance service under subpart K of 47 C.F.R. part 64, as such regulations existed on January 1, 2002.

Source: Laws 2002, LB 1105, § 81.

Cross References

Telephone Consumer Slamming Prevention Act, see section 86-201.

86-220 Solicitor, defined.

Solicitor means any person, who is not the seller offering a prize promotion, who represents to an individual that the individual has won or will receive a prize.

Source: Laws 2002, LB 1105, § 82.

86-221 Sponsor, defined.

Sponsor means any person on whose behalf a solicitor gives a prize but who is not the seller offering a prize promotion.

Source: Laws 2002, LB 1105, § 83.

86-222 Unsolicited consumer telephone call, defined.

Unsolicited consumer telephone call means a consumer telephone call other than a call made:

- (1) In response to an express request of the person called;
- (2) Primarily in connection with an existing debt or contract, for which payment or performance has not been completed at the time of such a call;

(3) To any person with whom the seller has a clearly established business relationship; or

(4) By a magazine or newspaper publisher or such publisher's agent or employee in connection with such publisher's business.

Source: Laws 2002, LB 1105, § 84.

86-223 Verifiable retail value, defined.

Verifiable retail value means the price (1) at which the solicitor or sponsor can demonstrate that a substantial number of prizes have been sold within the prior twelve months by a person other than the solicitor in the trade area in which the prize notice is given or (2) no more than one and one-half times the amount the solicitor or sponsor paid for the prize.

Source: Laws 2002, LB 1105, § 85.

86-224 Payment; consumer's express verifiable authorization required.

A seller may not obtain or submit for payment a check, draft, or other form of negotiable paper drawn on a consumer's checking, savings, share, or similar account, without that consumer's express verifiable authorization. Such authorization shall be deemed verifiable if any of the following means are employed:

(1) Express written authorization by the consumer, which may include the consumer's signature on the negotiable instrument;

(2) Express oral authorization which is tape recorded and made available upon request to the consumer's financial institution or to the consumer and which evidences clearly both the consumer's authorization of payment for the goods and services that are the subject of the sales offer and the consumer's receipt of all of the following information:

(a) The date of the check, draft, or other form of negotiable paper;

(b) The amount of the check, draft, or other form of negotiable paper;

(c) The payor's name;

(d) The number of check, draft, or negotiable paper payments, if more than one;

(e) A telephone number for consumer inquiry that is answered during normal business hours; and

(f) The date of the consumer's oral authorization; or

(3) Written confirmation of the transaction, sent to the consumer prior to submission for payment of the consumer's check, draft, or other form of negotiable paper that includes:

(a) All of the information contained in subdivision (2) of this section; and

(b) The procedures by which the consumer can obtain a refund from the seller in the event the confirmation is inaccurate.

Source: Laws 1999, LB 469, § 3; R.S.1943, (1999), § 86-2003; Laws 2002, LB 1105, § 86.

86-225 Consumer rights.

(1) In addition to any other right to revoke an offer:

(a) The consumer obligated for any part of the purchase price may cancel the telephone sale until midnight of the fifth business day after the day on which

the consumer has received written notice from the seller notifying the consumer of his or her right to cancel the telephone sale. Written notice shall include all of the information included in subdivision (2) of section 86-224 and the procedures by which a consumer may obtain a refund; and

(b) The seller shall disclose the refund policy to the consumer orally by telephone, in writing with advertising or promotional material, or with delivery of the products or services, and shall issue a refund within thirty days after the date on which the seller receives returned merchandise or notice of cancellation. A seller who discloses in writing that a sale is made or provided "satisfaction guaranteed", "with free inspection", "no-risk guarantee", or similar words or phrases shall be deemed to meet the requirements of the review and return for refund policy.

(2) Subdivision (1)(a) of this section does not apply to a sale in which the seller at a minimum has a policy of giving the consumer the right to review goods or services for a period of at least seven days after the date of delivery, accepting returns or canceling services, and providing a refund for the return of its unused and undamaged merchandise or canceled services.

Source: Laws 1999, LB 469, § 4; R.S.1943, (1999), § 86-2004; Laws 2002, LB 1105, § 87.

86-226 Restriction on obtaining consumer's payment.

It is unlawful for a seller to procure the services of any third-party delivery, courier, or other pickup service to obtain a consumer's payment for goods, unless the goods are delivered and can be inspected.

Source: Laws 1999, LB 469, § 5; R.S.1943, (1999), § 86-2005; Laws 2002, LB 1105, § 88.

86-227 Restriction on advance payment.

It is unlawful for a seller to request or receive payment or other consideration, in advance, from a consumer to recover or otherwise aid in the return of money or any other item lost by the consumer in a prior telemarketing transaction. This section does not apply to services provided to a consumer by an attorney licensed to practice law.

Source: Laws 1999, LB 469, § 6; R.S.1943, (1999), § 86-2006; Laws 2002, LB 1105, § 89.

86-228 Prize promotions; information required.

In the case of prize promotions, it is unlawful for a seller to fail to provide the following information:

(1) The odds of winning or receiving the prize and, if the odds are not calculable in advance, the factors used in calculating the odds;

(2) That no purchase and no payment is necessary to win;

(3) All material costs or conditions to receive or redeem a prize that is the subject of the prize promotion;

(4) The no-purchase or no-payment method of participating in the prize promotion, with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate;

(5) The true name and address of the solicitor, sponsor, or seller offering a prize when the consumer is told he or she has won or will receive a prize; and

(6) The verifiable retail value of each prize the consumer is told he or she has won or will receive.

Source: Laws 1999, LB 469, § 7; R.S.1943, (1999), § 86-2007; Laws 2002, LB 1105, § 90.

86-229 Solicitor, sponsor, or seller; prohibited acts.

A solicitor, sponsor, or seller shall not:

(1) Misrepresent the source of any written prize notice;

(2) Represent directly or by implication that the number of individuals eligible for the prize is limited or that an individual has won or will receive a particular prize unless that representation is true;

(3) Misrepresent the value of a prize; or

(4) Request or accept any payment, or create an impression that any payment is required, from an individual prior to the receipt of a written prize notice by such individual if the solicitor, sponsor, or seller represents to such individual that he or she has won or will receive a prize. A written prize notice under this subdivision shall contain all the information required in section 86-228.

Source: Laws 1999, LB 469, § 8; Laws 2001, LB 165, § 2; R.S.Supp.,2001, § 86-2008; Laws 2002, LB 1105, § 91.

86-230 Records required.

Sellers shall maintain records for twenty-four months in compliance with 16 C.F.R. 310.5, as such regulation existed on January 1, 2002.

Source: Laws 1999, LB 469, § 9; R.S.1943, (1999), § 86-2009; Laws 2002, LB 1105, § 92.

86-231 Burden of proof.

In any civil proceeding alleging a violation of the Telemarketing and Prize Promotions Act, the burden of proving an exemption from the act or an exemption from a definition in the act is upon the person claiming it. In any criminal proceeding alleging a violation of the act, the burden of producing evidence pertaining to a definition or an exemption is upon the person claiming it.

Source: Laws 1999, LB 469, § 10; R.S.1943, (1999), § 86-2010; Laws 2002, LB 1105, § 93.

86-232 Act; how construed.

The Telemarketing and Prize Promotions Act shall not be construed to limit the remedies available to consumers, the Attorney General, or any county attorney under the Uniform Deceptive Trade Practices Act or any other state or federal law.

Source: Laws 1999, LB 469, § 11; R.S.1943, (1999), § 86-2011; Laws 2002, LB 1105, § 94.

Cross References

Uniform Deceptive Trade Practices Act, see section 87-306.

86-233 Consumer; remedies.

Any consumer that suffers a loss or harm as a result of a violation of the Telemarketing and Prize Promotions Act may recover actual damages, attorney's fees, court costs, and any other remedies provided by law. The state, on behalf of its residents who have suffered a loss or harm as a result of a violation of the act, may seek actual damages or other remedies provided by law.

Source: Laws 1999, LB 469, § 12; R.S.1943, (1999), § 86-2012; Laws 2002, LB 1105, § 95.

86-234 Violation; penalty.

A violation of the Telemarketing and Prize Promotions Act is a Class I misdemeanor.

Source: Laws 1999, LB 469, § 13; R.S.1943, (1999), § 86-2013; Laws 2002, LB 1105, § 96.

86-235 Violation; civil penalty.

Any person who violates the Telemarketing and Prize Promotions Act shall be subject to a civil penalty of not more than two thousand dollars for each violation. The Attorney General, acting in the name of the state, may seek recovery of such civil penalties in a civil action.

Source: Laws 2001, LB 165, § 3; R.S.Supp.,2001, § 86-2014; Laws 2002, LB 1105, § 97.

(c) AUTOMATIC DIALING-ANNOUNCING DEVICES

86-236 Act, how cited.

Sections 86-236 to 86-257 shall be known and may be cited as the Automatic Dialing-Announcing Devices Act.

Source: Laws 2002, LB 1105, § 98.

86-237 Definitions, where found.

For purposes of the Automatic Dialing-Announcing Devices Act, the definitions found in sections 86-238 to 86-243 apply.

Source: Laws 1993, LB 305, § 1; R.S.1943, (1999), § 86-1201; Laws 2002, LB 1105, § 99.

86-238 Automatic dialing-announcing device, defined.

Automatic dialing-announcing device means a device which selects and dials telephone numbers and automatically plays a recorded message.

Source: Laws 1993, LB 305, § 2; R.S.1943, (1999), § 86-1202; Laws 2002, LB 1105, § 100.

86-239 Commission, defined.

Commission means the Public Service Commission.

Source: Laws 1993, LB 305, § 3; R.S.1943, (1999), § 86-1203; Laws 2002, LB 1105, § 101.

86-240 Emergency purposes, defined.

Emergency purposes means any situation affecting the health and safety of a consumer.

Source: Laws 1993, LB 305, § 4; R.S.1943, (1999), § 86-1204; Laws 2002, LB 1105, § 102.

86-241 Established business relationship, defined.

Established business relationship means a prior or existing relationship formed by a voluntary two-way communication between a person and a residential or business telephone subscriber, with or without an exchange of consideration, on the basis of an inquiry, application, purchase, or transaction by the subscriber regarding products or services offered by the person, which relationship has not been previously terminated by either party.

Source: Laws 1993, LB 305, § 5; R.S.1943, (1999), § 86-1205; Laws 2002, LB 1105, § 103.

86-242 Telephone solicitation, defined.

(1) Telephone solicitation means a telephone call or message using an automatic dialing-announcing device for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which call or message is transmitted to any person.

(2) Telephone solicitation does not include a call or message (a) made to any person with the person's prior express invitation or permission, (b) made to any person with whom the caller has an established business relationship, (c) made by a tax-exempt nonprofit organization, (d) not made for commercial purposes, (e) made for a commercial purpose but which does not include the transmission of an unsolicited advertisement, or (f) placed by a live operator and a prerecorded message is not utilized.

Source: Laws 1993, LB 305, § 6; R.S.1943, (1999), § 86-1206; Laws 2002, LB 1105, § 104; Laws 2008, LB720, § 2.

86-243 Unsolicited advertisement, defined.

Unsolicited advertisement means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission.

Source: Laws 1993, LB 305, § 7; R.S.1943, (1999), § 86-1207; Laws 2002, LB 1105, § 105.

86-244 Telephone solicitations; restrictions.

A person shall not initiate a telephone solicitation, other than a call made for emergency purposes, using an automatic dialing-announcing device to: (1) An emergency telephone line, including 911 or any emergency or business line of a hospital, physician or medical service office, health care facility, poison control center, fire protection agency, or law enforcement agency; (2) the telephone line of any guest room or patient room of a hospital, health care facility, nursing home, or similar facility; (3) any telephone number assigned to a paging service, a cellular telephone service, a specialized mobile radio service, any other radio common carrier service, or any service for which the person called is charged for the call; or (4) a residential or business telephone line

unless the telephone solicitation is otherwise permitted by the Automatic Dialing-Announcing Devices Act.

Source: Laws 1993, LB 305, § 8; R.S.1943, (1999), § 86-1208; Laws 2002, LB 1105, § 106.

86-245 Unsolicited advertisement to telephone facsimile machine; prohibited.

A person shall not use a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine.

Source: Laws 1993, LB 305, § 9; R.S.1943, (1999), § 86-1209; Laws 2002, LB 1105, § 107.

86-246 Automatic dialing-announcing device; certain use prohibited.

A person shall not use an automatic dialing-announcing device in such a way that two or more telephone lines of a business with a multiline telephone system are engaged simultaneously.

Source: Laws 1993, LB 305, § 10; R.S.1943, (1999), § 86-1210; Laws 2002, LB 1105, § 108.

86-247 Telephone solicitation message; requirements.

All telephone solicitation messages transmitted by an automatic dialing-announcing device shall:

- (1) At the beginning of the message, state clearly the identity of the person making the call; and
- (2) During or after the message, state clearly the telephone number, other than that of the device which made the call, or address of such person.

Source: Laws 1993, LB 305, § 11; R.S.1943, (1999), § 86-1211; Laws 2002, LB 1105, § 109; Laws 2008, LB720, § 3.

86-248 Telephone solicitation to residential line; limitations.

(1) A person shall not make a telephone solicitation using an automatic dialing-announcing device to a residential telephone line (a) before 8 a.m. or after 9 p.m. at the location of the person called and (b) unless the caller has instituted procedures for maintaining a list of telephone subscribers who do not wish to receive telephone solicitations made by or on behalf of the caller.

(2) The procedures instituted pursuant to subdivision (1)(b) of this section shall meet the following minimum standards:

(a) A written policy, available upon demand, for maintaining a do-not-call list must be established;

(b) Personnel engaged in any aspect of telephone solicitation must be informed of the existence of and trained in the use of the do-not-call list;

(c) If a person making a telephone solicitation, or on whose behalf a solicitation is made, receives a request from a residential or business telephone subscriber not to receive calls from that person, the person shall record the request and place the subscriber's name and telephone number on the do-not-call list and the time the request is made. If the requests are recorded or maintained by someone other than the person on whose behalf the telephone solicitation is made, the person on whose behalf the solicitation is made shall

be liable for any failure to honor the do-not-call request. In order to protect a telephone subscriber's privacy, a person making telephone solicitations shall obtain a telephone subscriber's prior express consent to share the telephone subscriber's request not to be called with, or to forward such request to, someone other than the person on whose behalf a telephone solicitation is made or an affiliated entity;

(d) A person making a telephone solicitation shall provide the person called with the identity of the person making the call and a telephone number, other than that of the device which placed the call, or address at which the person may be contacted;

(e) In the absence of a specific request by a telephone subscriber to the contrary, a residential or business telephone subscriber's do-not-call request shall apply to the particular person making the call or on whose behalf a call is made and shall not apply to affiliated entities unless the telephone subscriber reasonably would expect them to be included given the identification of the caller and the product being advertised; and

(f) A person making telephone solicitations shall maintain a do-not-call list for the purpose of any future telephone solicitations.

Source: Laws 1993, LB 305, § 12; R.S.1943, (1999), § 86-1212; Laws 2002, LB 1105, § 110.

86-249 Automatic dialing-announcing device; release of telephone line; requirements.

An automatic dialing-announcing device delivering a recorded message to a person shall release the telephone line of the person called within five seconds of the time notification is transmitted to the device that the person called has hung up, or as soon thereafter as the serving telephone company's central office equipment permits, to allow the telephone line of the person called to be used to make or receive other calls.

Source: Laws 1993, LB 305, § 13; R.S.1943, (1999), § 86-1213; Laws 2002, LB 1105, § 111.

86-250 Permit required; procedure; liability; filing required.

(1) A person shall not connect or operate an automatic dialing-announcing device for the purpose of making telephone solicitations on any telephone line unless the person has a current permit from the commission for the device. An applicant for a permit shall make a written application to the commission. The application shall be in a form prescribed by the commission and shall require information about the type of device proposed for connection and operation, the time of day telephone solicitations will be made using the device, the anticipated number of calls proposed to be placed during the specified calling period, the average length of a completed call, or such alternative or additional information as the commission may require. If the applicant is an individual, the application shall include the applicant's social security number. The applicant shall remit a fee of five hundred dollars for each device with the application.

(2) Upon receiving an application for a permit, the commission may grant, grant as modified, or deny the application. The commission may modify or deny the permit if the commission determines that (a) the applicant is unwilling

or unable to meet the requirements placed on such operations by law, rule, or regulation or has failed to comply with the requirements in the past, (b) the connection or operation of the device will result in a significant decline in the quality of service or access to service for other telephone users, (c) the applicant's equipment is unable to meet the requirements of law, rule, or regulation, or (d) the application does not contain adequate information.

(3) If a permit is granted, the permit shall remain in force for two years from the date of issuance, and each application for the renewal of a permit shall be treated as a new application.

(4) After receiving a permit but prior to connecting or operating an automatic dialing-announcing device on any telephone line, the permitholder shall notify the telephone company of the telephone line on which the device is proposed to be connected or operated. The telephone line shall be considered a business telephone line. The telephone company shall release to the commission the identity of any person connecting or operating an automatic dialing-announcing device when requested to do so by the commission pursuant to an investigation.

(5) A person contracting with a third party to connect or operate an automatic dialing-announcing device for the purpose of making telephone solicitations on any telephone line shall be jointly and severally liable with the third party for connecting and operating the automatic dialing-announcing device in violation of the Automatic Dialing-Announcing Devices Act or the rules and regulations adopted and promulgated under the act.

(6) A person contracting with a third party to connect or operate an automatic dialing-announcing device for the purpose of making telephone solicitations shall file with the commission the message to be used to comply with the requirements of section 86-247. Such person shall file any subsequent change to the message with the commission within five days after the change.

Source: Laws 1993, LB 305, § 14; Laws 1997, LB 752, § 231; R.S.1943, (1999), § 86-1214; Laws 2002, LB 1105, § 112; Laws 2008, LB720, § 4.

86-251 Sequential dialing prohibited.

A person shall not connect or operate an automatic dialing-announcing device in such a manner as to allow it to dial telephone numbers sequentially which means in any manner other than a random manner. A detectable, predictable pattern which can be used to accurately project the device's number dialing shall satisfy a finding that sequential number dialing is taking place in violation of this section.

Source: Laws 1993, LB 305, § 15; R.S.1943, (1999), § 86-1215; Laws 2002, LB 1105, § 113.

86-252 Commission; adopt rules and regulations.

The commission shall adopt and promulgate rules and regulations necessary to carry out the Automatic Dialing-Announcing Devices Act. The rules and regulations shall include limitations on the length of calls and messages and the days of the week, holidays, and time of day when calls can be made.

Source: Laws 1993, LB 305, § 16; R.S.1943, (1999), § 86-1216; Laws 2002, LB 1105, § 114.

86-253 Commission; enforcement.

The commission may conduct investigations and shall enforce the Automatic Dialing-Announcing Devices Act. Upon written complaint and supporting affidavit that an applicable law, rule, or regulation has been or is being violated, the commission may enter a cease and desist order on an ex parte basis against the party named in the complaint. The order shall have duration of no more than twenty days, and a hearing upon the complaint shall be held no later than twenty days after the order is entered. In addition to any criminal or other penalties, failure to comply with an applicable law, rule, or regulation shall constitute grounds for revocation or suspension of a permit.

Source: Laws 1993, LB 305, § 17; R.S.1943, (1999), § 86-1217; Laws 2002, LB 1105, § 115.

86-254 Seizure of automatic dialing-announcing devices; when; destruction; liability.

The commission, its agents or employees, or any peace officer of this state at the direction of the commission may, at any place in the state, seize without a warrant any automatic dialing-announcing device the operation of which does not conform in all respects to requirements imposed by subdivisions (1) and (2) of section 86-244 or any rules or regulations. The seized device shall constitute contraband. The commission may, upon satisfactory proof, direct return of a seized device when the evidence establishes the owner did not willfully or intentionally fail to comply with the applicable law, rules, or regulations. The commission may, upon finding that the owner of a seized device has willfully or intentionally failed to comply with the applicable law, rules, or regulations, confiscate the device. Any device so confiscated may be destroyed. Destruction of a device shall not occur before all statutory appeal periods available to the owner have been exhausted. The seizure and destruction of an automatic dialing-announcing device shall not relieve any person from a fine, imprisonment, or other penalty for violation of the applicable law, rules, or regulations. The commission, its agents and employees, or any peace officer of this state shall not be liable for negligence for the seizure, confiscation, or destruction of any contraband pursuant to this section.

Source: Laws 1993, LB 305, § 18; R.S.1943, (1999), § 86-1218; Laws 2002, LB 1105, § 116.

86-255 Commission decision; appeal.

Any decision of the commission made pursuant to the Automatic Dialing-Announcing Devices Act or the rules and regulations may be appealed. The appeal shall be in accordance with section 75-136.

Source: Laws 1993, LB 305, § 19; Laws 2000, LB 1285, § 20; R.S.Supp.,2000, § 86-1219; Laws 2002, LB 1105, § 117; Laws 2013, LB545, § 13.

86-256 Automatic dialing-announcing device; registration required; when; message requirements; liability; filing required.

(1) Any person using an automatic dialing-announcing device other than for telephone solicitations shall register the device with the commission pursuant

to the application process, without a fee, and shall include with the application a detailed explanation of the use planned and the message to be used.

(2) All telephone messages transmitted by an automatic dialing-announcing device other than telephone solicitations shall:

(a) At the beginning of the message, state clearly the identity of the person on whose behalf the message is being transmitted;

(b) During or after the message, state clearly the telephone number, other than that of the device which made the call, or address of the person operating the device; and

(c) Transmit messages only between the hours of 8 a.m. and 9 p.m. at the location of the person receiving the message.

(3) This section does not apply to (a) a message from any elementary, secondary, or postsecondary educational institution to any of its students, parents, or employees, (b) a message to a person with whom the person placing the call or the person on whose behalf the message is being transmitted has an established business or personal relationship, (c) a message from an employer advising any of its employees of work schedules, or (d) a message from a political subdivision as defined in section 13-903.

(4) A person contracting with a third party to connect or operate an automatic dialing-announcing device for other than telephone solicitations shall be jointly and severally liable with the third party for connecting and operating the automatic dialing-announcing device in violation of the Automatic Dialing-Announcing Devices Act or the rules and regulations adopted and promulgated under the act.

(5) A person contracting with a third party to connect or operate an automatic dialing-announcing device for other than telephone solicitations shall file with the commission the message to be used within twenty-four hours after the message is transmitted.

Source: Laws 1993, LB 305, § 21; R.S.1943, (1999), § 86-1221; Laws 2002, LB 1105, § 118; Laws 2008, LB720, § 5.

86-257 Violations; administrative fine.

The commission may administratively fine pursuant to section 75-156 any person who violates the Automatic Dialing-Announcing Devices Act or the rules and regulations adopted and promulgated under the act.

Source: Laws 1993, LB 305, § 22; Laws 2000, LB 1285, § 21; R.S.Supp.,2000, § 86-1222; Laws 2002, LB 1105, § 119.

(d) INTRASTATE PAY-PER-CALL REGULATION

86-258 Act, how cited.

Sections 86-258 to 86-270 shall be known and may be cited as the Intrastate Pay-Per-Call Regulation Act.

Source: Laws 1993, LB 42, § 1; R.S.1943, (1999), § 86-1101; Laws 2002, LB 1105, § 120.

86-259 Definitions, where found.

For purposes of the Intrastate Pay-Per-Call Regulation Act, the definitions found in sections 86-260 and 86-261 apply.

Source: Laws 1993, LB 42, § 2; R.S.1943, (1999), § 86-1102; Laws 2002, LB 1105, § 121.

86-260 Commission, defined.

Commission means the Public Service Commission.

Source: Laws 2002, LB 1105, § 122.

86-261 Pay-per-call services, defined.

Pay-per-call services means telecommunications services which permit simultaneous calling by a large number of callers to a single telephone number and for which the calling party is assessed, by virtue of completing the call, a charge that is not dependent on the existence of a presubscription relationship and for which the caller pays a per-call or per-time-interval charge that is greater than or in addition to the charge for transmission of the call.

Source: Laws 2002, LB 1105, § 123.

86-262 Common carriers; provide services; terms and conditions.

Common carriers may provide intrastate transmission, under either contract or tariff, for pay-per-call services only under the terms and conditions set forth by the Intrastate Pay-Per-Call Regulation Act.

Source: Laws 1993, LB 42, § 3; R.S.1943, (1999), § 86-1103; Laws 2002, LB 1105, § 124.

86-263 Rules and regulations regarding preambles.

In addition to the general requirements set forth in subsection (1) of section 86-269, the commission specifically shall adopt and promulgate rules and regulations as necessary regarding preambles to intrastate pay-per-call programs consistent with 16 C.F.R. 308.1 through 308.9, as such regulations existed on January 1, 2002, pertaining to preamble requirements for interstate pay-per-call programs.

Source: Laws 1993, LB 42, § 4; R.S.1943, (1999), § 86-1104; Laws 2002, LB 1105, § 125.

86-264 Common carrier; provide information to consumers.

The common carrier providing intrastate transmission for pay-per-call services shall provide to consumers upon request the name, address, and customer service telephone number of any information provider to whom the common carrier provides such transmission service, either directly or through another entity such as a service bureau. The common carrier shall provide the information at no charge and within a reasonable time upon verbal or written request.

Source: Laws 1993, LB 42, § 5; R.S.1943, (1999), § 86-1105; Laws 2002, LB 1105, § 126.

86-265 Option to block nine hundred services; charges; rules and regulations for involuntary blocks.

(1) Local exchange carriers shall offer to their subscribers, when technically feasible, an option to block intrastate nine hundred service. Blocking shall be offered at no charge on a one-time basis to all residential telephone subscribers. For blocking requests not within the one-time option and for commercial subscribers, the local exchange carrier may charge a reasonable one-time fee for each blocking request. Requests by subscribers to remove a previously blocked intrastate nine hundred service shall be in writing to the local exchange carrier. The commission may adopt and promulgate rules and regulations to implement procedures for local exchange carriers to place involuntary blocks on subscribers who fail to pay for pay-per-call services.

(2) For purposes of this section, technically feasible means when the existing switch will accommodate the request for blocking.

Source: Laws 1993, LB 42, § 6; R.S.1943, (1999), § 86-1106; Laws 2002, LB 1105, § 127.

86-266 Common carrier; prohibited acts.

No common carrier shall disconnect or order the disconnection of a subscriber's basic telecommunications service as a result of the subscriber's failure to pay interstate or intrastate pay-per-call service charges.

Source: Laws 1993, LB 42, § 7; R.S.1943, (1999), § 86-1107; Laws 2002, LB 1105, § 128.

86-267 Transmission services; acceptance of charges required.

No common carrier shall provide transmission services for pay-per-call services originated by an information provider and charged to the consumer unless the called party has taken affirmative action clearly indicating that it accepts the charges for the collect pay-per-call service. This restriction includes eight hundred number call-back service.

Source: Laws 1993, LB 42, § 8; R.S.1943, (1999), § 86-1108; Laws 2002, LB 1105, § 129.

86-268 Transmission services; limitations.

No common carrier shall provide transmission services for any pay-per-call service which employs broadcast advertising that generates the audible tones necessary to complete a call to a pay-per-call service.

Source: Laws 1993, LB 42, § 9; R.S.1943, (1999), § 86-1109; Laws 2002, LB 1105, § 130.

86-269 Enforcement; appeal.

(1) The commission shall adopt and promulgate rules and regulations necessary to carry out the Intrastate Pay-Per-Call Regulation Act.

(2) The commission may conduct investigations and shall enforce the act.

(3) Upon written complaint and supporting affidavit that an applicable rule or regulation or any provision of the act has been or is being violated, the commission may enter a cease and desist order on an ex parte basis against a party named in a complaint alleging violation of the act. The order shall have duration of no more than twenty days, and a hearing upon the complaint shall be held no later than twenty days after the order is entered by the commission.

(4) A decision of the commission made pursuant to the act and rules and regulations of the commission may be appealed. The appeal shall be in accordance with section 75-136.

Source: Laws 1993, LB 42, § 10; Laws 2000, LB 1285, § 18; R.S.Supp.,2000, § 86-1110; Laws 2002, LB 1105, § 131; Laws 2013, LB545, § 14.

86-270 Violations; administrative fine.

After notice and a hearing, the commission may administratively fine pursuant to section 75-156 violators of the Intrastate Pay-Per-Call Regulation Act or the applicable rules and regulations adopted and promulgated under the act.

Source: Laws 1993, LB 42, § 11; Laws 2000, LB 1285, § 19; R.S.Supp.,2000, § 86-1111; Laws 2002, LB 1105, § 132.

(e) INTERCEPTED COMMUNICATIONS

86-271 Definitions, where found.

For purposes of sections 86-271 to 86-2,115, unless the context otherwise requires, the definitions found in sections 86-272 to 86-289 apply.

Source: Laws 1969, c. 854, § 1, p. 3210; Laws 1984, LB 625, § 1; Laws 1988, LB 899, § 1; R.S.1943, (1999), § 86-701; Laws 2002, LB 1105, § 133.

The Nebraska Supreme Court looks to federal law in interpreting the provisions of Nebraska's intercepted communications statutes, sections 86-701 through 86-712 (recodified in 2002 as sections 86-271 to 86-2,115). The test for issuance of a wiretap order under the provisions of Nebraska's intercepted communications statutes is whether the sworn information before the court is of sufficient apparent reliability to justify a finding that there is probable cause to believe that an offense cognizable under said statutes has been or is being committed. *State v. Hinton*, 226 Neb. 787, 415 N.W.2d 138 (1987).

Conversations in which one party has consented to the recording of the conversation are not oral communications within the meaning of communication interception statutes (recodified in 2002 as sections 86-271 to 86-2,115). *State v. Manchester*, 220 Neb. 41, 367 N.W.2d 733 (1985).

Evidence of telephone conversations obtained by wiretaps in violation of this article (recodified in 2002 as sections 86-271 to 86-2,115) are inadmissible in evidence if timely objection is made. *White v. Longo*, 190 Neb. 703, 212 N.W.2d 84 (1973).

86-272 Aggrieved person, defined.

Aggrieved person means a person who was a party to any intercepted wire, electronic, or oral communication or a person against whom the interception was directed.

Source: Laws 2002, LB 1105, § 134.

86-273 Aural transfer, defined.

Aural transfer means a transfer containing the human voice at any point between and including the point of origin and the point of reception.

Source: Laws 2002, LB 1105, § 135.

86-274 Contents, defined.

Contents, when used with respect to any wire, electronic, or oral communication, includes any information concerning the substance, purport, or meaning of such communication.

Source: Laws 2002, LB 1105, § 136.

86-275 Electronic, mechanical, or other device, defined.

Electronic, mechanical, or other device means any device or apparatus which can be used to intercept a wire, electronic, or oral communication other than:

(1) Any telephone or telegraph instrument, equipment, or facility, or any component thereof, (a) furnished to the subscriber or user by a provider in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by such subscriber or user for connection to the facilities of such service and used by the subscriber or user in the ordinary course of its business or (b) being used by a provider in the ordinary course of its business or by an investigative or law enforcement officer in the ordinary course of his or her duties; or

(2) A hearing instrument or similar device being used to correct subnormal hearing to not better than normal.

Source: Laws 2002, LB 1105, § 137; Laws 2009, LB195, § 109.

86-276 Electronic communication, defined.

Electronic communication means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system but does not include:

(1) The radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;

(2) Any wire or oral communication;

(3) Any communication made through a tone-only mobile paging device; or

(4) Any communication from a mobile tracking device as defined in section 86-2,103.

Source: Laws 2002, LB 1105, § 138.

86-277 Electronic communication service, defined.

Electronic communication service means any service which provides to users thereof the ability to send or receive wire or electronic communication.

Source: Laws 2002, LB 1105, § 139.

86-278 Electronic communication system, defined.

Electronic communication system means any wire, radio, electromagnetic, photooptical, or photoelectronic facilities for the transmission of electronic communications and any computer facilities or related electronic equipment for the electronic storage of such communication.

Source: Laws 2002, LB 1105, § 140.

86-279 Electronic storage, defined.

Electronic storage means:

(1) Any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and

(2) Any storage of such communication by an electronic communication service for purposes of backup protection of such communication.

Source: Laws 2002, LB 1105, § 141.

86-280 Intercept, defined.

Intercept means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.

Source: Laws 2002, LB 1105, § 142.

86-281 Investigative or law enforcement officer, defined.

Investigative or law enforcement officer means a law enforcement officer as defined in section 81-1401 and includes the Attorney General and his or her deputies or assistants, a county attorney and his or her deputies, and agents of the United States Federal Bureau of Investigation, Drug Enforcement Administration, Marshals Service, Secret Service, Bureau of Alcohol, Tobacco, and Firearms, Treasury Department, Customs Service, Justice Department, and Internal Revenue Service.

Source: Laws 2002, LB 1105, § 143.

86-282 Mobile telephone communication, defined.

Mobile telephone communication means a radio communication that is transmitted on frequencies allocated under 47 C.F.R. 26.301, as such regulation existed on January 1, 2002.

Source: Laws 2002, LB 1105, § 144.

86-283 Oral communication, defined.

Oral communication means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation but does not include any electronic communication.

Source: Laws 2002, LB 1105, § 145.

Pursuant to subsection (12) of this section (recodified in 2002 as section 86-283) there is no objective expectation of privacy in face-to-face conversations occurring in jail visiting rooms. State v. Strohl, 255 Neb. 918, 587 N.W.2d. 675 (1999).

86-284 Pen register, defined.

Pen register means a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached but does not include (1) any device used by a provider or customer of an electronic communication service for billing or recording as an incident to billing for communication service provided by such provider or (2) any device used by a provider or customer of an electronic communication service for cost accounting or other like purposes in the ordinary course of its business.

Source: Laws 2002, LB 1105, § 146.

86-285 Provider, defined.

Provider means any person who provides an electronic communication service and who has authorized access to or possession or control of the facilities or equipment necessary to implement (1) the order to intercept a wire or electronic communication or (2) the order to install a pen register or a trap-and-trace device.

Source: Laws 2002, LB 1105, § 147.

86-286 Readily accessible to the general public, defined.

Readily accessible to the general public means, with respect to a radio communication, that such communication is not:

- (1) Scrambled or encrypted;
- (2) Transmitted using modulation techniques the essential parameters of which have been withheld from the public with the intention of preserving the privacy of such communication;
- (3) Carried on a subcarrier or other signal subsidiary to a radio transmission;
- (4) Transmitted over an electronic communication system by a provider unless the communication is a tone-only paging system communication; or
- (5) Transmitted on frequencies allocated for satellite communications under 47 C.F.R. part 25, for remote pickup broadcast stations under subpart D of 47 C.F.R. part 74, for aural broadcast auxiliary stations under subpart E of 47 C.F.R. part 74, for television broadcast auxiliary stations under subpart F of 47 C.F.R. part 74, or for fixed microwave services under 47 C.F.R. part 101, as such regulations existed on January 1, 2002, unless, in the case of a communication transmitted on a frequency allocated under 47 C.F.R. part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio.

Source: Laws 2002, LB 1105, § 148.

86-287 Trap-and-trace device, defined.

Trap-and-trace device means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted.

Source: Laws 2002, LB 1105, § 149.

86-288 User, defined.

User means any person or entity who:

- (1) Uses an electronic communication service; and
- (2) Is duly authorized by the provider of such service to engage in such use.

Source: Laws 2002, LB 1105, § 150.

86-289 Wire communication, defined.

Wire communication means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection, including the use of such connection in a switching station, between the point of origin and the point of reception furnished or operated by any person engaged in providing or operating such facilities for the transmission of communications. Wire communication includes any electronic storage of such communication but does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit.

Source: Laws 2002, LB 1105, § 151.

86-290 Unlawful acts; penalty.

(1) Except as otherwise specifically provided in sections 86-271 to 86-295, it is unlawful to:

(a) Intentionally intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept any wire, electronic, or oral communication;

(b) Intentionally use, endeavor to use, or procure any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when (i) such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication or (ii) such device transmits communications by radio or interferes with the transmission of such communication;

(c) Intentionally disclose or endeavor to disclose to any other person the contents of any wire, electronic, or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic, or oral communication in violation of this subsection;

(d) Intentionally use or endeavor to use the contents of any wire, electronic, or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic, or oral communication in violation of this subsection; or

(e) Having knowledge that an investigative or law enforcement officer has been authorized or has applied for authorization under sections 86-271 to 86-2,115 to intercept a wire, oral, or electronic communication, give notice or attempt to give notice of the possible interception to any person in order to obstruct, impede, or prevent such interception.

Except as provided in subdivisions (4)(a) and (5)(b) of this section, any person who violates this subsection is guilty of a Class IV felony.

(2)(a) It is not unlawful under sections 86-271 to 86-295 for an employer on his, her, or its business premises, for an operator of a switchboard, or for an officer, employee, or agent of any provider, the facilities of which are used in the transmission of a wire communication, to intercept, disclose, or use that communication in the normal course of his, her, or its employment while engaged in any activity which is a necessary incident to the rendition of his, her, or its service or to the protection of the rights or property of the carrier or provider of such communication services. Such employers and providers shall not utilize service observing or random monitoring except for mechanical, service quality, or performance control checks as long as reasonable notice of the policy of random monitoring is provided to their employees.

(b) It is not unlawful under sections 86-271 to 86-295 for a person acting under color of law to intercept a wire, electronic, or oral communication when such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.

(c) It is not unlawful under sections 86-271 to 86-295 for a person not acting under color of law to intercept a wire, electronic, or oral communication when such person is a party to the communication or when one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any state.

(d) It is not unlawful under sections 86-271 to 86-295:

(i) To intercept or access an electronic communication made through an electronic communications system that is configured so that such electronic communication is readily accessible to the general public;

(ii) To intercept any radio communication which is transmitted:

(A) By any station for the use of the general public or that relates to ships, aircraft, vehicles, or persons in distress;

(B) By any governmental, law enforcement, emergency management, private land mobile, or public safety communications system, including police and fire, readily accessible to the general public;

(C) By a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or

(D) By any marine or aeronautical communications system;

(iii) To intercept or receive, or to assist in the interception or receipt of:

(A) Any communications service offered over a cable system as provided in 47 U.S.C. 553, as such section existed on January 1, 2002; or

(B) Any satellite cable programming for private viewing as provided in 47 U.S.C. 605, as such section existed on January 1, 2002;

(iv) To intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment to the extent necessary to identify the source of such interference; or

(v) For other users of the same frequency to intercept any radio communication made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of such system if such communication is not scrambled or encrypted.

(e) It is not unlawful under sections 86-271 to 86-295 and 86-298 to 86-2,101:

(i) To use a pen register or a trap-and-trace device; or

(ii) For a provider of an electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service from fraudulent, unlawful, or abusive use of such service.

(3)(a) Except as provided in subsection (1) of this section and subdivision (b) of this subsection, a person or entity providing an electronic communication service to the public shall not intentionally divulge the contents of any communication, other than one to such person or entity or an agent thereof, while in transmission on such service to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient.

(b) A person or entity providing an electronic communication service to the public may divulge the contents of any such communication:

(i) As otherwise authorized in subdivision (a) of this subsection or section 86-292;

(ii) With the lawful consent of the originator or any addressee or intended recipient of such communication;

(iii) To a person employed or authorized, or whose facilities are used, to forward such communication to its destination; or

(iv) Which was inadvertently obtained by the provider and which appears to pertain to the commission of a crime if such divulgence is made to a law enforcement officer.

(4)(a) If the offense is a first offense under subsection (1) of this section and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain and the wire or electronic communication with respect to the offense under subsection (1) of this section is a radio communication that is not scrambled or encrypted, then:

(i) If the communication is not the radio portion of a cellular telephone communication, a public land mobile radio service communication, or a paging service communication and the conduct is not that described in subsection (5) of this section, the offense is a Class I misdemeanor; or

(ii) If the communication is the radio portion of a cellular telephone communication, a public land mobile radio service communication, or a paging service communication, the offense is a Class III misdemeanor.

(b) Conduct, otherwise an offense under this subsection that consists of or relates to the interception of a satellite transmission that is not encrypted or scrambled and that is transmitted: (i) To a broadcasting station for purposes of retransmission to the general public; or (ii) as an audio subcarrier intended for redistribution to facilities open to the public but not including data transmissions or telephone calls, is not an offense under this subsection unless the conduct is for the purposes of direct or indirect commercial advantage or private financial gain.

(5)(a) If the communication is: (i) A private satellite video communication that is not scrambled or encrypted and the conduct in violation of sections 86-271 to 86-295 is the private viewing of that communication and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain; or (ii) a radio communication that is transmitted on frequencies allocated for remote pickup broadcast stations under subpart D of 47 C.F.R. part 74, as such regulations existed on January 1, 2002, and that is not scrambled or encrypted and the conduct in violation of sections 86-271 to 86-295 is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, then the person who engages in such conduct shall be subject to suit by the state in a court of competent jurisdiction.

(b) In an action under this subsection:

(i) If the violation is a first offense by the person under subsection (1) of this section and such person has not been found liable in a civil action under section 86-297, the state shall be entitled to appropriate injunctive relief; and

(ii) If the violation is a second or subsequent offense under subsection (1) of this section or such person has been found liable in any prior civil action under section 86-297, the person shall be subject to a mandatory five-hundred-dollar civil fine.

(c) The court may use any means within its authority to enforce an injunction issued under this subsection and shall impose a civil fine of not less than five hundred dollars for each violation of such an injunction.

Source: Laws 1969, c. 854, § 2, p. 3211; Laws 1977, LB 39, § 329; Laws 1988, LB 899, § 2; Laws 1996, LB 43, § 52; R.S.1943, (1999), § 86-702; Laws 2002, LB 1105, § 152.

Message intercepted by one who was not a party to the communication, nor acting under color of law or with prior consent, is not admissible in evidence. *White v. Longo*, 190 Neb. 703, 212 N.W.2d 84 (1973).

86-291 Interception; court order.

The Attorney General or any county attorney may make application to any district court of this state for an order authorizing or approving the interception of wire, electronic, or oral communications, and such court may grant, subject to sections 86-271 to 86-295, an order authorizing or approving the interception of wire, electronic, or oral communications by law enforcement officers having responsibility for the investigation of the offense as to which application is made, when such interception may provide or has provided evidence of the commission of the offense of murder, kidnapping, robbery, bribery, extortion, dealing in narcotic or other dangerous drugs, labor trafficking or sex trafficking, labor trafficking of a minor or sex trafficking of a minor, sexual assault of a child or a vulnerable adult, visual depiction or possessing a visual depiction of sexually explicit conduct of a child, or child enticement by means of a computer, or any conspiracy to commit any such offense.

At the same time a county attorney first makes application to the district court for an initial order authorizing or approving the interception of wire, electronic, or oral communications, the county attorney shall submit the application to the Attorney General or his or her designated deputy or assistant. Within twenty-four hours of receipt by the office of the Attorney General of the application from the county attorney, the Attorney General or his or her designated deputy or assistant, as the case may be, shall state to the district court where the order is sought his or her recommendation as to whether the order should be granted. The court shall not issue the order until it has received the recommendation or until seventy-two hours after receipt of the application from the county attorney, whichever is sooner, unless the court finds exigent circumstances existing which necessitate the immediate issuance of the order. The court may issue the order and disregard the recommendation of the Attorney General or his or her designated deputy or assistant.

Source: Laws 1969, c. 854, § 3, p. 3213; Laws 1971, LB 294, § 1; Laws 1988, LB 899, § 3; R.S.1943, (1999), § 86-703; Laws 2002, LB 1105, § 153; Laws 2006, LB 1113, § 53; Laws 2019, LB519, § 17.

The requirement that the submissions of applications for intercept to the Attorney General and the court occur “[a]t the same time” necessitates that the application be submitted to the Attorney General in close enough proximity to the submission to the court that the grounds upon which the application is based are equally applicable and the Attorney General could issue its recommendation with sufficient time so the court could timely consider it in making its determination. *State v. Brye*, 304 Neb. 498, 935 N.W.2d 438 (2019).

In a gambling conviction based on evidence obtained by wiretap, court held that federal law preempts the field, but does not require “all possible” investigative techniques be tried be-

fore authorizing wiretap. *State v. Kolosseus*, 198 Neb. 404, 253 N.W.2d 157 (1977).

A plea of nolo contendere waived right to test the statute’s constitutionality. *State v. Abramson*, 197 Neb. 135, 247 N.W.2d 59 (1976).

Nebraska statutory scheme (recodified in 2002 as sections 86-271 to 86-2,115) with respect to wiretaps does not prevent the involvement of federal officers in state wiretap authorizations. *United States v. Van Horn*, 579 F.Supp. 804 (D. Neb. 1984).

86-292 Interception; privileged use.

(1) Any investigative or law enforcement officer who, by any means authorized by sections 86-271 to 86-295, has obtained knowledge of the contents of any wire, electronic, or oral communication or evidence derived therefrom may disclose such contents to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(2) Any investigative or law enforcement officer who, by any means authorized by sections 86-271 to 86-295, has obtained knowledge of the contents of any wire, electronic, or oral communication or evidence derived therefrom may use such contents to the extent such use is appropriate to the proper performance of his or her official duties.

(3) Any person who has received, by any means authorized by sections 86-271 to 86-295, any information concerning a wire, electronic, or oral communication or evidence derived therefrom intercepted in accordance with sections 86-271 to 86-295 may disclose the contents of that communication or such derivative evidence while giving testimony under oath or affirmation in any criminal proceeding held under the authority of the United States, of this state, or of any other state.

(4) No otherwise privileged wire, electronic, or oral communication intercepted in accordance with, or in violation of, sections 86-271 to 86-295 shall lose its privileged character.

(5) When an investigative or law enforcement officer, while engaged in intercepting wire, electronic, or oral communications in the manner authorized herein, intercepts wire, electronic, or oral communications relating to offenses other than those specified in the order of authorization or approval, the contents thereof and evidence derived therefrom may be disclosed or used as provided in subsections (1) and (2) of this section. Such contents and any evidence derived therefrom may be used under subsection (3) of this section when authorized or approved by a judge of a district court when such judge finds on subsequent application that the contents were otherwise intercepted in accordance with sections 86-271 to 86-295. Such application shall be made as soon as practicable.

Source: Laws 1969, c. 854, § 4, p. 3213; Laws 1988, LB 899, § 4; R.S.1943, (1999), § 86-704; Laws 2002, LB 1105, § 154.

86-293 Interception; procedure; appeal.

(1) Each application for an order authorizing or approving the interception of a wire, electronic, or oral communication shall be made in writing upon oath or affirmation to a judge of a district court and shall state the applicant's authority to make such application. Each application shall include the following information:

(a) The identity of the applicant;

(b) A full and complete statement of the facts and circumstances relied upon by the applicant to justify his or her belief that an order should be issued, including details as to the particular offense that has been, is being, or is about to be committed, a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted except as otherwise provided in subsection (13) of this section, a particular description of the type of communications sought to be intercepted, and the identity of the person, if known, committing the offense and whose communications are to be intercepted;

(c) A full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(e) A full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application made to any judge for authorization to intercept or for approval of interceptions of wire, electronic, or oral communications involving any of the same persons, facilities, or places specified in the application and the action taken by the judge on each such application; and

(f) When the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception or a reasonable explanation of the failure to obtain such results.

(2) The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

(3) Upon such application the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire, electronic, or oral communications or mobile telephone communications within the territorial jurisdiction of the court if the judge determines on the basis of the facts submitted by the applicant that: (a) There is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense enumerated in section 86-291; (b) there is probable cause for belief that particular communications concerning that offense will be obtained through such interception; (c) normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous; and (d) except as otherwise provided in subsection (13) of this section, there is probable cause for belief that the facilities from which or the place where the wire, electronic, or oral communications are to be intercepted are being used or are about to be used in connection with the commission of such offense or are leased to, listed in the name of, or commonly used by such person.

(4) Each order authorizing or approving the interception of any wire, electronic, or oral communication shall specify: (a) The identity of the person, if known, whose communications are to be intercepted; (b) except as otherwise provided in subsection (13) of this section, the nature and location of the communications facilities as to which or the place where authority to intercept is granted; (c) a particular description of the type of communication sought to be intercepted and a statement of the particular offense to which it relates; (d) the identity of the agency authorized to intercept the communications and of the person authorizing the application; and (e) the period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

(5) Each order authorizing the interception of a wire, electronic, or oral communication shall, upon request of the applicant, direct that a provider, landlord, custodian, or other person furnish to the applicant all information, facilities, and technical assistance necessary to accomplish the interception inconspicuously and with a minimum of interference with the services that

such provider, landlord, custodian, or person is giving to the person whose communications are to be intercepted. Any provider, landlord, custodian, or other person furnishing such facilities or technical assistance shall be compensated therefor by the applicant for expenses incurred in providing such facilities or assistance at the prevailing rates. A provider that has received an order as provided in this subsection may, under seal, move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the Attorney General or county attorney as the case may be, shall decide such a motion expeditiously.

(6) No order entered under this section may authorize or approve the interception of any wire, electronic, or oral communication for any period longer than is necessary to achieve the objective of the authorization nor in any event longer than thirty days. Extensions of an order may be granted but only upon application for an extension made in accordance with subsection (1) of this section and the court making the findings required by subsection (3) of this section. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than thirty days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to avoid and prevent interception of confidential communications to or from persons of the classes described in sections 20-146 and 27-503 to 27-506 unless there exists probable cause to believe such persons have committed, are committing, or are conspiring to commit offenses specified in section 86-291, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under sections 86-271 to 86-295, and shall terminate upon attainment of the authorized objective or in any event in thirty days. Upon a showing of good cause as set forth in the application, in the event the intercepted communication is in a foreign language and an expert in that foreign language is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception.

(7)(a) Whenever an order authorizing interception is entered pursuant to sections 86-271 to 86-295, the order shall, at a minimum, require reports to be filed with the judge who issued the order no earlier than the twelfth day and no later than the sixteenth day after the order is issued and twelve to sixteen days thereafter showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Additional reports shall be filed at such other intervals as the judge may require. Time computed under this subdivision shall commence on the first calendar day after the order is issued.

(b) If the required reports are not filed, the judge shall exclude from evidence any communication intercepted after that date otherwise authorized by the order unless the person required to file the reports establishes that the failure was for good cause.

(8)(a) The contents of any wire, electronic, or oral communication intercepted by any means authorized by sections 86-271 to 86-295 shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire, electronic, or oral communication under this subsection shall be done in such way as will protect the recording from editing or other

alterations. Immediately upon the expiration of the period of the order or extensions thereof, such recordings shall be made available to the judge issuing such order and sealed under his or her directions. Custody of the recordings shall be wherever the judge orders. They shall not be destroyed except upon an order of the issuing or denying judge and in any event shall be kept for ten years. Duplicate recordings may be made for use or disclosure pursuant to subsections (1) and (2) of section 86-292 for investigations. The presence of the seal provided for by this subsection or a satisfactory explanation for the absence thereof shall be a prerequisite for the use or disclosure of the contents of any wire, electronic, or oral communication or evidence derived therefrom under subsection (3) of section 86-292.

(b) Applications made and orders granted under sections 86-271 to 86-295 shall be sealed by the judge. Custody of the applications and orders shall be wherever the judge directs. Such applications and orders shall be disclosed only upon a showing of good cause before a judge of a district court, shall not be destroyed except on order of the issuing or denying judge, and in any event shall be kept for ten years.

(c) Any violation of this subsection may be punished as contempt of the issuing or denying judge.

(9)(a) Within a reasonable time, but not longer than ninety days after the termination of the period of an order or extensions thereof, the issuing judge shall cause the applicant to serve on the persons named in the order or the application and such other parties to intercepted communications which the judge may determine to be in the interest of justice an inventory which shall include: (i) The entry of the order of application; (ii) the date of such entry and the period of authorized or approved interception or the denial of the application; and (iii) whether, during such period, wire, electronic, or oral communications were or were not intercepted.

(b) The judge, upon the filing of a motion by a person whose communications were intercepted, may make available to such person or his or her counsel for inspection such portions of the intercepted communications, applications, and orders as the judge determines to be in the interest of justice. On application to a judge of a district court, the serving of the inventory required by this subsection shall be postponed for ninety days. Thereafter, on an ex parte showing of good cause to a judge of a district court, the serving of the inventory required by this subsection may be further postponed.

(c) If the inventory is not served as required by this subsection, any communication intercepted under an order or extension thereof shall be excluded as evidence before all courts of this state unless the failure to serve such inventory was for good cause, the failure to serve the inventory did not substantially affect the rights of the defendant in the matter, or the serving of the inventory was postponed as allowed and ordered pursuant to subdivision (b) of this subsection.

(d) Nothing in this subsection shall be construed to limit the judge's power of contempt.

(10) The contents of any intercepted wire, electronic, or oral communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in a federal or state court unless each party, not less than ten days before the trial, hearing, or proceeding, has been furnished with a copy of the court order and accompanying

application under which the interception was authorized or approved. This ten-day period may be waived by the judge if he or she finds that it was not possible to furnish the party with such information ten days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving such information.

(11) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of this state may move to suppress the contents of any intercepted wire, electronic, or oral communication or evidence derived therefrom on the grounds that the communication was unlawfully intercepted, the order of authorization or approval under which it was intercepted is insufficient on its face, or the interception was not made in conformity with the order of authorization or approval. Such motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire, electronic, or oral communication or evidence derived therefrom shall be treated as having been obtained in violation of sections 86-271 to 86-295. The judge, upon the filing of such motion by the aggrieved person, may in his or her discretion make available to the aggrieved person or his or her counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interests of justice.

(12) In addition to any other right to appeal, the Attorney General or any county attorney shall have the right to appeal from an order granting a motion to suppress made under subsection (11) of this section or the denial of an application for an order of approval if the Attorney General or the county attorney certifies to the judge granting such motion or denying such application that the appeal is not taken for purposes of delay. Such appeal shall be taken within thirty days after the date the order was entered and shall be diligently prosecuted.

(13) The requirements of subdivisions (1)(b), (3)(d), and (4)(b) of this section relating to the specification of the facilities from which or the place where the communication is to be intercepted shall not apply if:

(a) In the case of an application with respect to the interception of an oral communication:

(i) The application is approved by both the Attorney General and the county attorney where the application is sought or a deputy attorney general or designated deputy county attorney if the Attorney General or county attorney is outside of his or her respective jurisdiction;

(ii) The application contains a full and complete statement as to why such specification is not practical and identifies the person believed to be committing the offense and whose communications are to be intercepted; and

(iii) The judge finds that such specification is not practical; and

(b) In the case of an application with respect to a wire or electronic communication:

(i) The application is approved by both the Attorney General and the county attorney where the application is sought or a deputy attorney general or designated deputy county attorney if the Attorney General or county attorney is outside of his or her respective jurisdiction;

(ii) The application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing of a purpose, on the part of that person, to thwart interception by changing facilities; and

(iii) The judge finds that such purpose has been adequately shown.

(14) An interception of a communication under an order with respect to which the requirements of subdivisions (1)(b), (3)(d), and (4)(b) of this section do not apply by reason of subsection (13) of this section shall not begin until the facility from which or the place where the communication is to be intercepted is ascertained by the person implementing the interception order.

(15) As used in subdivisions (7)(b) and (9)(c) of this section, good cause shall include a showing that the failure to file the report or serve the inventory was not intentional and that a substantial reason or special circumstance, including an act of God, reasonable unavailability of the applicant or necessary law enforcement officer due to death, medical condition, incapacitation, inaccessibility, or location, or other substantial reason or special circumstance as the court in its discretion determines, excused the failure to file the report or serve the inventory.

Source: Laws 1969, c. 854, § 5, p. 3214; Laws 1976, LB 583, § 1; Laws 1988, LB 899, § 5; R.S.1943, (1999), § 86-705; Laws 2002, LB 1105, § 155.

1. Application for wiretap
2. Order
3. Suppression of evidence
4. Miscellaneous

1. Application for wiretap

It is not necessary for the State to utilize all investigative techniques before making an application for a wiretap. It is sufficient that the State show that other techniques are impractical under the circumstances and that it would be unreasonable to require pursuit of those avenues of investigation. The application for a wiretap must contain a full and complete disclosure of all that has been done so that the court may make a judgment as to whether more should be required before a wiretap is authorized. An affidavit in support of an application for a wiretap is to be tested in a practical and commonsense fashion. *State v. Nash*, 233 Neb. 318, 444 N.W.2d 914 (1989).

An application for a wiretap shall include sufficient facts which will support a believable conclusion that reasonable or ordinary investigatory techniques had been tried and had failed, or appeared unlikely to succeed, in obtaining evidence regarding a suspect's illegal activity. *State v. Whitmore*, 221 Neb. 450, 378 N.W.2d 150 (1985).

The statement envisioned by subsection (1)(c) of this section (formerly subdivision (1)(c) of section 86-705) is a statement of fact demonstrating exhaustion or unavailability of normal or conventional investigative techniques. *State v. Golter*, 216 Neb. 36, 342 N.W.2d 650 (1983).

This section requires a separate showing of the necessity of a wiretap as a means of investigation of the crime being committed. To demonstrate necessity, the prospective and retrospective failure of alternative investigative techniques must be apparent from the facts submitted by the applicant. This section (formerly section 86-705) applies whether the wiretap sought is the first one covering a particular criminal activity, or whether a previous tap has furnished information which is the basis for the application for another tap. The validity of the application for the wiretap authorization and for the order of the authorizing judge cannot be established by the exercise of hindsight. They must be viewed in the light of circumstances as they existed and were known or reasonably anticipated at the time, and cannot be "bootstrapped" by what the wiretap later uncovered. A

showing that two or more principals are involved in one conspiracy as to one of which a sufficient affidavit has been filed is not alone sufficient to support an application as to all of the alleged principals or their telephones. In this case, affidavits are not sufficient to satisfy statutory requirement of necessity for wiretap. *State v. Lane*, 211 Neb. 46, 317 N.W.2d 750 (1982).

Affidavits incorporated into application were sufficiently detailed to satisfy the requirements of this section (formerly section 86-705). *State v. Lozano*, 209 Neb. 772, 311 N.W.2d 529 (1981).

Subdivision (1)(c) of this section (formerly subdivision (1)(c) of section 86-705) does not require the exhaustion of all possible or reasonable avenues of investigation. The statutory requirements are stated in the alternative, i.e., that other methods must have been tried and failed "or" that other procedures are unlikely to succeed or are too dangerous. *State v. Holmes and Beardslee*, 208 Neb. 114, 302 N.W.2d 382 (1981).

In order to obtain a wiretap, the application and affidavit for the wiretap must set out facts sufficient to establish all four essential requirements of subsection (3) of this section (formerly subsection (3) of section 86-705). *State v. Hinchion, DiBiase, Olsen, and Cullen*, 207 Neb. 478, 299 N.W.2d 748 (1980).

2. Order

Although interceptions of telephonic communications need not cease upon the obtaining of a described communication, unless the order authorizing them so provides, they must cease when the objective of the authorization has been achieved, and in no event may the interceptions extend beyond thirty days. *State v. Brennen*, 218 Neb. 454, 356 N.W.2d 861 (1984).

An order not containing a provision that the authorization to intercept calls shall be conducted in such a way so as to avoid and prevent interception of confidential information is not per se invalid absent a showing that any substantial right of the defendant has been violated. *State v. Brennen*, 214 Neb. 734, 336 N.W.2d 79 (1983).

3. Suppression of evidence

The ultimate burden of showing an unlawful interception rests upon the party against whom the fruits of the electronic surveillance are offered. *State v. Nash*, 233 Neb. 318, 444 N.W.2d 914 (1989).

Evidence derived from prior wiretap found illegal in *State v. Lane*, 211 Neb. 46, 317 N.W.2d 750 (1982), was used to support application for wiretap in present case; thus, wiretap in this case also suppressed. *State v. Richter*, 211 Neb. 63, 317 N.W.2d 759 (1982).

Evidence which is obtained as the result of a search which is based solely on a wiretap which is in violation of this act (sections 86-701 to 86-712, recodified in 2002 as sections 86-291 to 86-2,115) must be suppressed where the defendant had waived his fourth amendment rights under the U.S. Constitution, but not his statutory rights under this act. *State v. Aulrich*, 209 Neb. 546, 308 N.W.2d 739 (1981).

Appeals by the state from an order suppressing evidence under this section shall be pursuant to section 29-824. *State v. Hinchion, DiBiase, Olsen, and Cullen*, 207 Neb. 478, 299 N.W.2d 748 (1980).

4. Miscellaneous

Pursuant to subsection (3) of this section, a court can authorize interception of communications within its territorial jurisdiction and this interception occurs both at the origin or point of reception and where the communication is redirected and first heard. *State v. Brye*, 304 Neb. 498, 935 N.W.2d 438 (2019).

An interlocutory appeal brought under section 86-705(12), R.R.S.1943, (recodified in 2002 as section 86-293(12)) shall be heard according to the procedure set out in section 29-824, R.R.S.1943. *State v. Anderson and Hochstein*, 207 Neb. 51, 296 N.W.2d 440 (1980).

This section (formerly section 86-705) is virtually identical to 18 U.S.C. section 2518. This section is intended to assure that wire tapping is not resorted to when traditional investigative techniques would suffice. However, it is not necessary to exhaust all other possible techniques before a wiretap order may issue. *State v. Trader*, 205 Neb. 282, 287 N.W.2d 78 (1980); *State v. DiMauro & Kessler*, 205 Neb. 275, 287 N.W.2d 74 (1980).

In a gambling conviction based on evidence obtained by wiretap, court held that federal law preempts the field, but does not require "all possible" investigative techniques be tried before authorizing wiretap. *State v. Kolosseus*, 198 Neb. 404, 253 N.W.2d 157 (1977).

The statute prescribes a rule of evidence applicable to civil as well as criminal proceedings. *White v. Longo*, 190 Neb. 703, 212 N.W.2d 84 (1973).

Misdemeanor gambling is an inherently serious crime and one of those typically involving elements of organized crime. Gambling is also one of the crimes enumerated in this statute and in 18 U.S.C. section 2516. Therefore, wiretap evidence obtained in the investigation of misdemeanor gambling is admissible in a probation revocation hearing. *U.S. v. Frederickson*, 581 F.2d 711 (8th Cir. 1978).

86-294 Interception; reports.

In January of each year the Attorney General and each county attorney shall report to the Administrative Office of the United States Courts:

(1) The following information with respect to each application for an order or extension made during the preceding calendar year: (a) The fact that an order or extension was applied for; (b) the kind of order or extension applied for; (c) the fact that the order or extension was granted as applied for, was modified, or was denied; (d) the period of interceptions authorized by the order, and the number and duration of any extensions of the order; (e) the offense specified in the order or application, or extension of an order; (f) the identity of the applying investigative or law enforcement officer and agency making the application and the person authorizing the application; and (g) the nature of the facilities from which or the place where communications were to be intercepted;

(2) A general description of the interceptions made under such order or extension, including (a) the approximate nature and frequency of incriminating communications intercepted, (b) the approximate nature and frequency of other communications intercepted, (c) the approximate number of persons whose communications were intercepted, and (d) the approximate nature, amount, and cost of the manpower and other resources used in the interceptions;

(3) The number of arrests resulting from interceptions made under such order or extension, and the offenses for which arrests were made;

(4) The number of trials resulting from such interceptions;

(5) The number of motions to suppress made with respect to such interceptions, and the number granted or denied;

(6) The number of convictions resulting from such interceptions and the offenses for which the convictions were obtained and a general assessment of the importance of the interceptions; and

(7) The information required by subdivisions (2) through (6) of this section with respect to orders or extensions obtained in the preceding calendar year.

Source: Laws 1969, c. 854, § 6, p. 3218; R.S.1943, (1999), § 86-706; Laws 2002, LB 1105, § 156.

86-295 Violations; penalty.

It is unlawful for any person to (1) intentionally and without lawful authority cut, break, tap, or make connection with any telegraph or telephone line, wire, cable, or instrument or electronic, mechanical, or other device or read or copy in any unauthorized manner any message, communication, or report passing over it, in this state, (2) intentionally and without lawful authority prevent, obstruct, or delay, by any means or contrivance whatsoever, the sending, transmission, conveyance, or delivery in this state of any authorized message, communication, or report by or through any telegraph or telephone line, wire, or cable under the control of any telegraph or telephone company doing business in this state, (3) aid, agree with, employ, or conspire with any person or persons to unlawfully do or perform, or cause to be done, any of the acts described in subdivisions (1) and (2) of this section, or (4) occupy, use a line, or knowingly permit another to occupy, use a line, room, table, establishment, or apparatus to unlawfully do or cause to be done any of the acts described in this section. Any person who violates this section is guilty of a Class IV felony.

Source: Laws 1969, c. 854, § 7, p. 3219; Laws 1977, LB 39, § 330; Laws 1988, LB 899, § 6; R.S.1943, (1999), § 86-707; Laws 2002, LB 1105, § 157.

86-296 Electronic devices; prohibited acts; penalty.

(1) Except as otherwise specifically provided in sections 86-271 to 86-295 and this section, any person who intentionally:

(a) Sends in intrastate commerce any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the unlawful surreptitious interception of wire, electronic, or oral communications, is guilty of a Class IV felony; or

(b) Manufactures, assembles, possesses, or sells any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the unlawful surreptitious interception of wire, electronic, or oral communications and that such device or any component thereof has been or will be transported in intrastate commerce, is guilty of a Class IV felony.

(2) This section shall not be construed to prohibit the exchange of electronic, mechanical, or other devices between law enforcement officers or federally funded law enforcement associations.

(3) It is unlawful for a provider or an officer, agent, or employee of or a person under contract with a provider, in the normal course of the business of providing electronic communication service, to send or carry in intrastate commerce, manufacture, assemble, possess, or sell any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the unlawful surreptitious interception of wire, oral, or electronic communications. Any person who violates this subsection is guilty of a Class IV felony.

(4) It is lawful for an officer, agent, or employee of or a person under contract with the United States, a state, or a political subdivision thereof, in the normal course of the activities of the United States, a state, or a political subdivision thereof, to send or carry in intrastate commerce, manufacture, assemble, possess, or sell any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the unlawful surreptitious interception of wire, electronic, or oral communications.

Source: Laws 1988, LB 899, § 7; R.S.1943, (1999), § 86-707.01; Laws 2002, LB 1105, § 158.

86-297 Interception; civil action.

(1) Any person whose wire, electronic, or oral communication is intercepted, disclosed, or intentionally used in violation of sections 86-271 to 86-295 and 86-298 to 86-2,103 may in a civil action recover from the person or entity which engaged in that violation such relief as may be appropriate.

(2) In an action under this section, appropriate relief includes:

(a) Such preliminary and other equitable or declaratory relief as may be appropriate;

(b) Damages under subsection (3) of this section; and

(c) Reasonable attorney's fees and other litigation costs reasonably incurred.

(3)(a) In an action under this section, if the conduct in violation of sections 86-271 to 86-295 and 86-298 to 86-2,103 is the private viewing of a private satellite video communication that is not scrambled or encrypted or if the communication is a radio communication that is transmitted on frequencies allocated for remote pickup broadcast stations under subpart D of 47 C.F.R. part 74, as such regulations existed on January 1, 2002, that is not scrambled or encrypted and the conduct is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, then the court shall assess damages as follows:

(i) If the person who engaged in such conduct has not previously been enjoined under subsection (5) of section 86-290 and has not been found liable in a prior civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff or statutory damages of not less than fifty dollars and not more than five hundred dollars; or

(ii) If on one prior occasion the person who engaged in such conduct has been enjoined under subsection (5) of section 86-290 or has been found liable in a civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff or statutory damages of not less than one hundred dollars and not more than one thousand dollars.

(b) In any other action under this section, the court may assess as damages whichever is the greater of:

(i) The sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or

(ii) Statutory damages of whichever is the greater of one hundred dollars a day for each day of violation or ten thousand dollars.

(4) A good faith reliance on (a) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization, (b) a request

of an investigative or law enforcement officer under section 86-293, or (c) a good faith determination that section 86-290 permitted the conduct complained of shall be a complete defense against any civil or criminal action brought under sections 86-271 to 86-295 and 86-298 to 86-2,103 or any other law.

(5) A civil action under this section may not be commenced later than two years after the date upon which the claimant first discovered or had a reasonable opportunity to discover the violation.

Source: Laws 1988, LB 899, § 8; R.S.1943, (1999), § 86-707.02; Laws 2002, LB 1105, § 159.

Whether reasonable attorney fees should be awarded under this section is addressed to the trial court's discretion, and a trial court is not required to provide an explanation of such an award in the absence of a party's request for specific findings. *Brumbaugh v. Bendorf*, 306 Neb. 250, 945 N.W.2d 116 (2020).

86-298 Pen register; trap-and-trace device; restrictions on use; penalty.

(1) Except as provided in this section, no person may install or use a pen register or a trap-and-trace device without first obtaining a court order under section 86-2,100. Nothing in sections 86-271 to 86-2,110 shall be construed to prohibit an emergency operator from conducting a trap or trace of a telephone number during an emergency.

(2) The prohibition of subsection (1) of this section shall not apply with respect to the use of a pen register or a trap-and-trace device by a provider:

(a) Relating to the operation, maintenance, and testing of an electronic communication service, to the protection of the rights or property of such provider or to the protection of users of that service from abuse of service or unlawful use of service;

(b) To record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of such service from fraudulent, unlawful, or abusive use of service; or

(c) When the consent of the user of such service has been obtained.

(3) Any person who knowingly violates subsection (1) of this section is guilty of a Class I misdemeanor.

Source: Laws 1988, LB 899, § 9; R.S.1943, (1999), § 86-707.03; Laws 2002, LB 1105, § 160.

86-299 Pen register; trap-and-trace device; application for order.

(1) An investigative or law enforcement officer may make application for an order or an extension of an order under section 86-2,100 authorizing or approving the installation and use of a pen register or a trap-and-trace device under sections 86-298 to 86-2,101 to a county or district court. Such application shall be in writing and shall be under oath or affirmation.

(2) An application under subsection (1) of this section shall include:

(a) The identity of the investigative or law enforcement officer making the application and the identity of the law enforcement agency conducting the investigation; and

(b) A certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

Source: Laws 1988, LB 899, § 10; R.S.1943, (1999), § 86-707.04; Laws 2002, LB 1105, § 161.

86-2,100 Pen register; trap-and-trace device; court order.

(1) Upon an application made under section 86-299, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap-and-trace device within the jurisdiction of the court if the court finds that the investigative or law enforcement officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.

(2) An order issued under this section:

(a) Shall specify:

(i) The identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap-and-trace device is to be attached;

(ii) The identity, if known, of the person who is the subject of the criminal investigation;

(iii) The number and, if known, physical location of the telephone line to which the pen register or trap-and-trace device is to be attached and, in the case of a trap-and-trace device, the geographic limits of the order; and

(iv) A statement of the offense to which the information likely to be obtained by the pen register or trap-and-trace device relates; and

(b) Shall direct, upon the request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap-and-trace device.

(3)(a) An order issued under this section shall authorize the installation and use of a pen register or a trap-and-trace device for a period not to exceed sixty days.

(b) Extensions of such an order may be granted but only upon an application for an order under section 86-299 and upon the judicial finding required by subsection (1) of this section. The period of extension shall be for a period not to exceed sixty days.

(4) An order issued under this section shall direct that:

(a) The order be sealed until otherwise ordered by the court; and

(b) The person owning or leasing the line to which the pen register or a trap-and-trace device is attached or the person who has been ordered by the court to provide assistance to the applicant not disclose the existence of the pen register or trap-and-trace device or the existence of the investigation to the listed subscriber or to any other person unless or until otherwise ordered by the court.

Source: Laws 1988, LB 899, § 11; R.S.1943, (1999), § 86-707.05; Laws 2002, LB 1105, § 162.

86-2,101 Pen register; trap-and-trace device; installation.

(1) Upon the request of an investigative or law enforcement officer authorized to install and use a pen register under sections 86-298 to 86-2,101, a provider, landlord, custodian, or other person shall furnish such investigative or law enforcement officer forthwith all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation

and use is to take place if such assistance is directed by a court order as provided in section 86-2,100.

(2) Upon the request of an investigative or law enforcement officer authorized to receive the results of a trap-and-trace device under sections 86-298 to 86-2,101, a provider, landlord, custodian, or other person shall install such device forthwith on the appropriate line and shall furnish such investigative or law enforcement officer all additional information, facilities, and technical assistance, including installation and operation of the device, unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place if such installation and assistance is directed by a court order as provided in section 86-2,100. Unless otherwise ordered by the court, the results of the trap-and-trace device shall be furnished to the investigative or law enforcement officer, designated in the court order, at reasonable intervals during regular business hours for the duration of the order.

(3) A provider, landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to this section shall be reasonably compensated for such reasonable expenses incurred in providing such facilities and assistance.

(4) No cause of action shall lie in any court against any provider, its officers, employees, or agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order under sections 86-298 to 86-2,101.

(5) A good faith reliance on a court order, a legislative authorization, or a statutory authorization shall be a complete defense against any civil or criminal action brought under sections 86-298 to 86-2,101 or any other law.

Source: Laws 1988, LB 899, § 12; R.S.1943, (1999), § 86-707.06; Laws 2002, LB 1105, § 163.

86-2,102 Satellites; prohibited acts; penalty.

(1) Any person who, without the authority of the satellite operator, intentionally or maliciously interferes with the authorized operation of a communications or weather satellite or obstructs or hinders any satellite transmission is guilty of a Class IV felony.

(2) This section shall not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States or this state.

Source: Laws 1988, LB 899, § 13; R.S.1943, (1999), § 86-707.07; Laws 2002, LB 1105, § 164.

86-2,103 Mobile tracking device; use.

(1) A district court may issue a warrant or other order for the installation of a mobile tracking device, and such order may authorize the use of that device within the jurisdiction of the court and outside that jurisdiction if the device is installed in that jurisdiction.

(2) For purposes of this section, mobile tracking device means an electronic or mechanical device which permits the tracking of the movement of a person or object.

Source: Laws 1988, LB 899, § 14; R.S.1943, (1999), § 86-707.08; Laws 2002, LB 1105, § 165.

86-2,104 Electronic communication service; unauthorized access; penalty.

(1) Except as provided in subsection (3) of this section, any person who (a) intentionally accesses without authorization a facility through which an electronic communication service is provided or (b) intentionally exceeds an authorization to access the facility and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such service is subject to the penalties provided in subsection (2) of this section.

(2) The penalty for an offense under subsection (1) of this section is (a) if the offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain (i) a Class I misdemeanor for the first offense and (ii) a fine or imprisonment for not more than two years, or both, for any subsequent offense and (b) a Class IV felony for any other offense.

(3) Subsection (1) of this section shall not apply with respect to conduct authorized (a) by the person or entity providing an electronic communication service, (b) by a user of that service with respect to a communication of or intended for that user, or (c) by section 86-293 or 86-2,107.

Source: Laws 1988, LB 899, § 15; R.S.1943, (1999), § 86-707.09; Laws 2002, LB 1105, § 166.

86-2,105 Electronic communication service; disclosure.

(1) Except as provided in subsection (2) of this section, (a) a person or entity providing an electronic communication service to the public shall not knowingly divulge to any person or entity the contents of a communication while in electronic storage by the service and (b) a person or entity providing remote computing service to the public shall not knowingly divulge to any person or entity the contents of any communication which is carried or maintained on the service (i) on behalf of, and received by means of electronic transmission from or created by means of computer processing of communications received by means of electronic transmission from, a subscriber to or customer of such service and (ii) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage of computer processing.

(2) A person or entity may divulge the contents of a communication:

(a) To an addressee or intended recipient of such communication or an agent of such addressee or intended recipient;

(b) As otherwise authorized in section 86-290, 86-292, or 86-2,106;

(c) With the lawful consent of the originator or an addressee or intended recipient of such communication or the subscriber in the case of remote computing service;

(d) To a person employed or authorized or whose facilities are used to forward such communication to its destination;

(e) As may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of the service; or

(f) To a law enforcement officer if such contents (i) were inadvertently obtained by the provider and (ii) appear to pertain to the commission of a crime.

Source: Laws 1988, LB 899, § 16; R.S.1943, (1999), § 86-707.10; Laws 2002, LB 1105, § 167.

86-2,106 Electronic communication service; remote computing service; disclosure; government access.

(1) A governmental entity may require the disclosure by a provider of electronic communication service of the contents of an electronic communication, that is in electronic storage in an electronic communications system for one hundred eighty days or less, only pursuant to a warrant. A governmental entity may require the disclosure by a provider of the contents of an electronic communication that has been in electronic storage in an electronic communications system for more than one hundred eighty days by the means available under subsection (2) of this section.

(2)(a) A governmental entity may require a provider of remote computing service to disclose the contents of any electronic communication to which this subsection is made applicable by subdivision (2)(b) of this section (i) without required notice to the subscriber or customer if the governmental entity obtains a warrant or (ii) with prior notice from the governmental entity to the subscriber or customer if the governmental entity (A) uses an administrative subpoena or (B) obtains a court order for such disclosure under subsection (4) of this section, except that delayed notice may be given pursuant to section 86-2,108.

(b) Subdivision (2)(a) of this section shall apply to any electronic communication that is held or maintained on that service (i) on behalf of, and received by means of electronic transmission from or created by means of computer processing of communications received by means of electronic transmission from, a subscriber to or customer of such remote computing service and (ii) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

(3)(a)(i) Except as provided in subdivision (3)(a)(ii) of this section, a provider of electronic communication service or remote computing service may disclose a record or other information pertaining to a subscriber to or customer of such service not including the contents of communications covered by subsection (1) or (2) of this section to any person other than a governmental entity.

(ii) A provider of electronic communication service or remote computing service shall disclose a record or other information pertaining to a subscriber to or customer of such service not including the contents of communications covered by subsection (1) or (2) of this section to a governmental entity only when the governmental entity (A) uses an administrative subpoena, (B) obtains a warrant, (C) obtains a court order for such disclosure under subsection (4) of this section, or (D) has the consent of the subscriber or customer to such disclosure.

(b) A governmental entity receiving records or information under this subsection is not required to provide notice to a subscriber or customer.

(4) A court order for disclosure under subsection (2) or (3) of this section shall issue only if the governmental entity shows that there is reason to believe the contents of a wire or electronic communication or the records or other information sought are relevant to a legitimate law enforcement inquiry. A court issuing an order pursuant to this section, on a motion made promptly by the provider, may quash or modify such order if the information or records requested are unusually voluminous in nature or compliance with such order would otherwise cause an undue burden on such provider.

(5) No cause of action shall lie in any court against any provider, its officers, employees, or agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, subpoena, or certification under sections 86-2,104 to 86-2,110.

Source: Laws 1988, LB 899, § 17; R.S.1943, (1999), § 86-707.11; Laws 2002, LB 1105, § 168.

Even if subdivision (3)(a) of this section prohibits a county attorney from obtaining a person's noncontent telecommunication records by issuing an investigative subpoena, the Legislature has not provided a remedy for a violation of this provision,

and the violation of a state statute restricting searches is insufficient to show a Fourth Amendment violation under the U.S. Constitution. *State v. Knutson*, 288 Neb. 823, 852 N.W.2d 307 (2014).

86-2,107 Remote computing service; court order for government access.

(1)(a) A governmental entity acting under subsection (2) of section 86-2,106 may include in its subpoena or court order a requirement that the provider to whom the request is directed create a backup copy of the contents of the electronic communications sought in order to preserve those communications. Without notifying the subscriber or customer of such subpoena or court order, such provider shall create such backup copy as soon as practicable consistent with its regular business practices and shall confirm to the governmental entity that such backup copy has been made. Such backup copy shall be created within two business days after receipt by the provider of the subpoena or court order.

(b) Notice to the subscriber or customer shall be made by the governmental entity within three days after receipt of such confirmation unless such notice is delayed pursuant to section 86-2,108.

(c) The provider shall not destroy such backup copy until the later of (i) the delivery of the information or (ii) the resolution of any proceedings including appeals of any proceeding concerning the subpoena or court order.

(d) The provider shall release such backup copy to the requesting governmental entity no sooner than fourteen days after the governmental entity's notice to the subscriber or customer if such provider (i) has not received notice from the subscriber or customer that the subscriber or customer has challenged the governmental entity's request and (ii) has not initiated proceedings to challenge the request of the governmental entity.

(e) A governmental entity may seek to require the creation of a backup copy under subdivision (a) of this subsection if in its sole discretion such entity determines that there is reason to believe that notification under this section and section 86-2,106 of the existence of the subpoena or court order may result in destruction of or tampering with evidence. This determination shall not be subject to challenge by the subscriber, customer, or provider.

(2)(a) Within fourteen days after notice by the governmental entity to the subscriber or customer under subdivision (1)(b) of this section, such subscriber

or customer may file a motion to quash such subpoena or vacate such court order, with copies served upon the governmental entity and with written notice of such challenge to the provider. A motion to vacate a court order shall be filed in the court which issued such order. A motion to quash a subpoena shall be filed in the appropriate court. Such motion or application shall contain an affidavit or sworn statement (i) stating that the applicant is a subscriber to or customer of the service from which the contents of electronic communications maintained for him or her have been sought and (ii) stating the applicant's reasons for believing that the records sought are not relevant to a legitimate law enforcement inquiry or that there has not been substantial compliance with sections 86-2,104 to 86-2,110 in some other respect.

(b) Service shall be made under this section upon a governmental entity by delivering or mailing by registered or certified mail a copy of the papers to the person, office, or department specified in the notice which the subscriber or customer has received pursuant to sections 86-2,106 to 86-2,108. For purposes of this section, delivery means (i) handing a copy to the attorney or to the party or (ii) leaving a copy at the attorney's or party's office with a clerk or other person in charge of the office, or if the office is closed or the attorney or party to be served has no office, leaving it at the attorney's or the party's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

(c) If the court finds that the subscriber or customer has complied with subdivisions (a) and (b) of this subsection, the court shall order the governmental entity to file a sworn response, which may be filed in camera if the governmental entity includes in its response the reasons which make in camera review appropriate. If the court is unable to determine the motion or application on the basis of the parties' initial allegations and response, the court may conduct such additional proceedings as it deems appropriate. All such proceedings shall be completed and the motion or application decided as soon as practicable after the filing of the governmental entity's response.

(d) If the court finds that the applicant is not the subscriber or customer for whom the communications sought by the governmental entity are maintained or that there is reason to believe that the law enforcement inquiry is legitimate and that the communications sought are relevant to that inquiry, it shall deny the motion or application and order such process enforced. If the court finds that the applicant is the subscriber or customer for whom the communications sought by the governmental entity are maintained and that there is not reason to believe that the communications sought are relevant to a legitimate law enforcement inquiry or that there has not been substantial compliance with sections 86-2,104 to 86-2,110, it shall order the process quashed.

(e) A court order denying a motion or application under this section shall not be deemed a final order and no interlocutory appeal may be taken therefrom by the subscriber or customer.

Source: Laws 1988, LB 899, § 18; R.S.1943, (1999), § 86-707.12; Laws 2002, LB 1105, § 169; Laws 2008, LB1014, § 70.

86-2,108 Electronic communication service; remote computing service; notification requirements.

(1)(a) A governmental entity acting under subsection (2) of section 86-2,106 shall (i) when a court order is sought, include in the application a request,

which the court shall grant, for an order delaying the notification required under such subsection for a period not to exceed ninety days if the court determines that there is reason to believe that notification of the existence of the court order may have an adverse result or (ii) when an administrative subpoena is obtained, delay the notification required under such subsection for a period not to exceed ninety days upon the execution of a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result.

(b) For purposes of this section:

(i) Adverse result means:

(A) Endangering the life or physical safety of an individual;

(B) Flight from prosecution;

(C) Destruction of or tampering with evidence;

(D) Intimidation of potential witnesses; or

(E) Otherwise seriously jeopardizing an investigation or unduly delaying a trial; and

(ii) Supervisory official means the investigative agent in charge, the assistant investigative agent in charge, an equivalent of an investigating agency's headquarters or regional office, the chief prosecuting attorney, the first assistant prosecuting attorney, or an equivalent of a prosecuting attorney's headquarters or regional office.

(c) The governmental entity shall maintain a true copy of certification under subdivision (a)(ii) of this subsection.

(d) Extensions of the delay of notification provided in sections 86-2,106 and 86-2,107 of up to ninety days each may be granted by the court upon application, or by certification by a governmental entity, but only in accordance with subsection (2) of this section.

(e) Upon expiration of the period of delay of notification under subdivision (a) or (d) of this subsection, the governmental entity shall serve upon or deliver by registered or first-class mail to the customer or subscriber a copy of the process or request together with notice that:

(i) States with reasonable specificity the nature of the law enforcement inquiry; and

(ii) Informs such customer or subscriber:

(A) That information maintained for such customer or subscriber by the provider named in such process or request was supplied to or requested by that governmental entity and the date on which the supplying or request took place;

(B) That notification of such customer or subscriber was delayed;

(C) What governmental entity or court made the certification or determination pursuant to which that delay was made; and

(D) Which provision of sections 86-2,104 to 86-2,109 allowed such delay.

(2) A governmental entity acting under section 86-2,106, except as provided in subsection (1) of this section, may apply to a court for an order commanding a provider of electronic communication service or remote computing service to whom a warrant, subpoena, or court order is directed, for such period as the court deems appropriate, not to notify any other person of the existence of the warrant, subpoena, or court order. The court shall enter such an order if it

determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order will result in an adverse result.

Source: Laws 1988, LB 899, § 19; R.S.1943, (1999), § 86-707.13; Laws 2002, LB 1105, § 170; Laws 2015, LB294, § 17.

86-2,109 Electronic communication service; remote computing service; reimbursement for costs; when.

(1) Except as otherwise provided in subsection (3) of this section, a governmental entity obtaining the contents of communications, records, or other information under sections 86-2,104 to 86-2,110 shall pay to the person or entity assembling or providing such information a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching for, assembling, reproducing, or otherwise providing such information. Such reimbursable costs include any costs due to necessary disruption of normal operations of any electronic communication service or remote computing service in which such information may be stored.

(2) The amount of the fee provided by subsection (1) of this section shall be as mutually agreed by the governmental entity and the person or entity providing the information or, in the absence of agreement, shall be as determined by the court which issued the order for production of such information or the court before which a criminal prosecution relating to such information would be brought if no court order was issued for production of the information.

(3) The requirement of subsection (1) of this section shall not apply with respect to records or other information maintained by a provider that relate to telephone toll records and telephone listings obtained under section 86-2,106. The court may, however, order a payment as described in subsection (1) of this section if the court determines the information required is unusually voluminous in nature or otherwise caused an undue burden on the provider.

Source: Laws 1988, LB 899, § 20; R.S.1943, (1999), § 86-707.14; Laws 2002, LB 1105, § 171.

86-2,110 Electronic communication service; remote computing service; civil action authorized; damages; limitation.

(1) Except as provided in subsection (5) of section 86-2,106, any provider, subscriber, or customer aggrieved by any violation of sections 86-2,104 to 86-2,110 in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind may, in a civil action, recover from the person or entity which engaged in that violation such relief as may be appropriate.

(2) In a civil action under this section, appropriate relief includes:

(a) Such preliminary and other equitable or declaratory relief as may be appropriate;

(b) Damages under subsection (3) of this section; and

(c) Reasonable attorney's fees and other litigation costs reasonably incurred.

(3) The court may assess as damages in a civil action under this section the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation, but in no case shall a person entitled to recover receive less than the sum of one thousand dollars.

(4) A good faith reliance on (a) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization, (b) a request of an investigative or law enforcement officer under section 86-293, or (c) a good faith determination that section 86-290 permitted the conduct complained of shall be a complete defense to any civil or criminal action brought under sections 86-2,104 to 86-2,110.

(5) A civil action under this section may not be commenced later than two years after the date upon which the claimant first discovered or had a reasonable opportunity to discover the violation.

Source: Laws 1988, LB 899, § 21; R.S.1943, (1999), § 86-707.15; Laws 2002, LB 1105, § 172.

86-2,111 Interception; grand jury procedure.

(1) If the Attorney General or any county attorney reasonably determines that the testimony of any witness or the production of books, papers, or other evidence by any witness is necessary to the public interest in any proceeding before the grand jury of the district court of the State of Nebraska involving any violation or conspiracy to violate the provisions of subsection (1) of section 86-290 or involving the offenses enumerated in section 86-291, the Attorney General or county attorney, upon the approval of the Attorney General, shall make application to the court that the witness be instructed to testify or produce evidence subject to the provisions of this section. Upon an order of the court, such witness shall not be excused from testifying or from producing books, papers, or other evidence on the grounds that the testimony or evidence required by him or her may incriminate him or her or subject him or her to a penalty or forfeiture. Nothing in this section shall be construed to suspend or otherwise interfere with the operation of the provisions of the Free Flow of Information Act or sections 27-503 to 27-506 and 27-605.

(2) Except as otherwise provided in this section, no such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the witness is compelled, after having claimed the privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding against the witness in any court. No witness shall be exempt under this section from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion pursuant to this section.

Source: Laws 1976, LB 583, § 2; Laws 1995, LB 13, § 1; R.S.1943, (1999), § 86-708; Laws 2002, LB 1105, § 173.

Cross References

Free Flow of Information Act, see section 20-147.

86-2,112 Attorney General or county attorney; discovery; additional order limiting notification.

(1) The Attorney General or any county attorney may administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of records including books, papers, documents, and tangible things which constitute or contain evidence relevant or material to the investigation or enforcement of the laws of this state when it reasonably appears that such action is necessary and proper. The attendance of witnesses

and the production of records shall be required from any place within the State of Nebraska, and service of subpoenas may be made upon any publicly or privately held corporation, partnership, or other legal entity located within or outside the State of Nebraska. Witnesses summoned by the Attorney General or a county attorney shall be paid the same fees that are paid witnesses in the courts of the State of Nebraska and mileage at the rate provided in section 81-1176.

(2) The Attorney General or a county attorney may apply to a court for an order commanding the person or entity to which a subpoena is directed not to notify any other person of the existence of the subpoena. The court shall enter such an order if it determines that there is reason to believe that notification of the existence of the subpoena will result in an adverse result, as such term is defined in section 86-2,108.

Source: Laws 1976, LB 583, § 3; Laws 1981, LB 204, § 221; R.S.1943, (1999), § 86-709; Laws 2002, LB 1105, § 174; Laws 2008, LB952, § 2; Laws 2015, LB294, § 18.

86-2,113 Interception; subpoena.

A subpoena of the Attorney General or a county attorney may be served by any person designated in the subpoena to serve it. Service upon a natural person may be made by personal delivery of the subpoena to him or her. Service may be made upon a domestic or foreign corporation, upon a partnership, upon a domestic or foreign limited liability company, or upon any other unincorporated association which is subject to suit under a common name, by delivering the subpoena to an officer, a managing or general agent, a member, or any other agent authorized by appointment or by law to receive service of process. The affidavit of the person serving the subpoena entered on a true copy thereof by the person serving it shall be proof of service.

Source: Laws 1976, LB 583, § 4; Laws 1993, LB 121, § 553; R.S.1943, (1999), § 86-710; Laws 2002, LB 1105, § 175.

86-2,114 Interception; subpoena; enforcement.

(1) If any person refuses to obey a subpoena issued to such person, the Attorney General or a county attorney may invoke the aid of any court of the State of Nebraska within the jurisdiction of which the investigation is carried on or of which the subpoenaed person is an inhabitant, carries on business, or may otherwise be found, to compel compliance with such subpoena.

(2) The court may issue an order requiring the subpoenaed person to appear before the Attorney General or a county attorney to produce records, if so ordered, or to give testimony concerning the matter under investigation. Nothing in this section shall be construed to suspend or otherwise interfere with the operation of the provisions of the Free Flow of Information Act or sections 27-503 to 27-506 and 27-605.

(3) Any failure to obey the order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district in which the subpoenaed person is an inhabitant or may otherwise be found.

Source: Laws 1976, LB 583, § 5; Laws 1995, LB 13, § 2; R.S.1943, (1999), § 86-711; Laws 2002, LB 1105, § 176.

Cross References

Free Flow of Information Act, see section 20-147.

86-2,115 Interception; use as evidence.

No part of the contents of any intercepted wire or oral communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a state, or a political subdivision thereof if the disclosure of that information would be in violation of sections 86-271 to 86-2,115.

Source: Laws 1976, LB 583, § 6; R.S.1943, (1999), § 86-712; Laws 2002, LB 1105, § 177.

The discovery of "harp sheets" by the Department of Correctional Services during an independent, administratively inspired inventory of a parole officer's state-owned car was sufficiently independent and distinguishable from an illegal police wiretap of the parole officer's phone to purge the "harp sheets" from any taint arising from the wiretap. The "harp sheets" were not

evidence derived from an unlawful police wiretap. *State v. Gallagher*, 214 Neb. 487, 334 N.W.2d 458 (1983).

The subject of an illegal wiretap may testify at a criminal trial if his identity was made known by means other than the illegal wiretap or his decision to testify is voluntary. *State v. Anderson and Hochstein*, 207 Neb. 51, 296 N.W.2d 440 (1980).

(f) PROHIBITED ACTS AND SERVICES

86-2,116 Diversion of service; provisions applicable.

(1) In addition to any other criminal procedure and penalty provided by law, any person who unlawfully diverts or interferes with telecommunications service may be subject to sections 28-515.01, 28-515.02, 28-519, 28-1311, and 76-2325.01.

(2) In addition to any other civil procedure and remedy provided by law, any person who unlawfully diverts telecommunications service may be subject to actions authorized in sections 25-21,275 to 25-21,278.

Source: Laws 2002, LB 1105, § 178.

(g) NEIGHBOR SPOOFING PROTECTION ACT

86-2,117 Telecommunications service or IP-enabled voice service; prohibited acts; penalty; appeal.

(1) This section shall be known and may be cited as the Neighbor Spoofing Protection Act.

(2) No person shall, in connection with any telecommunications service or IP-enabled voice service, cause any caller identification service to knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value.

(3) Nothing in this section shall be construed to prevent or restrict any person from blocking the capability of any caller identification service to transmit caller identification information.

(4) This section shall not apply:

(a) To any authorized activity of a law enforcement agency;

(b) When a court order specifically authorizes the use of caller identification manipulation; or

(c) To any provider of telecommunications services, broadband services, or Internet services, as those terms are defined in section 86-593, if such provider is acting in a manner that is authorized or required by federal law.

(5) Except as provided in this section, local exchange carriers and telecommunications carriers shall not be responsible for enforcement of this section.

(6)(a) Notwithstanding section 75-156, the Public Service Commission may, after hearing, impose an administrative penalty for a violation of this section. The penalty for a violation shall not exceed two thousand dollars. Every violation associated with a specific telephone number within the state shall be considered a separate and distinct violation.

(b) The amount of an administrative penalty shall be based on:

- (i) The nature, circumstances, extent, and gravity of a prohibited act;
- (ii) The history of previous violations;
- (iii) The amount necessary to deter future violations; and
- (iv) Any efforts to correct the violation.

(c) The commission shall remit any administrative penalty collected under this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(d) Any administrative penalty may be appealed. The appeal shall be in accordance with section 75-136.

(7) Notwithstanding subsection (6) of this section, a violation of this section shall be considered a violation of section 59-1602 and be subject to the Consumer Protection Act and any other law which provides for the implementation and enforcement of section 59-1602. A violation of this section does not give rise to a private cause of action.

Source: Laws 2019, LB693, § 1.

Cross References

Consumer Protection Act, see section 59-1623.

ARTICLE 3 UNIVERSAL SERVICE

(a) TELECOMMUNICATIONS RELAY SYSTEM

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86-316.	Act, how cited.
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§ 86-301

TELECOMMUNICATIONS AND TECHNOLOGY

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- (e) NEBRASKA E-RATE SPECIAL CONSTRUCTION MATCHING FUND PROGRAM
- 86-332. Program; established; fiber optic cable; funding; public libraries; required contributions.
- (f) BROADBAND ACCESS MAP
- 86-333. Official Nebraska location fabric broadband access map; Nebraska Broadband Office; powers and duties; recipient of support or grant; provide information.
- (a) TELECOMMUNICATIONS RELAY SYSTEM

86-301 Act, how cited.

Sections 86-301 to 86-315 shall be known and may be cited as the Telecommunications Relay System Act.

Source: Laws 1993, LB 305, § 23; R.S.1943, (1999), § 86-1301; Laws 2002, LB 1105, § 179.

86-302 Purpose of act.

The purpose of the Telecommunications Relay System Act is to provide a statewide telecommunications relay system and a statewide voucher program for the provision of specialized telecommunications equipment for qualified deaf, hard of hearing, or speech-impaired persons in Nebraska which enables them to communicate twenty-four hours per day, seven days per week, with other persons who use conventional telephone systems.

Source: Laws 1990, LB 240, § 1; R.S.Supp.,1992, § 86-901; Laws 1993, LB 305, § 24; Laws 1995, LB 146, § 1; Laws 1997, LB 568, § 1; Laws 1999, LB 359, § 4; R.S.1943, (1999), § 86-1302; Laws 2002, LB 1105, § 180.

86-303 Definitions, where found.

For purposes of the Telecommunications Relay System Act, the definitions found in sections 86-304 to 86-311 apply.

Source: Laws 1990, LB 240, § 2; R.S.Supp.,1992, § 86-902; Laws 1993, LB 305, § 25; Laws 1995, LB 146, § 2; Laws 1999, LB 359, § 5; R.S.1943, (1999), § 86-1303; Laws 2002, LB 1105, § 181.

86-304 Commission, defined.

Commission means the Public Service Commission.

Source: Laws 2002, LB 1105, § 182.

86-305 Deaf, defined.

Deaf has the same meaning as in section 71-4720.01.

Source: Laws 2002, LB 1105, § 183.

86-306 Fund, defined.

Fund means the Nebraska Telecommunications Relay System Fund.

Source: Laws 2002, LB 1105, § 184.

86-307 Hard of hearing, defined.

Hard of hearing has the same meaning as in section 71-4720.01.

Source: Laws 2002, LB 1105, § 185.

86-308 Household, defined.

Household means a family unit whose members are related by birth, marriage, or adoption and who share a common living arrangement.

Source: Laws 2002, LB 1105, § 186.

86-309 Personal telephone service, defined.

Personal telephone service means telephone service located in an individual's room and the telephone service account is in the individual's name.

Source: Laws 2002, LB 1105, § 187.

86-310 Specialized telecommunications equipment, defined.

Specialized telecommunications equipment means any telecommunications device enabling deaf, hard of hearing, or speech-impaired persons to communicate using conventional telephone systems. Specialized telecommunications equipment includes, but is not limited to, telecommunications devices for the deaf, signaling devices, and amplification devices.

Source: Laws 2002, LB 1105, § 188.

86-311 Telecommunications relay system, defined.

Telecommunications relay system means a service permitting full and simultaneous communication between deaf, hard of hearing, or speech-impaired

persons using specialized telecommunications equipment and other persons using conventional telephone equipment.

Source: Laws 2002, LB 1105, § 189.

86-312 Nebraska Telecommunications Relay System Fund; created; use; investment.

(1) The Nebraska Telecommunications Relay System Fund is created. The fund shall be used to provide a statewide telecommunications relay system and to administer a statewide voucher program to provide specialized telecommunications equipment to qualified deaf, hard of hearing, and speech-impaired persons in Nebraska, except that transfers may be made from the fund to the General Fund at the direction of the Legislature.

(2) Based upon the price of the equipment, vouchers shall be issued by the program administrator to pay private vendors for all or part of the cost of the equipment. After purchase, the recipient is the owner of the equipment and responsible for enforcement of any warranties and repairs.

(3) Any money in the Nebraska Telecommunications Relay System 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 240, § 3; R.S.Supp., 1992, § 86-903; Laws 1993, LB 305, § 26; Laws 1994, LB 1066, § 141; Laws 1995, LB 146, § 3; Laws 1997, LB 568, § 2; Laws 1999, LB 359, § 6; R.S. 1943, (1999), § 86-1304; Laws 2002, LB 1105, § 190; Laws 2009, First Spec. Sess., LB3, § 97.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

86-313 Surcharge; amount; hearing; commission; powers and duties.

(1)(a) Each telephone company in Nebraska shall collect from each of the telephone subscribers a surcharge not to exceed twenty cents per month on each telephone number or functional equivalent in Nebraska, including wireless service as defined in section 86-456.01. Except for wireless service, the surcharge shall only be collected on the first one hundred telephone numbers or functional equivalents per subscriber. The companies shall add the surcharge to each subscriber's bill. The surcharge shall not be collected with respect to prepaid wireless telecommunications service as defined in the Prepaid Wireless Surcharge Act.

(b) The telephone companies are not liable for any surcharge not paid by a subscriber.

(2) Before April 1 of each year, the commission shall hold a public hearing to determine the amount of surcharge necessary to carry out the Telecommunications Relay System Act. After the hearing, the commission shall set the surcharge at the level necessary to fund the statewide telecommunications relay system and the specialized telecommunications equipment program for the following year plus a reasonable reserve. The surcharge shall become effective on July 1 following the change.

(3) In an emergency the commission may adjust the amount of the surcharge to become effective before such date but only after a public hearing for such purpose.

(4) Each telephone company shall remit the proceeds from the surcharge to the commission. The commission shall remit the funds to the State Treasurer for credit to the fund.

(5) The commission may require an audit of any company collecting the surcharge pursuant to the act.

(6) This section shall not apply to subscribers who have no access to relay service.

Source: Laws 1990, LB 240, § 4; R.S.Supp.,1992, § 86-904; Laws 1993, LB 305, § 27; Laws 1995, LB 146, § 4; R.S.1943, (1999), § 86-1305; Laws 2002, LB 1105, § 191; Laws 2003, LB 187, § 28; Laws 2007, LB661, § 3; Laws 2010, LB723, § 1; Laws 2012, LB1091, § 6.

Cross References

Prepaid Wireless Surcharge Act, see section 86-901.

86-314 Telecommunications relay system; specialized telecommunications equipment program; requirements; rules and regulations; administrative fine.

(1) The commission shall establish standards, procedures, and training specifications for the telecommunications relay system and shall supervise its operation. The telecommunications relay system shall assure prompt and accurate relay of all messages seven days per week, twenty-four hours per day, including holidays, to all deaf, hard of hearing, or speech-impaired persons living in Nebraska who possess specialized telecommunications equipment. Any person using the telecommunications relay system shall not be charged for access to such system other than charges billed for instate and out-of-state long-distance telephone service. The telecommunications relay system shall at least provide the following telephone services: (a) Statewide instate calls with charges for long-distance calls billed to the person making the call in a manner which the commission determines will recover the cost of long-distance calls to the system; (b) out-of-state calls with charges billed to the person making the call; and (c) emergency calls.

(2) The commission shall establish standards and criteria and shall determine the eligibility of qualified deaf, hard of hearing, and speech-impaired persons applying for specialized telecommunications equipment. The eligible standards and criteria shall include the following: (a) That two persons residing at the same address may each be a recipient of the telecommunications equipment; (b) an applicant shall reside in a household that has telephone service; (c) a recipient of equipment may not reapply for assistance more than once every three years; and (d) a nursing home or institution resident is eligible for specialized telecommunications equipment only if he or she has personal telephone service.

(3) The commission may approve applications for specialized telecommunications equipment if they meet the guidelines established by the commission.

(4) The commission shall adopt and promulgate rules and regulations necessary for implementation of the Telecommunications Relay System Act and guidelines for the specialized telecommunications equipment program. The

commission may enter into contracts with other agencies or private organizations, which may include the Commission for the Deaf and Hard of Hearing, to operate the telecommunications relay system and the specialized telecommunications equipment program.

(5) The Public Service Commission may administratively fine pursuant to section 75-156 any person who violates the act.

Source: Laws 1990, LB 240, § 5; R.S.Supp.,1992, § 86-905; Laws 1993, LB 305, § 28; Laws 1995, LB 146, § 5; Laws 1997, LB 851, § 27; Laws 1999, LB 359, § 7; Laws 2000, LB 1285, § 22; R.S.Supp.,2000, § 86-1306; Laws 2002, LB 1105, § 192; Laws 2024, LB1031, § 3.

Operative date July 19, 2024.

86-315 Special committee; membership.

The commission shall administer the Telecommunications Relay System Act with the advice of a special committee appointed by the Commission for the Deaf and Hard of Hearing. The special committee shall consist of seven members as follows: One member shall be a deaf person; one member shall be a deaf or hard of hearing person; one member shall be a speech-impaired person; one member shall represent the Public Service Commission; one member shall represent the telephone industry; one member shall represent the Commission for the Deaf and Hard of Hearing; and one member shall represent the public.

Source: Laws 1990, LB 240, § 6; R.S.Supp.,1992, § 86-906; Laws 1993, LB 305, § 29; Laws 1997, LB 851, § 28; Laws 1999, LB 359, § 8; R.S.1943, (1999), § 86-1307; Laws 2002, LB 1105, § 193.

(b) NEBRASKA TELECOMMUNICATIONS UNIVERSAL SERVICE FUND ACT

86-316 Act, how cited.

Sections 86-316 to 86-329 shall be known and may be cited as the Nebraska Telecommunications Universal Service Fund Act.

Source: Laws 1997, LB 686, § 1; Laws 1999, LB 514, § 4; R.S.1943, (1999), § 86-1401; Laws 2002, LB 1105, § 194; Laws 2007, LB661, § 4; Laws 2018, LB157, § 1; Laws 2021, LB338, § 3.

86-317 Purpose of act.

The purpose of the Nebraska Telecommunications Universal Service Fund Act is to authorize the commission to establish a funding mechanism which supplements federal universal service support mechanisms and ensures that all Nebraskans, without regard to their location, have comparable accessibility to telecommunications services at affordable prices.

Source: Laws 1997, LB 686, § 2; R.S.1943, (1999), § 86-1402; Laws 2002, LB 1105, § 195.

86-318 Definitions, where found.

For purposes of the Nebraska Telecommunications Universal Service Fund Act, the definitions found in sections 86-319 to 86-322 apply.

Source: Laws 1997, LB 686, § 3; Laws 2001, LB 389, § 3; R.S.Supp.,2001, § 86-1403; Laws 2002, LB 1105, § 196; Laws 2007, LB661, § 5; Laws 2018, LB157, § 2.

86-319 Commission, defined.

Commission means the Public Service Commission.

Source: Laws 2002, LB 1105, § 197.

86-320 Fund, defined.

Fund means the Nebraska Telecommunications Universal Service Fund.

Source: Laws 2002, LB 1105, § 198.

86-320.01 Telecommunications, defined.

Telecommunications means the transmission between or among points specified by the user of information of the user's choosing without change in the form or content of the information as sent and received.

Source: Laws 2007, LB661, § 6.

86-320.02 Prepaid wireless telecommunications service provider, defined.

Prepaid wireless telecommunications service provider means a wireless telecommunications company whose service must be paid for in advance and is sold in predetermined units or dollars of which the number declines with use in a known amount or expiration of time.

Source: Laws 2018, LB157, § 3.

86-321 Telecommunications Act of 1996, defined.

Telecommunications Act of 1996 means the federal telecommunications legislation enacted as Public Law 104-104, as such law existed on January 1, 2002.

Source: Laws 2002, LB 1105, § 199.

86-322 Telecommunications company, defined.

Telecommunications company means any natural person, firm, partnership, limited liability company, corporation, or association providing telecommunications or telecommunications service for hire in Nebraska without regard to whether such company holds a certificate of convenience and necessity as a telecommunications common carrier or a permit as a telecommunications contract carrier from the commission.

Source: Laws 2002, LB 1105, § 200; Laws 2007, LB661, § 7.

86-323 Legislature; declaration of policy.

The Legislature declares that it is the policy of the state to preserve and advance universal service based on the following principles:

(1) Quality telecommunications and information services should be available at just, reasonable, and affordable rates;

(2) Access to advanced telecommunications and information services should be provided in all regions of the state;

(3) Consumers in all regions of the state, including low-income consumers and those in rural and high-cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas;

(4) All providers of telecommunications should make an equitable and non-discriminatory contribution to the preservation and advancement of universal service;

(5) There should be specific, predictable, sufficient, and competitively neutral mechanisms to preserve and advance universal service. Funds for the support of high-cost service areas will be available only to the designated eligible telecommunications companies providing service to such areas. Funds for the support of low-income customers, schools, libraries, and providers of health care to rural areas will be available to any entity providing telecommunications services, maintenance, and upgrading of facilities. The distribution of universal service funds should encourage the continued development and maintenance of telecommunications infrastructure;

(6) Elementary and secondary schools, libraries, and providers of health care to rural areas should have access to advanced telecommunications services as described in the Telecommunications Act of 1996. To promote the efficient use of facilities in rural areas, universal service rules should not preclude the sharing of facilities supported by universal service funds with other local users, if such ineligible users pay appropriate retail usage rates to the telecommunications company;

(7) The implicit support mechanisms in intrastate access rates throughout the state may be replaced while ensuring that local service rates in all areas of the state remain affordable; and

(8) The costs of administration of the Nebraska Telecommunications Universal Service Fund should be kept to a minimum.

Source: Laws 1997, LB 686, § 4; R.S.1943, (1999), § 86-1404; Laws 2002, LB 1105, § 201; Laws 2007, LB661, § 8.

86-324 Nebraska Telecommunications Universal Service Fund; created; use; investment; commission; powers and duties; administrative fine.

(1) The Nebraska Telecommunications Universal Service Fund is hereby created. The fund shall provide the assistance necessary to make universal access to telecommunications services available to all persons in the state consistent with the policies set forth in the Nebraska Telecommunications Universal Service Fund Act. Only eligible telecommunications companies designated by the commission shall be eligible to receive support to serve high-cost areas from the fund. A telecommunications company that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Any such support should be explicit and sufficient to achieve the purpose of the act.

(2) Notwithstanding the provisions of section 86-124, in addition to other provisions of the act, and to the extent not prohibited by federal law, the commission:

(a) Shall have authority and power to subject eligible telecommunications companies to service quality, customer service, and billing regulations. Such regulations shall apply only to the extent of any telecommunications services or offerings made by an eligible telecommunications company which are eligible for support by the fund. The commission shall be reimbursed from the fund for all costs related to drafting, implementing, and enforcing the regulations and any other services provided on behalf of customers pursuant to this subdivision;

(b) Shall have authority and power to issue orders carrying out its responsibilities and to review the compliance of any eligible telecommunications company receiving support for continued compliance with any such orders or regulations adopted pursuant to the act;

(c) May withhold all or a portion of the funds to be distributed from any telecommunications company failing to continue compliance with the commission's orders or regulations;

(d) Shall withhold support distributed from the fund from any telecommunications company using or providing any communications equipment or service deemed to pose a threat to national security identified on the Covered List developed pursuant to 47 C.F.R. 1.50002, as such regulation existed on January 1, 2023, and published by the Public Safety and Homeland Security Bureau of the Federal Communications Commission pursuant to the federal Secure and Trusted Communications Networks Act of 2019, 47 U.S.C. 1601 et seq., as such act existed on January 1, 2023, and the rules adopted pursuant to such act by the Federal Communications Commission on November 11, 2022, in its Report and Order FCC 22-84. Any telecommunications company that removes, discontinues, or replaces any communications equipment or service identified on the Covered List described in this subdivision in compliance with federal law shall not be required to obtain any additional permits from any state agency or political subdivision in the removal, discontinuance, or replacement of such communications equipment or service as long as the state agency or political subdivision is properly notified of the necessary replacements and the replacement of any communications equipment is similar to the existing communications equipment;

(e) Shall require every telecommunications company to contribute to any universal service mechanism established by the commission pursuant to state law. The commission shall require, as reasonably necessary, an annual audit of any telecommunications company to be performed by a third-party certified public accountant to insure the billing, collection, and remittance of a surcharge for universal service. The costs of any audit required pursuant to this subdivision shall be paid by the telecommunications company being audited;

(f) Shall require an audit of information provided by a telecommunications company to be performed by a third-party certified public accountant for purposes of calculating universal service fund payments to such telecommunications company. The costs of any audit required pursuant to this subdivision shall be paid by the telecommunications company being audited; and

(g) May administratively fine pursuant to section 75-156 any person who violates the Nebraska Telecommunications Universal Service Fund Act.

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

(4)(a) Transfers may be made from earnings on the Nebraska Telecommunications Universal Service Fund to the 211 Cash Fund or the General Fund at the direction of the Legislature.

(b) The State Treasurer shall transfer one million two hundred seventy-five thousand dollars on July 1, 2023, from the earnings on the Nebraska Telecommunications Universal Service Fund to the 211 Cash Fund. The State Treasurer shall transfer one million four hundred fifty-five thousand dollars on July 1, 2024, from the earnings on the Nebraska Telecommunications Universal Service Fund to the 211 Cash Fund.

(c) Beginning October 1, 2024, through June 30, 2027, any investment earnings from investment of money in the Nebraska Telecommunications Universal Service Fund remaining after transfers to the 211 Cash Fund shall be credited to the General Fund.

Source: Laws 1997, LB 686, § 5; Laws 1999, LB 514, § 5; Laws 2000, LB 1285, § 23; Laws 2001, LB 389, § 4; R.S.Supp., 2001, § 86-1405; Laws 2002, LB 1105, § 202; Laws 2002, LB 1211, § 13; Laws 2002, Second Spec. Sess., LB 37, § 1; Laws 2017, LB331, § 57; Laws 2021, LB384, § 24; Laws 2022, LB1012, § 31; Laws 2023, LB683, § 20; Laws 2023, LB818, § 36; Laws 2024, LB1413, § 59; Laws 2024, First Spec. Sess., LB3, § 48.

Note: Changes made by Laws 2024, LB1413, became effective April 2, 2024.

Note: Changes made by Laws 2024, First Spec. Sess., LB3, became effective August 21, 2024.

Cross References

211 Cash Fund, see section 75-1101.

Nebraska Capital Expansion Act, see section 72-1269.

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

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

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

86-324.01 Fund; distribution; projects; requirements; applicability.

Beginning on January 1, 2022, the commission shall ensure that funds distributed from the Nebraska Telecommunications Universal Service Fund for construction of new broadband infrastructure shall go to projects that provide broadband service scalable to one hundred megabits per second or greater for downloading and one hundred megabits per second or greater for uploading. This section shall not apply to any disbursements from any Nebraska Telecommunications Universal Service Fund wireless infrastructure grant program, the purpose of which is to improve wireless telecommunications service coverage through grants for the construction of wireless telecommunications service facilities.

Source: Laws 2021, LB338, § 4.

86-324.02 Ongoing high-cost support; speed tests; speed requirements.

(1) Any recipient of ongoing high-cost support from the Nebraska Telecommunications Universal Service Fund shall agree to submit to speed tests as determined by the commission. Upon the commission's request, such recipient shall conduct the speed tests and submit the results to the commission. The speed tests shall be conducted for one week using a random sample of locations

of consumers who subscribe to services provided over infrastructure for which ongoing high-cost support is received.

(2) For purposes of this subsection, broadband serviceable location means a business or residential location in Nebraska at which fixed broadband access service is or is able to be installed. Beginning eighteen months after April 16, 2024, the commission shall not provide ongoing high-cost support from the Nebraska Telecommunications Universal Service Fund for any broadband serviceable location not capable of access to the Internet at speeds of at least one hundred megabits per second for downloading and at least twenty megabits per second for uploading, except that:

(a) If a broadband serviceable location is subject to a federally enforceable commitment for deployment of infrastructure capable of access to the Internet at speeds of at least one hundred megabits per second for downloading and at least twenty megabits per second for uploading, the commission shall continue to provide ongoing high-cost support from the fund so long as the recipient of the ongoing high-cost support is in compliance with the deployment obligations of such federally enforceable commitment and the requirements of the fund; and

(b) Beginning January 1, 2029, the commission shall not provide ongoing high-cost support for any broadband serviceable location not capable of access to the Internet at speeds of at least one hundred megabits per second for downloading and at least twenty megabits per second for uploading, notwithstanding any federally enforceable commitment for deployment.

Source: Laws 2021, LB338, § 5; Laws 2024, LB1031, § 4.
Operative date April 16, 2024.

86-325 Fund; commission; powers and duties.

The commission shall determine the standards and procedures reasonably necessary, adopt and promulgate rules and regulations as reasonably required, and enter into such contracts with other agencies or private organizations or entities as may be reasonably necessary to efficiently develop, implement, and operate the fund.

Source: Laws 1997, LB 686, § 6; R.S.1943, (1999), § 86-1406; Laws 2002, LB 1105, § 203.

Nothing in this section requires the Public Service Commission to engage in rulemaking to interpret federal law in conjunction with the administration of the Nebraska Telecommuni-

cations Universal Service Fund. In re Application No. C-1889, 264 Neb. 167, 647 N.W.2d 45 (2002).

86-326 Fund; administrator; duties; telecommunications companies; obligations.

The fund may be administered by a neutral third-party administrator. The commission shall oversee the preparation and selection process of the administrator through a request for proposal process established by the commission. If a third-party administrator is selected, the administrator shall serve at the will of the commission. The administrator shall: Gather the necessary data to estimate fund obligations; notify telecommunications companies of their obligations to the fund; collect and distribute money from the fund in accordance with the Nebraska Telecommunications Universal Service Fund Act and the rules and regulations established by the commission; and notify the commission of any violations of the act and rules and regulations by telecommunications companies with respect to the fund. The commission shall audit the administrator to ensure the duties are being performed in accordance with the act and its

rules and regulations. Any telecommunications company not meeting its obligation to the fund shall not be eligible to receive payments from the fund, shall be subject to administrative penalties to be determined by the commission, and shall be subject to the revocation of any certificate or permit issued pursuant to section 86-128 or any predecessor statute.

Source: Laws 1997, LB 686, § 7; Laws 1999, LB 150, § 15; R.S.1943, (1999), § 86-1407; Laws 2002, LB 1105, § 204.

86-327 Fund; advisory board.

The commission shall oversee and the administrator, if a third-party administrator is selected, shall administer the fund with the advice of an advisory board appointed by the commission.

The number of members on such advisory board shall be not less than seven nor more than nine members. The composition of the membership of the advisory board shall be determined by the commission and shall include the following representatives: One member shall represent the commission; one member shall represent elementary and secondary schools; one member shall represent libraries; one member shall represent rural health care providers; two members, but not more than three members, shall represent telecommunications companies; and one member, but not more than two members, shall represent the public.

The advisory board shall provide recommendations to the commission at the public hearing held pursuant to the Open Meetings Act. The advisory board shall also, on an annual basis, recommend the services to be supported by the fund.

Source: Laws 1997, LB 686, § 8; R.S.1943, (1999), § 86-1408; Laws 2002, LB 1105, § 205; Laws 2004, LB 821, § 44.

Cross References

Open Meetings Act, see section 84-1407.

86-328 Annual public hearing; notice; fund level; Prepaid Wireless Surcharge Act; applicability.

(1) Annually the commission shall hold a public hearing to determine the level of the fund necessary to carry out the Nebraska Telecommunications Universal Service Fund Act. The commission shall publish notice of the hearing in at least one newspaper of general circulation in the state at least once each week for two consecutive weeks before the hearing. After the hearing, the commission shall determine the amount of the fund for the following year, including a reasonable reserve. In the initial year of the fund's operation, the commission shall determine the amount of the fund to be equivalent to the amount which, in the commission's judgment, after careful analysis, is necessary to keep approximately ninety-six percent of Nebraska households subscribed to local telecommunications service.

(2) In an emergency as determined by the commission, the commission may adjust the level of the fund, but only after a public hearing for such purpose.

(3) For purposes of service by a prepaid wireless telecommunications service provider, universal service fund contribution and surcharge obligations shall be governed by the Prepaid Wireless Surcharge Act, except that a prepaid wireless

telecommunications service provider shall continue to be subject to the audit requirements in subdivision (2)(e) of section 86-324.

Source: Laws 1997, LB 686, § 9; R.S.1943, (1999), § 86-1409; Laws 2002, LB 1105, § 206; Laws 2018, LB157, § 4; Laws 2023, LB683, § 21.

Cross References

Prepaid Wireless Surcharge Act, see section 86-901.

86-329 Nebraska Telephone Assistance Program; commission; duties.

(1) The commission shall establish the Nebraska Telephone Assistance Program. The purpose of the Nebraska Telephone Assistance Program is to promote the provision of universal service to low-income households by local exchange carriers. Support provided by the program shall be specifically targeted to maintain affordable rates for residential basic local exchange services supported by federal and state universal service mechanisms. The commission shall establish means-tested eligibility guidelines and standards for the provision of support from the program which are consistent with the Telecommunications Act of 1996 and 47 C.F.R. 54.400 through 54.409, as such act and regulations existed on January 1, 2002.

(2) Any local exchange carrier receiving state universal service support shall be prohibited from disconnecting the basic local exchange service of any customer receiving low-income support from the program for the nonpayment of any interexchange toll service charges. The commission may grant limited waivers of this requirement in a manner consistent with 47 C.F.R. 54.400 through 54.409, as such regulations existed on January 1, 2002.

(3) Any person receiving low-income support from the program shall be exempt from the payment of any surcharge established by the commission pursuant to the Nebraska Telecommunications Universal Service Fund Act.

Source: Laws 1997, LB 686, § 10; Laws 1999, LB 514, § 6; R.S.1943, (1999), § 86-1410; Laws 2002, LB 1105, § 207; Laws 2004, LB 1004, § 2.

(c) FUNDING FOR INFRASTRUCTURE PROJECTS

86-330 Unserved or underserved exchanges; funding redirection program; funding to providers; reverse auction; rural-based plan; considerations; limitations; Public Service Commission; powers and duties.

(1) Based on consumer complaints or upon its own motion, the Public Service Commission may open a docket to consider the implementation and operation of a funding redirection program that awards funding to broadband Internet service providers to support high-speed Internet infrastructure deployment projects in unserved or underserved exchanges within the State of Nebraska. The commission may, in its discretion, withhold funding from the Nebraska Telecommunications Universal Service Fund to any telecommunications company that has not served, to the commission's satisfaction, those areas with service that meets the criteria for successful investment of funding from the Nebraska Telecommunications Universal Service Fund.

(2) The commission shall adopt and promulgate rules and regulations that establish standards governing the withholding of funding from the Nebraska

Telecommunications Universal Service Fund from any recipient, including the provision of notice and the right to a hearing prior to the issuance of an order withdrawing such funding. If the commission withdraws funding from the Nebraska Telecommunications Universal Service Fund from any telecommunications company, the commission may redirect the withdrawn funding through a reverse auction or rural-based plan to another eligible telecommunications company, except that any funding that is withdrawn shall be utilized in the exchange area for which the funding was originally granted. The commission shall have wide discretion in the design, implementation, and operation of a funding redirection program but may use as a guide the reverse auction program designed by the Federal Communications Commission in its Connect America Fund Phase II Auction process.

(3)(a) In redirecting funding that has been withheld from an eligible telecommunications company, the commission may consider rural-based plans. To qualify for commission consideration, a rural-based plan shall include an eligible telecommunications company.

(b) The commission shall consider rural-based plans based on the following scoring criteria:

(i) The history of the participating eligible telecommunications company in providing quality and affordable telecommunications and broadband services in rural areas;

(ii) The capability of the eligible telecommunications company to use the proposed technology to provide broadband services to every location in the exchange area on a reasonably comparable basis;

(iii) The support of local businesses, hospitals, schools, colleges, agricultural producers, and residents;

(iv) Other sources of funding;

(v) Partnerships and other cooperative arrangements with local public power providers;

(vi) Partnerships and other cooperative arrangements with local wireless Internet service providers; and

(vii) Cooperation by the incumbent local exchange carrier from which funding has been withheld.

(c) In entering an order redirecting funding, the commission shall establish a timeline for deployment that includes periodic milestones for ensuring timely deployment and shall require the eligible telecommunications company to file reports sufficient to assess compliance with deployment milestones.

(d) The commission shall adopt and promulgate rules and regulations to carry out this subsection.

(4) Funding support shall not be withheld from an eligible telecommunications company for infrastructure found by the commission to be capable of reliably providing broadband service at a minimum download speed of one hundred megabits per second and a minimum upload speed of twenty megabits per second that enables users to originate and receive high-quality voice, data, graphics, and video communications using any technology.

(5) For purposes of this section, rural-based plan means a proposal for redirecting funding as described in this section which is made by rural

residential and business users of telecommunications and broadband services in high-cost areas of the exchange.

Source: Laws 2018, LB994, § 4; Laws 2021, LB338, § 6.

(d) BROADBAND PLANNING AND SERVICES

86-331 Nebraska Broadband Office; created; legislative intent; Director of Broadband; duties; decision; appeal; report; hearing.

(1) It is the intent of the Legislature to ensure that all federal, state, and local government funding for broadband infrastructure and services in Nebraska be leveraged strategically to ensure that all Nebraskans have access to affordable, reliable broadband services before January 1, 2028. To accomplish this intent, the Nebraska Broadband Office is created. The office shall be headed by the Director of Broadband. The director shall be appointed by and serve at the pleasure of the Governor with the approval of a majority of the Legislature. For administrative and budgetary purposes, the Nebraska Broadband Office shall be located in the Department of Transportation. All administrative and budgetary decisions for the Nebraska Broadband Office shall be made by the Director of Broadband.

(2) The Nebraska Broadband Office shall:

(a) Through active outreach, collaborate with officials at all levels of government and with stakeholders, which may include, but not be limited to, businesses and industries, community foundations, local governments, local or regional economic development organizations, schools, colleges, other educational entities, public libraries, health care institutions, financial institutions, agricultural producers, telecommunications providers, public power districts, electric cooperatives, nonprofit organizations, and other interested entities;

(b) Through such collaboration, develop a strategic plan that maximizes the use of public and private resources and encourages innovative models for ownership of infrastructure that is used for both private and public purposes;

(c) Direct the coordination among state agencies, boards, and commissions on policy matters affecting use of federal or state funding for broadband infrastructure deployment, operation, and maintenance;

(d) Conduct state advocacy on broadband issues at the federal level, including the accuracy of federal mapping and speed data;

(e) Ensure that all governmental funding is utilized in a cost-effective and accountable manner for Nebraska broadband projects;

(f) Oversee the coordination of programs for broadband users, such as libraries and schools, and digital equity and inclusion projects;

(g) Provide resources and assistance for local and regional broadband planning; and

(h) Provide resources and information to the public through a website and other communication modes.

(3) If any final decision of the Nebraska Broadband Office relating to funding for broadband projects is appealed to district court, the appeal shall take precedence on the trial docket over all other cases and shall be assigned for hearing, trial, or argument at the earliest practicable date and expedited in every way.

(4)(a) On or before December 1 of each year, the Nebraska Broadband Office shall file with the Clerk of the Legislature an annual report on the status of broadband within the State of Nebraska. The report shall:

(i) Describe the status of all publicly administered broadband deployment programs, including the number of projects funded through October of the report year;

(ii) Describe the quality of broadband service being provided to Nebraska residents;

(iii) Provide any updates to the strategic plan developed under subdivision (2)(b) of this section;

(iv) Summarize the Nebraska Broadband Office's outreach efforts and collaboration with all interested stakeholders;

(v) Provide an update on efforts to promote digital equity and inclusion on behalf of Nebraska residents; and

(vi) Provide an update on state advocacy on broadband issues being conducted at the federal level.

(b) Upon receipt of such report, the Transportation and Telecommunications Committee of the Legislature shall hold a public hearing to allow an opportunity for public comment on the report.

Source: Laws 2020, LB992, § 8; Laws 2023, LB683, § 22.

(e) NEBRASKA E-RATE SPECIAL CONSTRUCTION
MATCHING FUND PROGRAM

86-332 Program; established; fiber optic cable; funding; public libraries; required contributions.

(1) The Public Service Commission shall establish the Nebraska E-Rate Special Construction Matching Fund Program. Beginning July 1, 2021, the program shall receive funding from the Nebraska Telecommunications Universal Service Fund to provide incentives for fiber optic cable to be constructed to benefit public libraries.

(2) The commission shall establish criteria and priorities for funding by establishing a support mechanism to deploy fiber optic cable for the benefit of public library access to E-Rate special construction matching funding.

(3) The commission may use its discretion in determining the amount of funding required to be contributed by any public library in order to receive matching funds from the program.

Source: Laws 2020, LB992, § 9.

(f) BROADBAND ACCESS MAP

86-333 Official Nebraska location fabric broadband access map; Nebraska Broadband Office; powers and duties; recipient of support or grant; provide information.

(1) The Nebraska Broadband Office may create and maintain an official Nebraska location fabric broadband access map showing broadband availability and quality of service for all serviceable locations in Nebraska utilizing any federal funding that is made available for such purpose. For purposes of this

section, serviceable location means any residence, dwelling, business, or building where an entity provides or may provide broadband services.

(2) The Nebraska Broadband Office may contract with private parties to create, improve, and maintain the map. When contracting with private parties, the office shall give preference to contractors providing mapping services to the Federal Communications Commission. The office may collect from providers of broadband services any information necessary to establish and update the map. Any information provided to the office by a provider of broadband services pursuant to this section that is confidential, proprietary, or a trade secret as defined in section 87-502 shall be treated as such by the office.

(3) Any recipient of support from the Nebraska Telecommunications Universal Service Fund shall comply with the provisions of this section. Any grant recipient under the Nebraska Broadband Bridge Act, including any entity that operates as an eligible telecommunications carrier in Nebraska as defined in section 86-1302 that wishes to participate in the Broadband Bridge Program created under section 86-1303, either directly or as a challenging party under section 86-1307, shall comply with the provisions of this section. Any grant recipient of federal broadband funding administered by the Nebraska Broadband Office shall comply with the provisions of this section.

(4) After the Federal Communications Commission completes the national Broadband Serviceable Location Fabric and accompanying National Broadband Availability Map, the Nebraska Broadband Office shall annually evaluate whether the continued maintenance of any annually updated Nebraska location fabric broadband access map created and maintained in accordance with this section is necessary. The office shall report its annual findings pursuant to this subsection to the Transportation and Telecommunications Committee of the Legislature.

(5) The Nebraska Broadband Office shall utilize funding provided by the federal Broadband Equity, Access, and Deployment Program authorized under the federal Infrastructure Investment and Jobs Act, Public Law 117-58, to carry out this section.

Source: Laws 2022, LB1144, § 2; Laws 2023, LB683, § 23.

Cross References

Nebraska Broadband Bridge Act, see section 86-1301.

ARTICLE 4

PUBLIC SAFETY SYSTEMS

(a) NEBRASKA PUBLIC SAFETY COMMUNICATION SYSTEM ACT

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(a) NEBRASKA PUBLIC SAFETY COMMUNICATION SYSTEM ACT

86-401 Act, how cited.

Sections 86-401 to 86-418 shall be known and may be cited as the Nebraska Public Safety Communication System Act.

Source: Laws 1999, LB 446, § 1; R.S.1943, (1999), § 86-1803; Laws 2002, LB 1105, § 208; Laws 2002, LB 1211, § 14; Laws 2005, LB 343, § 2; Laws 2006, LB 1061, § 14; Laws 2009, LB154, § 21.

86-402 Legislative findings.

The Legislature finds that:

- (1) During emergencies the resources of the state and its political subdivisions must be effectively directed to save lives, to protect property, and to meet the needs of its citizens;
- (2) Public safety agencies fulfill this unique and essential role;
- (3) Public safety agencies are only as effective as their ability to communicate. To adequately ensure public safety, such agencies require efficient, reliable communication systems which account for their unique role and the specialized needs that accompany such role;
- (4) There are presently radio communication systems used by public safety agencies during daily operations and emergencies that are deficient. Many of Nebraska's systems rely on inadequate equipment, are susceptible to communication interference, have limited coverage areas, operate under the constraints of a limited number of radio frequency channels, and lack coordination and the ability to interoperate among city, county, and other local users, state users, and federal users. Additionally, such systems presently do not allow for secure transmissions which are necessary for the protection and integrity of public safety communications;

(5) Recent changes and advances in communication technology would increase the capability of public safety agencies to provide efficient and effective public safety services;

(6) Investment in the public safety communication infrastructure is required to ensure the effectiveness of Nebraska's public safety agencies;

(7) Regional approaches to communications planning and preparedness and the adoption of regional response structures should be used to develop and sustain interoperable communications. Local and state public safety agencies shall develop a comprehensive interoperable communications plan before receiving any state or federal funding to build, upgrade, enhance, or replace communication systems; and

(8) A network of regional communication systems should balance the need for multiple simultaneous users while maintaining autonomy for the internal use of individual agencies. The objectives of such a network should include maximizing resources and reducing duplication among public safety agencies as well as encouraging cooperation, coordination, consolidation, sharing, and partnerships between public agencies and private entities.

Source: Laws 1999, LB 446, § 2; R.S.1943, (1999), § 86-1804; Laws 2002, LB 1105, § 209; Laws 2002, LB 1211, § 15; Laws 2005, LB 343, § 3.

86-403 Definitions, where found.

For purposes of the Nebraska Public Safety Communication System Act, the definitions found in sections 86-407 and 86-408 apply.

Source: Laws 1999, LB 446, § 3; R.S.1943, (1999), § 86-1805; Laws 2002, LB 1105, § 210; Laws 2002, LB 1211, § 16; Laws 2005, LB 343, § 4.

86-404 Repealed. Laws 2005, LB 343, § 13.

86-405 Repealed. Laws 2005, LB 343, § 13.

86-406 Repealed. Laws 2005, LB 343, § 13.

86-407 Division, defined.

Division means the division of communications of the office of Chief Information Officer.

Source: Laws 2002, LB 1105, § 212; Laws 2006, LB 921, § 13.

86-408 Public safety agency, defined.

Public safety agency means any federal, state, or political subdivision entity which provides emergency and public safety services, including medical services, law enforcement services, fire management services, correctional services, and emergency and disaster relief services.

Source: Laws 2002, LB 1105, § 213.

86-409 Repealed. Laws 2005, LB 343, § 13.

86-410 Repealed. Laws 2005, LB 343, § 13.

86-411 Repealed. Laws 2005, LB 343, § 13.

86-412 Repealed. Laws 2005, LB 343, § 13.

86-413 Repealed. Laws 2005, LB 343, § 13.

86-414 Repealed. Laws 2005, LB 343, § 13.

86-415 Repealed. Laws 2005, LB 343, § 13.

86-416 Service agreement provisions; special tax; procedure.

(1) Notwithstanding any other provision of Nebraska law, any city, county, village, public power district, or fire protection district may enter into a service agreement with any joint entity created pursuant to the Interlocal Cooperation Act or any joint public agency created pursuant to the Joint Public Agency Act which owns or operates or proposes to own or operate any public safety communication project for obtaining communication services, including the use or right to use real or personal property included in any such project. This subsection shall not be construed to authorize any service agreements that conflict with the provisions for the sale, lease, or license of dark fiber pursuant to sections 86-574 to 86-578.

(2) Any such service agreement may provide for the following:

(a) The payment of fixed or variable periodic amounts for service or the right to obtain service, including the use or right to use real or personal property;

(b) That such service agreement may extend for a term of years as determined by the governing body of the city, county, village, public power district, or fire protection district and be binding upon such city, county, village, public power district, or fire protection district over such term of years;

(c) That fixed or variable periodic amounts payable may be determined based upon any of the following factors:

(i) Operating, maintenance, and management expenses, including renewals and replacements for facilities and equipment;

(ii) Amounts payable with respect to debt service on bonds or other obligations, including margins of coverage if deemed appropriate; and

(iii) Amounts necessary to build or maintain operating reserves, capital reserves, and debt service reserves;

(d) That any such service agreement may require payment to be made in the agreed fixed or variable periodic amounts irrespective of whether such public safety communication project or regional communication system is completed or operational and notwithstanding any suspension, interruption, interference, reduction, or curtailment of the services of such project or system; and

(e) Such other provisions as the parties to the service agreement deem appropriate in connection with providing and obtaining public safety communication service, including the acquisition of real and personal property, the construction of facilities, and the operation, maintenance, and management of services, property, and facilities.

(3) In order to provide for the payments due under such service agreement:

(a) Any city, county, village, or fire protection district may provide that payments may be made from a special tax levied for such purpose upon all taxable property within such city, county, village, or fire protection district, if

determined appropriate by the governing body by a vote of three-fourths of the members of the governing body, if there are four or more members of such body, or by a vote of two-thirds of the members of the governing body, if there are less than four members of such body. The special tax shall for all purposes of Nebraska law, including limitations upon tax levies, budgets, revenue, and expenditures of public funds, have the same status as a tax levied for the purpose of paying the bonded indebtedness of such city, county, village, or fire protection district; and

(b) Any public power district may pledge the revenue of the district, subject to any existing pledges made for bonded indebtedness or borrowings from the United States or any other party and existing conditions relating to issuance of additional bonds or other indebtedness, and, if deemed appropriate by the governing body, the service agreement may have the status of revenue bond indebtedness issued pursuant to sections 70-631 to 70-635.

Source: Laws 2002, LB 1211, § 23; Laws 2005, LB 343, § 5; Laws 2024, LB61, § 5.

Effective date July 19, 2024.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

86-417 Repealed. Laws 2006, LB 1061, § 29.

86-417.01 Repealed. Laws 2007, LB 322, § 42.

86-417.02 Repealed. Laws 2007, LB 322, § 42.

86-418 Standards; incentives.

The division shall develop and adopt technical and operational standards for any communication system acquired, developed, constructed, or replaced by any state agency or any city, county, village, public power district, fire protection district, or other political subdivision, including joint entities and joint public agencies created pursuant to the Interlocal Cooperation Act or Joint Public Agency Act. The division shall develop incentives to encourage regional cooperation in public safety communication throughout the state. The division shall assist local communities and public safety agencies which desire to connect with a network of regional communication systems. Incentive alternatives may include financial incentives to encourage migration by communities to the network and to reward communities which coordinate efforts to form public safety communication centers. Such incentives shall not mandate migration by public safety agencies to the network.

Source: Laws 1999, LB 446, § 7; R.S.1943, (1999), § 86-1809; Laws 2002, LB 1105, § 218; Laws 2005, LB 343, § 7.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

86-418.01 Repealed. Laws 2009, LB 154, § 27.

86-419 Repealed. Laws 2005, LB 343, § 13.

(b) EMERGENCY TELEPHONE COMMUNICATIONS SYSTEMS

86-420 Act, how cited.

Sections 86-420 to 86-441.01 shall be known and may be cited as the Emergency Telephone Communications Systems Act.

Source: Laws 2002, LB 1105, § 221; Laws 2005, LB 516, § 1; Laws 2006, LB 1222, § 1; Laws 2007, LB661, § 9.

86-421 Legislative findings.

The Legislature finds that 911 emergency telephone communications systems further the public interest and protect the health, safety, and welfare of the people of Nebraska. The purpose of the Emergency Telephone Communications Systems Act is to fund the development, installation, and operation of 911 emergency telephone communications systems throughout the state.

Source: Laws 1990, LB 240, § 7; R.S.1943, (1999), § 86-1001; Laws 2002, LB 1105, § 222.

86-422 Definitions, where found.

For purposes of the Emergency Telephone Communications Systems Act, the definitions found in sections 86-423 to 86-434 apply.

Source: Laws 1990, LB 240, § 8; Laws 1991, LB 133, § 1; Laws 1993, LB 305, § 30; R.S.1943, (1999), § 86-1002; Laws 2002, LB 1105, § 223; Laws 2007, LB661, § 10.

86-423 Automatic location identification, defined.

Automatic location identification means a feature by which the name and address associated with the calling party's telephone number is forwarded to the public safety answering point for display. Additional telephones with the same telephone number as the calling party's shall be identified with the address of the telephone number at the main location of the calling party. This feature is available only for E-911 service.

Source: Laws 2002, LB 1105, § 224.

86-424 Automatic number identification, defined.

Automatic number identification means a feature by which the calling party's automatic number identification telephone number is forwarded to the E-911 control office and to the public safety answering point's display and transfer units. This feature is available only for E-911 service.

Source: Laws 2002, LB 1105, § 225.

86-425 E-911 service or enhanced-911 service, defined.

E-911 service or enhanced-911 service means a telephone exchange communications service by which one or more public safety answering points designated by the governing body may receive telephone calls dialed to the telephone number 911. E-911 service generally may provide, but is not limited to, selective routing, automatic number identification, and automatic location identification features.

Source: Laws 2002, LB 1105, § 226.

86-426 Governing body, defined.

Governing body means the county board, the city council of a city, the board of trustees of a village, or the board of directors of any rural or suburban fire protection district.

Source: Laws 2002, LB 1105, § 227.

86-427 Repealed. Laws 2007, LB 661, § 30.**86-428 911 service, defined.**

911 service means a telephone service which provides a service user with the ability to reach a public safety answering point by dialing the digits 911 for the purpose of reporting emergencies. The level of technology to be used for the provision of 911 service in a particular 911 service area shall be determined by the governing bodies having jurisdiction over such 911 service area.

Source: Laws 2002, LB 1105, § 229.

86-429 911 service area, defined.

911 service area means (1) the portion of a governing body's jurisdiction in which 911 service is provided and (2) an area being provided 911 service by contract with a service supplier on or before January 1, 1990, notwithstanding the crossing of jurisdictional lines, until such time as the noncontracting governing body notifies the contracting governing body in writing of its intention to opt out of the 911 service area.

Source: Laws 2002, LB 1105, § 230.

86-429.01 Primary place of use, defined.

Primary place of use means the residential or business street address that is representative of the primary location of the customer's use of a service that includes the provision of 911 service.

Source: Laws 2007, LB661, § 11.

86-430 Public safety agency, defined.

Public safety agency means an agency which actually provides firefighting, law enforcement, ambulance, emergency medical, or other emergency services.

Source: Laws 2002, LB 1105, § 231.

86-431 Public safety answering point, defined.

Public safety answering point means a twenty-four-hour, local-jurisdiction communications facility which receives 911 service calls and either directly dispatches emergency services or relays calls to the appropriate public safety agency.

Source: Laws 2002, LB 1105, § 232.

86-432 Service supplier, defined.

Service supplier means any person providing 911 service in this state.

Source: Laws 2002, LB 1105, § 233.

86-433 Service surcharge, defined.

Service surcharge means a charge set by a governing body and assessed on each telephone number or functional equivalent of service users whose primary place of use is within the governing body's designated 911 service area, with the exception of those service users served by wireless carriers as defined in section 86-456 and those service users who have no access to 911 service.

Source: Laws 2002, LB 1105, § 234; Laws 2007, LB661, § 12.

86-434 Service user, defined.

Service user means any person who is provided 911 service in this state.

Source: Laws 2002, LB 1105, § 235; Laws 2007, LB661, § 13.

86-435 911 service; costs; surcharges authorized; additional increase; when; agreement by governing bodies; use.

(1) A governing body may incur any nonrecurring or recurring charges for the installation, maintenance, and operation of 911 service and shall pay such costs out of general funds which may be supplemented by funds from the imposition of a service surcharge. A governing body incurring costs for 911 service may impose a uniform service surcharge of up to fifty cents per month on each telephone number or functional equivalent of service users whose primary place of use is within the governing body's 911 service area, except for those service users served by wireless carriers as defined in section 86-456 and those service users who have no access to 911 service. The initial service surcharge may be imposed at any time subsequent to the execution of an agreement for 911 service with a service supplier.

(2) Except in a county containing a city of the metropolitan class, such uniform service surcharge in subsection (1) of this section may be increased by an additional amount not to exceed fifty cents per month. Such additional increase shall be made only after:

(a) Publication of notices for a public hearing. Such notices shall:

(i) Be published at least once a week for three consecutive weeks in a legal newspaper published or of general circulation in the areas affected;

(ii) Set forth the time, place, and date of such public hearing; and

(iii) Set forth the purpose of the public hearing and the purpose of the increase; and

(b) A public hearing is held pursuant to such notices.

(3) If 911 service is to be provided for a territory which is included in whole or in part in the jurisdiction of two or more governing bodies, the agreement for such service shall be entered into by each such governing body unless any such governing body expressly excludes itself from the agreement. Such an agreement shall provide that each governing body which is a customer of 911 service will pay for its portion of the service. Nothing in this subsection shall be construed to prevent two or more governing bodies from entering into a contract which establishes a separate legal entity for the purpose of entering into such an agreement as the customer of the service supplier or any supplier of equipment for 911 service.

(4) If a governing body's 911 service area includes a local exchange area which intersects governmental boundary lines, the affected governmental units may cooperate to provide 911 service through an agreement as provided in the

Interlocal Cooperation Act or the Joint Public Agency Act. The agreement shall provide for the assessment of a uniform service surcharge within a governing body's 911 service area. The service surcharge on each telephone number or functional equivalent of service users whose primary place of use is within the governing body's 911 service area, except for those service users served by wireless carriers as defined in section 86-456 and those service users who have no access to 911 service, shall be the same as the amount allowed in subsections (1) and (2) of this section.

(5) Funds generated by the service surcharge shall be expended only for the purchase, installation, maintenance, and operation of telecommunications equipment and telecommunications-related services required for the provision of 911 service.

Source: Laws 1990, LB 240, § 9; Laws 1991, LB 133, § 2; Laws 1994, LB 1044, § 1; Laws 1997, LB 37, § 1; R.S.1943, (1999), § 86-1003; Laws 2002, LB 1105, § 236; Laws 2007, LB661, § 14.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

86-436 Surcharges; service user; service supplier; duties; collection.

(1) A service user shall pay service surcharges in each 911 service area where the service user has its primary place of use and receives 911 service, except that an individual service user shall not be required to pay on a single periodic billing service surcharges on more than one hundred telephone numbers or functional equivalents in any single 911 service area. Every service user shall be liable for any service surcharge billed to such user until the surcharge has been paid to the service supplier.

(2) The duty of a service supplier to bill a service surcharge to a service user shall commence at such time as may be specified by the governing body. A service surcharge shall be collected as far as practicable at the same time as and along with the charges for service in accordance with the regular billing practice of the service supplier.

(3) A service supplier shall have no obligation to take any legal action to enforce the collection of any service surcharge imposed pursuant to section 86-435. Such action may be brought by or on behalf of the governing body imposing the charge or the separate legal entity formed pursuant to such section. A service supplier shall annually provide the governing body a list of the amounts uncollected along with the names and addresses of those service users who carry a balance that can be determined by the service supplier to be for nonpayment of any service surcharge. The service supplier shall not be liable for such uncollected amounts.

Source: Laws 1990, LB 240, § 10; R.S.1943, (1999), § 86-1004; Laws 2002, LB 1105, § 237; Laws 2007, LB661, § 15.

86-437 Service supplier; surcharges; remittance; record; audit; report; commission; duties; administrative fine.

(1) The amount of service surcharges collected in one calendar quarter by a service supplier shall be remitted to the governing body no later than sixty days after the close of that calendar quarter. At the time of the remittance, the service supplier shall file a return for the remittance with the governing body in

such form as the governing body and the service supplier agree upon. The service supplier shall maintain a record of the amount of service surcharges collected. The record shall be maintained for a period of one year after the date the amount was billed. A governing body may at its own expense require an annual audit of a service supplier's books and records concerning the collection and remittance of a service surcharge.

(2) On or before April 30 of each year, each service supplier shall report for the preceding calendar year to the Public Service Commission for each of its exchanges (a) whether 911 service or E-911 service is provided in that exchange, (b) the level of the service surcharge, (c) to which governing body the service surcharge is being submitted, and (d) the amount of revenue collected by the service surcharge.

(3) The commission shall compile and place the information from such reports required in subsection (2) of this section into its annual telecommunications report to the Legislature, including the availability and location of 911 service and E-911 service in the State of Nebraska.

(4) The commission shall adopt and promulgate rules and regulations necessary to carry out subsections (2) and (3) of this section.

(5) The commission may administratively fine pursuant to section 75-156 any person who violates the Emergency Telephone Communications Systems Act.

Source: Laws 1990, LB 240, § 11; Laws 1993, LB 305, § 31; Laws 2000, LB 1285, § 17; R.S.Supp.,2000, § 86-1005; Laws 2002, LB 1105, § 238; Laws 2008, LB755, § 8.

Cross References

Annual report to Legislature, see section 86-163.

86-438 Surcharge; rate; establishment.

Each calendar year, the governing body shall establish the rate of the service surcharge, not to exceed the amount authorized by section 86-435, that together with any surplus revenue carried forward will produce sufficient revenue to fund the expenditures described in section 86-421. Amounts collected in excess of such necessary expenditures within a given year shall be carried forward to the next year. A governing body shall make its determination of the rate no later than September 1 of each year and, if it is a new rate, shall fix the new rate to take effect commencing with the first billing period of each service user on or following the next January 1. The governing body shall notify by certified or registered mail every service supplier of any change in the rate at least ninety days before the new rate becomes effective.

Source: Laws 1990, LB 240, § 12; R.S.1943, (1999), § 86-1006; Laws 2002, LB 1105, § 239.

86-439 Surcharges; separate fund; use.

Funds collected by a governing body from the imposition of a service surcharge shall be credited to a separate fund apart from the general revenue of the governing body and shall be used solely to pay for costs for 911 service. Any money remaining in the fund at the end of any fiscal year shall remain in the fund for payments during any succeeding year, except that if 911 service is discontinued, money remaining in the fund after payment of all costs related to 911 service have been made shall be transferred to the general fund of the

public safety agency or proportionately to the general fund of each participating public safety agency.

Source: Laws 1990, LB 240, § 13; R.S.1943, (1999), § 86-1007; Laws 2002, LB 1105, § 240.

86-440 Governing body; agreements authorized.

Any governing body authorized to impose a service surcharge may enter into an agreement directly with a service supplier of 911 service or may contract and cooperate with any public safety agency, with other states or their political subdivisions, or with any association or corporation for the administration of 911 service as provided by law.

Source: Laws 1990, LB 240, § 14; R.S.1943, (1999), § 86-1008; Laws 2002, LB 1105, § 241.

86-440.01 County implementation of enhanced-911 service.

Each county shall implement enhanced-911 service by July 1, 2010.

Source: Laws 2006, LB 1222, § 2.

86-441 911 service; immunity from liability.

The 911 service described in the Emergency Telephone Communications Systems Act is within the governmental powers and authorities of a governing body or public safety agency. In contracting for such 911 service and in providing such 911 service, except for failure to use reasonable care or for intentional acts, each governing body, public safety agency, and service supplier and their employees and agents shall be immune from liability or the payment for any damages in the performance of installing, maintaining, or providing 911 service.

Source: Laws 1990, LB 240, § 15; R.S.1943, (1999), § 86-1009; Laws 2002, LB 1105, § 242.

This section does not waive sovereign immunity for claims alleging negligence against any provider of 911 emergency dispatch services. *Edwards v. Douglas County*, 308 Neb. 259, 953 N.W.2d 744 (2021).

86-441.01 Federal or other funds; Public Service Commission; powers; immunity.

The Public Service Commission may apply for or assist any political subdivision in applying for any federal or other funds available for 911 service or E-911 service and may distribute federal funds consistent with federal law and other funds consistent with the directives, purposes, or conditions of such other funds. Except for intentional acts, the commission shall be immune from liability or the payment of damages in assisting any political subdivision in applying for any such federal funds.

Source: Laws 2005, LB 516, § 2.

(c) ENHANCED WIRELESS 911 SERVICES

86-442 Act, how cited.

Sections 86-442 to 86-470 shall be known and may be cited as the Enhanced Wireless 911 Services Act.

Source: Laws 2002, LB 1105, § 243; Laws 2003, LB 187, § 29; Laws 2006, LB 1222, § 3; Laws 2007, LB661, § 16; Laws 2013, LB595, § 1; Laws 2018, LB993, § 1.

86-443 Definitions, where found.

For purposes of the Enhanced Wireless 911 Services Act, the definitions found in sections 86-444 to 86-456.01 apply.

Source: Laws 2001, LB 585, § 1; R.S.Supp.,2001, § 86-2201; Laws 2002, LB 1105, § 244; Laws 2006, LB 1222, § 4; Laws 2007, LB661, § 17; Laws 2013, LB595, § 2.

86-443.01 Repealed. Laws 2018, LB993, § 20.**86-444 Advisory board, defined.**

Advisory board means the Enhanced Wireless 911 Advisory Board.

Source: Laws 2002, LB 1105, § 245.

86-445 Automatic number identification, defined.

Automatic number identification means a feature by which a person calling a public safety answering point has his or her ten-digit telephone number simultaneously forwarded to the public safety answering point and to the public safety answering point's display and transfer units.

Source: Laws 2002, LB 1105, § 246.

86-446 Commission, defined.

Commission means the Public Service Commission.

Source: Laws 2002, LB 1105, § 247.

86-447 E-911 service, defined.

E-911 service has the same meaning as in section 86-425.

Source: Laws 2002, LB 1105, § 248.

86-448 Enhanced wireless 911 service, defined.

Enhanced wireless 911 service means a telephone exchange communications service by which wireless carriers can provide automatic number identification, pseudo-automatic number identification, and wireless automatic location identification information to a public safety answering point which has the capability of providing selective routing, selective transfer, fixed transfer, automatic number identification, and wireless automatic location identification.

Source: Laws 2002, LB 1105, § 249.

86-449 Governing body, defined.

Governing body has the same meaning as in section 86-426.

Source: Laws 2002, LB 1105, § 250.

86-449.01 Home service provider, defined.

Home service provider means a telecommunications company as defined in section 86-322 that has contracted with a customer to provide wireless service.

Source: Laws 2007, LB661, § 18.

86-450 911 service, defined.

911 service has the same meaning as in section 86-428.

Source: Laws 2002, LB 1105, § 251.

86-450.01 Next-generation 911, defined.

Next-generation 911 means an Internet-protocol-based system comprised of managed emergency services Internet protocol networks, functional elements, and databases that replicate traditional E-911 service or enhanced 911 wireless service features and functions and that provide additional capabilities.

Source: Laws 2013, LB595, § 4.

86-450.02 Repealed. Laws 2012, LB 1091, § 12.

86-450.03 Primary place of use, defined.

Primary place of use means the street address representative of where the use of wireless service primarily occurs. The place of primary use shall be the residential street address or the primary business street address of the user of the wireless service and shall be within the service area of the home service provider.

Source: Laws 2007, LB661, § 20; Laws 2012, LB1091, § 7.

86-451 Pseudo-automatic number identification, defined.

Pseudo-automatic number identification means a feature by which automatic number identification is provided to a public safety answering point of the ten-digit telephone number of the specific cell site or cell site sector from which a wireless call originated.

Source: Laws 2002, LB 1105, § 252.

86-452 Public safety agency, defined.

Public safety agency has the same meaning as in section 86-430.

Source: Laws 2002, LB 1105, § 253.

86-453 Public safety answering point, defined.

Public safety answering point has the same meaning as in section 86-431.

Source: Laws 2002, LB 1105, § 254.

86-454 Ten-digit telephone number, defined.

Ten-digit telephone number means a telephone number assigned to a particular telephone account prefaced by the area code.

Source: Laws 2002, LB 1105, § 255.

86-455 Wireless automatic location identification, defined.

Wireless automatic location identification means a feature by which information is provided to a public safety answering point identifying the location, including the latitude and longitude within the parameters established by the Federal Communications Commission, of a wireless unit originating a call to a public safety answering point.

Source: Laws 2002, LB 1105, § 256.

86-456 Wireless carrier, defined.

Wireless carrier means (1) any carrier of mobile service as referenced in 47 U.S.C. 153(27), as such section existed on January 1, 2007, (2) any carrier of commercial mobile service as referenced in 47 U.S.C. 332(d)(1), as such section existed on January 1, 2007, (3) any carrier of commercial mobile radio service as referenced in 47 C.F.R. 20.9, as such regulation existed on January 1, 2007, or (4) any cellular radiotelephone service, licensees of a personal communications service, and specialized mobile radio services as referenced in 47 C.F.R. 20.9, as such regulation existed on January 1, 2007.

Source: Laws 2002, LB 1105, § 257; Laws 2006, LB 1222, § 7; Laws 2007, LB661, § 21.

86-456.01 Wireless service, defined.

Wireless service means: (1) Any mobile service as defined in 47 U.S.C. 153 and 47 C.F.R. 27.4, as such section and regulation existed on January 1, 2007; (2) any commercial mobile service as defined in 47 U.S.C. 332(d), as such section existed on January 1, 2007; or (3) any commercial mobile radio service as referenced in 47 C.F.R. 20.9, as such regulation existed on January 1, 2007.

Source: Laws 2007, LB661, § 22.

86-457 Surcharge; wireless carrier; duties; applicability of section.

(1) Each wireless carrier shall collect:

(a) A surcharge of up to seventy cents, except as provided in subdivision (1)(b) of this subsection, on all active telephone numbers or functional equivalents every month from users of wireless service and shall remit the surcharge in accordance with section 86-459; or

(b) A surcharge of up to fifty cents on all active telephone numbers or functional equivalents every month from users of wireless service whose primary place of use is in a county containing a city of the metropolitan class and shall remit the surcharge in accordance with section 86-459.

The wireless carrier is not liable for any surcharge not paid by a customer.

(2) Except as otherwise provided in this section, the wireless carrier shall add the surcharge to each user's billing statement. The surcharge shall appear as a separate line-item charge on the user's billing statement and shall be labeled as "Enhanced Wireless 911 Surcharge" or a reasonable abbreviation of such phrase.

(3) If a wireless carrier, except as otherwise provided in this section, resells its service through other entities, each reseller shall collect the surcharge from its customers and shall remit the surcharge in accordance with section 86-459.

(4) The surcharges authorized by this section shall not apply to prepaid wireless telecommunications service as defined in section 86-902.

(5) This section shall not apply to users who have no 911 service.

Source: Laws 2001, LB 585, § 2; R.S.Supp.,2001, § 86-2202; Laws 2002, LB 1105, § 258; Laws 2003, LB 187, § 31; Laws 2006, LB 1222, § 8; Laws 2007, LB661, § 23; Laws 2012, LB1091, § 8.

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

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

86-458 Public hearing; commission; duties.

The commission shall hold a public hearing annually to determine the amount of revenue necessary to carry out the Enhanced Wireless 911 Services Act and the 911 Service System Act. After the hearing, the commission shall determine the amount of money to be deposited in the 911 Service System Fund for the following year and shall set the surcharge subject to the limitation in section 86-457.

Source: Laws 2001, LB 585, § 3; R.S.Supp.,2001, § 86-2203; Laws 2002, LB 1105, § 259; Laws 2016, LB938, § 32; Laws 2018, LB993, § 2.

Cross References

911 Service System Act, see section 86-1001.

86-459 Wireless carrier; duties; administrative fine.

(1) Each wireless carrier shall remit monthly to the commission the amounts collected pursuant to section 86-457 together with any forms required by the commission no later than sixty days after the last day of the month. The commission shall remit the funds to the State Treasurer for credit to the 911 Service System Fund.

(2) As the commission may require, each wireless carrier, except a wireless carrier whose users have no 911 service, shall report to the commission on a quarterly basis for each county in a manner prescribed by the commission the following information: (a) The number of telephone numbers or functional equivalents served; (b) the number of telephone numbers or functional equivalents from which it has collected surcharge revenue; (c) the number of wireless towers by county; and (d) the current implementation status of enhanced wireless 911 service in each county served by that wireless carrier.

(3) The wireless carrier shall maintain all records required by this section, records of the amounts collected pursuant to section 86-457, and remittance records for a period of five years after the date of remittance to the fund. The commission may require an audit of any wireless carrier's books and records concerning the collection and remittance of any amounts collected pursuant to the Enhanced Wireless 911 Services Act. The costs of any audit required by the commission shall, at the commission's discretion, be paid by the audited wireless carrier. A wireless carrier shall not be required to pay for more than one remittance audit or more than one collection audit per year, unless the commission orders subsequent audits for good cause.

(4) Each wireless carrier shall comply with all commission rules and regulations regarding enhanced wireless 911 service.

(5) Each wireless carrier shall comply with this section regardless of whether the wireless carrier receives reimbursement from the fund. Wireless carriers failing to comply with this section may be administratively fined by the commission pursuant to section 75-156.

Source: Laws 2001, LB 585, § 4; R.S.Supp.,2001, § 86-2204; Laws 2002, LB 1105, § 260; Laws 2006, LB 1222, § 9; Laws 2007, LB661, § 24; Laws 2008, LB755, § 9; Laws 2018, LB993, § 3.

86-460 Public safety answering point; report.

(1) Each public safety answering point shall report to the commission annually (a) the name and location of the public safety answering point and (b) whether wireless 911 service or enhanced wireless 911 service is provided at that public safety answering point.

(2) The commission shall compile and place the information required in this section into its annual telecommunications report to the Legislature.

Source: Laws 2001, LB 585, § 5; R.S.Supp.,2001, § 86-2205; Laws 2002, LB 1105, § 261.

Cross References

Annual report to Legislature, see section 86-163.

86-461 Enhanced Wireless 911 Advisory Board; created; members; expenses.

(1) The Enhanced Wireless 911 Advisory Board is created to advise the commission concerning the implementation, development, administration, coordination, evaluation, and maintenance of enhanced wireless 911 service. The advisory board shall be composed of nine individuals appointed by the Governor, including:

- (a) One sheriff;
- (b) Two county officials or employees;
- (c) Two municipal officials or employees;
- (d) One representative from the state's wireless telecommunications industry;
- (e) One manager of a public safety answering point not employed by a sheriff;
- (f) One representative of the state's local exchange telecommunications service industry; and
- (g) One member of the public.

(2) The advisory board shall also include two ex officio members:

- (a) One commissioner from the Public Service Commission or his or her designee; and
- (b) The Chief Information Officer or his or her designee.

(3) Members of the board as described in subdivisions (1)(a) through (1)(g) of this section shall be appointed for a term of three years. Each succeeding member of the board shall be appointed for a term of three years. The board shall meet as often as necessary to carry out its duties. Members of the board shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 2001, LB 585, § 6; R.S.Supp.,2001, § 86-2206; Laws 2002, LB 1105, § 262; Laws 2006, LB 921, § 14; Laws 2007, LB661, § 25; Laws 2020, LB381, § 141.

86-462 Advisory board; duties.

(1) The advisory board shall make recommendations to the commission regarding the implementation of the Enhanced Wireless 911 Services Act, including:

- (a) The allocation of funds from the 911 Service System Fund as specified in section 86-465;
- (b) Rules and regulations necessary to carry out the act;

(c) Any adjustments in the surcharge amount to recommend to the Legislature; and

(d) The resolution of any disputes between public safety answering points and wireless carriers.

(2) The commission may approve and implement any recommendations of the advisory board.

Source: Laws 2001, LB 585, § 7; R.S.Supp.,2001, § 86-2207; Laws 2002, LB 1105, § 263; Laws 2018, LB993, § 4.

86-463 Repealed. Laws 2018, LB993, § 20.

86-464 Service agreement; authorized.

A public safety answering point may enter into a service agreement with one or more wireless carriers. The commission shall determine the most efficient method for providing enhanced wireless 911 service.

Source: Laws 2001, LB 585, § 9; R.S.Supp.,2001, § 86-2209; Laws 2002, LB 1105, § 265.

86-465 Commission; advisory board; duties.

(1) The commission shall, in consultation with the advisory board:

(a) Determine the costs to implement wireless automatic location identification;

(b) Determine the level of funding needed to trigger disbursements pursuant to the Enhanced Wireless 911 Services Act;

(c) Determine the percentage of the 911 Service System Fund to be allocated to each funding purpose, including the percentage that shall be designated for funding 911 service under subdivision (2)(c) of this section;

(d) Determine how the funds distributed under subdivisions (2)(a) and (2)(c) of this section are to be allocated among the wireless carriers and the public safety answering points; and

(e) Establish a mechanism for determining the level of funding available to each public safety answering point and wireless carrier for costs determined to be eligible by the commission under subsection (2) of this section.

(2) The commission shall, in consultation with the advisory board, establish eligibility standards and criteria for applications for disbursements from the 911 Service System Fund and standards and criteria concerning the level of fund disbursement for each application. In establishing such criteria and standards, the following purposes may be eligible for funding:

(a) Costs incurred or to be incurred by wireless carriers to implement enhanced wireless 911 service pursuant to a service agreement with a public safety answering point or pursuant to a request for service from a public safety answering point. Such costs may include, but not be limited to, the portion of the costs for new equipment used for providing enhanced wireless 911 service, costs to lease another vendor's equipment or services to provide enhanced wireless 911 service, costs to create or maintain any database or database elements used solely for enhanced wireless 911 service, and other costs of establishing enhanced wireless 911 service. The portion of the costs of equip-

ment or services used in the wireless carrier's main infrastructure resulting in revenue to the wireless carrier is not eligible for funding;

(b) Costs incurred or to be incurred by public safety answering points to implement enhanced wireless 911 service may include, but not be limited to, purchases of new equipment, costs of upgrades, modification and personnel training used solely to process the data elements of enhanced wireless 911 service, and maintenance costs and license fees for new equipment;

(c) Costs incurred or to be incurred by public safety answering points for the purchase, installation, maintenance, and operation of telecommunications equipment and telecommunications services required for the provision of enhanced wireless 911 service; and

(d) Expenses incurred by members of the advisory board while performing duties required by the Enhanced Wireless 911 Services Act.

(3) A wireless carrier receiving funds from the 911 Service System Fund shall not directly assess any of the costs associated with the implementation or provision of enhanced wireless 911 service to any public safety answering point, county, or municipality without the express consent of the commission.

(4) The commission shall have any powers necessary to carry out the intent and purposes of the Enhanced Wireless 911 Services Act.

Source: Laws 2001, LB 585, § 10; R.S.Supp.,2001, § 86-2210; Laws 2002, LB 1105, § 266; Laws 2006, LB 1222, § 11; Laws 2008, LB755, § 10; Laws 2013, LB595, § 6; Laws 2018, LB993, § 5.

86-466 Compensation for costs.

(1) A public safety answering point and wireless carrier may be compensated for costs determined by the commission to be eligible for funding. The level of funding available to each public safety answering point and wireless carrier for eligible cost compensation may be limited based upon the mechanism established by the commission pursuant to section 86-465. The commission is not required to provide compensation for costs to more than one public safety answering point in any county. A public safety answering point or wireless carrier may apply for disbursement from the 911 Service System Fund by submitting a written application to the commission. The commission shall receive and review applications, including supporting documentation. The commission shall notify each applicant as to the commission's approval or disapproval of the application.

(2) Each entity that receives disbursements from the 911 Service System Fund shall make a full accounting of the money in a manner and form prescribed by the commission.

Source: Laws 2001, LB 585, § 11; R.S.Supp.,2001, § 86-2211; Laws 2002, LB 1105, § 267; Laws 2006, LB 1222, § 12; Laws 2018, LB993, § 6.

86-466.01 County without enhanced wireless 911 service; commission; powers.

If any county does not have enhanced wireless 911 service, the commission may designate a public safety answering point that has enhanced wireless 911 service to receive wireless 911 service calls and directly dispatch or relay calls

to the appropriate emergency services provider until the county has implemented enhanced wireless 911 service.

Source: Laws 2006, LB 1222, § 13.

86-467 Confidential information.

Information provided by wireless carriers to the advisory board or the commission pursuant to the Enhanced Wireless 911 Services Act may be treated as records which may be withheld from the public upon request of the party submitting such records if the information qualifies under subdivision (3) of section 84-712.05.

Source: Laws 2001, LB 585, § 12; R.S.Supp.,2001, § 86-2212; Laws 2002, LB 1105, § 268.

86-468 Immunity.

The commission, governing bodies, and public safety agencies may provide enhanced wireless 911 service. In contracting for and providing such service, except for failure to use reasonable care or for intentional acts, the commission, each governing body, each public safety agency, each wireless carrier, and their employees and agents shall be immune from liability or the payment of damages in the performance of installing, maintaining, or providing enhanced wireless 911 service.

Source: Laws 2001, LB 585, § 13; R.S.Supp.,2001, § 86-2213; Laws 2002, LB 1105, § 269.

86-469 Rules and regulations.

The commission, in consultation with the advisory board, shall adopt and promulgate rules and regulations necessary to carry out the Enhanced Wireless 911 Services Act.

Source: Laws 2001, LB 585, § 14; R.S.Supp.,2001, § 86-2214; Laws 2002, LB 1105, § 270.

86-470 Civil penalty.

The commission may assess a civil penalty pursuant to section 75-156 for each violation of any provision 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.

Source: Laws 2003, LB 187, § 30.

86-471 Repealed. Laws 2018, LB993, § 20.

(d) 988 SUICIDE AND CRISIS LIFELINE

86-472 988 Suicide and Crisis Lifeline; legislative findings; Department of Health and Human Services; duties.

(1) The Legislature finds that:

(a) In 2020, Congress enacted the federal National Suicide Hotline Designation Act of 2020, Public Law 116-172. This federal act designated 988 as the universal three-digit telephone number within the United States for the purpose

of the national suicide prevention and mental health crisis hotline system operating since 2005 through the National Suicide Prevention Lifeline;

(b) The three-digit 988 code became operational nationally in 2022, and is a more universal and easy-to-remember way to connect individuals experiencing mental health-related distress with mental health care professionals; and

(c) The 988 Suicide and Crisis Lifeline is a national effort, organized at the state level, and serves as an alternative to 911 in addressing the growing need for mental health-related crisis intervention in order to save lives.

(2) The Department of Health and Human Services shall:

(a) Oversee administration of the 988 Suicide and Crisis Lifeline in Nebraska, including contracting for services provided by trained counselors, call-center operators, and other service providers helping operate the 988 Suicide and Crisis Lifeline network in the state; and

(b) Coordinate and cooperate with the Public Service Commission to ensure that the 988 Suicide and Crisis Lifeline has the capability to connect individuals to the 911 service system and also receive communications from the 911 service system as provided under subdivision (6) of section 86-1025.

Source: Laws 2024, LB1200, § 66.

Operative date July 19, 2024.

86-473 988 Suicide and Crisis Lifeline; immunity from liability.

Except for failure to use reasonable care or for intentional acts, each person involved in the provision of 988 Suicide and Crisis Lifeline service pursuant to section 86-472, including 988 service providers, call-center operators, and counselors, shall be immune from liability or the payment of damages in the performance of installing, maintaining, or providing such service, including providing interoperable connections between the 988 Suicide and Crisis Lifeline and the 911 service system.

Source: Laws 2024, LB1200, § 67.

Operative date July 19, 2024.

ARTICLE 5

PUBLIC TECHNOLOGY INFRASTRUCTURE

Cross References

Alcoholic liquor, shipment of, see Chapter 53, article 1.

Cigarettes, shipment of, regulations, see sections 77-2621 and 77-2622.

Diseased or infected plants or plant products, prohibited shipments, see Chapter 2, article 10.

Fish and game shipments, regulations, see sections 37-510 and 37-511.

Franchise tax, report, see sections 77-801 to 77-804.

Nursery stock imports, duties of carrier, see Chapter 2, article 10.

(a) INFORMATION TECHNOLOGY INFRASTRUCTURE ACT

Section	
86-501.	Act, how cited.
86-502.	Definitions, where found.
86-503.	Commission, defined.
86-504.	Department, defined.
86-505.	Enterprise, defined.
86-506.	Enterprise project, defined.
86-507.	Information technology, defined.
86-508.	Information technology clearinghouse, defined.
86-509.	Information technology infrastructure, defined.

TELECOMMUNICATIONS AND TECHNOLOGY

- Section
86-510. Statewide technology plan, defined.
86-511. Technical panel, defined.
86-512. Legislative intent.
86-513. Legislative findings and intent.
86-514. University of Nebraska; Legislature; exemptions.
86-515. Nebraska Information Technology Commission; created; members; expenses; executive director.
86-516. Commission; duties.
86-517. Commission; implementation goals.
86-518. Progress report.
86-519. Office of Chief Information Officer; created.
86-520. Chief Information Officer; duties.
86-520.01. Information technology purchases; standards; use of Network Nebraska; notice required; when.
86-521. Technical panel; created; duties.
86-522. Community Technology Fund; created; use; investment.
86-523. Government Technology Collaboration Fund; created; use; investment.
86-524. Legislative review.
86-524.01. Information technology plan; report required.
86-525. Enterprise project; legislative findings.
86-526. Enterprise project; designation.
86-527. Information Technology Infrastructure Fund; created; use; investment.
86-528. Enterprise project; funding.
86-529. Enterprise project; commission; duties.
86-530. Enterprise project; report.

(b) INTERGOVERNMENTAL DATA COMMUNICATIONS ACT

- 86-531. Repealed. Laws 2008, LB 823, § 23.
86-532. Repealed. Laws 2008, LB 823, § 23.
86-533. Repealed. Laws 2008, LB 823, § 23.
86-534. Repealed. Laws 2008, LB 823, § 23.
86-535. Repealed. Laws 2008, LB 823, § 23.
86-536. Repealed. Laws 2008, LB 823, § 23.
86-537. Repealed. Laws 2008, LB 823, § 23.
86-538. Repealed. Laws 2008, LB 823, § 23.
86-539. Repealed. Laws 2008, LB 823, § 23.
86-540. Repealed. Laws 2008, LB 823, § 23.
86-541. Repealed. Laws 2008, LB 823, § 23.
86-542. Repealed. Laws 2008, LB 823, § 23.
86-543. Repealed. Laws 2008, LB 823, § 23.
86-544. Repealed. Laws 2008, LB 823, § 23.
86-545. Repealed. Laws 2008, LB 823, § 23.
86-546. Repealed. Laws 2008, LB 823, § 23.
86-547. Repealed. Laws 2008, LB 823, § 23.
86-548. Repealed. Laws 2008, LB 823, § 23.
86-549. Repealed. Laws 2008, LB 823, § 23.

(c) INTERGOVERNMENTAL DATA SERVICES PROGRAM

- 86-550. Act, how cited.
86-551. Intergovernmental data services program; created.
86-552. Definitions, where found.
86-553. Repealed. Laws 2008, LB 823, § 23.
86-554. Application, defined.
86-555. Office, defined.
86-556. Officer, defined.
86-557. Division, defined.
86-558. Intergovernmental data services system, defined.
86-559. Local application, defined.
86-560. Peripheral device, defined.
86-561. System, defined.
86-562. System; purposes.

PUBLIC TECHNOLOGY INFRASTRUCTURE

- Section
86-563. Division; duties and powers.
86-564. Budget; duties.
86-565. Rules and regulations.
86-566. Repealed. Laws 2019, LB298, § 25.
86-567. Intergovernmental Data Services Program Revolving Fund; created; use; investment.
86-568. Miscellaneous cash and revolving funds; authorized.

(d) GEOGRAPHIC INFORMATION SYSTEM

- 86-569. Findings and intent.
86-570. Geographic Information Systems Council; created; members; appointment; terms; expenses.
86-571. Council; officers; advisory committees; meetings; expenses.
86-572. Council; duties.
86-573. Council; report.

(e) PUBLICLY OWNED DARK FIBER

- 86-574. Dark fiber, defined.
86-575. Agency or political subdivision; dark fiber; disposition; powers.
86-576. Agency or political subdivision; dark fiber; sale.
86-577. Agency or political subdivision; dark fiber; lease or license.
86-578. Dark fiber; violation; procedure; appeal.

(f) INTERNET ENHANCEMENT

- 86-579. Repealed. Laws 2023, LB818, § 45.
86-580. Repealed. Laws 2020, LB992, § 17.

(g) COUNTY TELEPHONE SYSTEMS

- 86-581. Repealed. Laws 2005, LB 645, § 11.
86-582. Repealed. Laws 2005, LB 645, § 11.
86-583. Repealed. Laws 2005, LB 645, § 11.
86-584. Repealed. Laws 2005, LB 645, § 11.
86-585. Repealed. Laws 2005, LB 645, § 11.
86-586. Repealed. Laws 2005, LB 645, § 11.
86-587. Repealed. Laws 2005, LB 645, § 11.
86-588. Repealed. Laws 2005, LB 645, § 11.
86-589. Repealed. Laws 2005, LB 645, § 11.
86-590. Repealed. Laws 2005, LB 645, § 11.
86-591. Repealed. Laws 2005, LB 645, § 11.
86-592. Repealed. Laws 2005, LB 645, § 11.

(h) RETAIL OR WHOLESALE SERVICES

- 86-593. Terms, defined.
86-594. Agency or political subdivision of state; limitation on power.
86-595. Public power supplier; limitation on retail services.
86-596. Repealed. Laws 2014, LB 658, § 4.
86-597. Retail or wholesale service; how construed.
86-598. Sections; how construed.
86-599. Repealed. Laws 2009, LB 154, § 27.

(i) NETWORK NEBRASKA

- 86-5,100. Network Nebraska; development and maintenance; access; Chief Information Officer; duties; cost; report.
86-5,101. Repealed. Laws 2009, LB 545, § 26.

(j) BROADBAND INTERNET SERVICE INFRASTRUCTURE ACT

- 86-5,102. Act, how cited.
86-5,103. Legislative findings.
86-5,104. Terms, defined.
86-5,105. Broadband facility agreement; purpose; contents; notice; electric utility easement; effect; claim for compensation; responsibility for payment; conditions on agreement.

§ 86-501

TELECOMMUNICATIONS AND TECHNOLOGY

Section

- 86-5,106. Electric utility easement; use for commercial broadband facilities; claim or cause of action; limitations; exceptions; acceptance of damage award; effect.
- 86-5,107. Electric utility; broadband facility agreement; requirements; electric service; avoid material interference; effect of act.
- 86-5,108. Act; applicability.

(k) BROADBAND SERVICES

- 86-5,109. Legislative declaration; federal funds; scalability requirements; broadband infrastructure; requirements.

(a) INFORMATION TECHNOLOGY INFRASTRUCTURE ACT

86-501 Act, how cited.

Sections 86-501 to 86-530 shall be known and may be cited as the Information Technology Infrastructure Act.

Source: Laws 1996, LB 1190, § 1; Laws 2000, LB 1349, § 3; R.S.Supp.,2000, § 81-1190; Laws 2002, LB 1105, § 271; Laws 2008, LB823, § 1; Laws 2010, LB1071, § 37.

86-502 Definitions, where found.

For purposes of the Information Technology Infrastructure Act, the definitions found in sections 86-503 to 86-511 apply.

Source: Laws 1996, LB 1190, § 2; Laws 2000, LB 1349, § 4; R.S.Supp.,2000, § 81-1191; Laws 2002, LB 1105, § 272.

86-503 Commission, defined.

Commission means the Nebraska Information Technology Commission.

Source: Laws 1998, LB 924, § 4; R.S.1943, (1999), § 86-1504; Laws 2002, LB 1105, § 273.

86-504 Department, defined.

Department means the Department of Administrative Services.

Source: Laws 2002, LB 1105, § 274.

86-505 Enterprise, defined.

Enterprise means one or more departments, offices, boards, bureaus, commissions, or institutions of the state for which money is to be appropriated for communications or data processing services, equipment, or facilities, including all executive, legislative, and judicial departments, the Nebraska state colleges, the University of Nebraska, and all other state institutions and entities.

Source: Laws 2002, LB 1105, § 275; Laws 2010, LB1071, § 38.

86-506 Enterprise project, defined.

Enterprise project means an endeavor undertaken by an enterprise over a fixed period of time using information technology, which would have a significant effect on a core business function or which affects multiple government programs, agencies, or institutions. Enterprise project includes all aspects of

planning, design, implementation, project management, and training relating to the endeavor.

Source: Laws 2002, LB 1105, § 276; Laws 2008, LB823, § 2; Laws 2010, LB1071, § 39.

86-507 Information technology, defined.

Information technology means computing and telecommunications systems and their supporting infrastructure and interconnectivity used to acquire, transport, process, analyze, store, and disseminate information electronically.

Source: Laws 2002, LB 1105, § 277.

86-508 Information technology clearinghouse, defined.

Information technology clearinghouse means a service to provide convenient access for the commission and general public to information about best technology practices, referrals for technical assistance, and other information related to the Information Technology Infrastructure Act.

Source: Laws 2002, LB 1105, § 278.

86-509 Information technology infrastructure, defined.

Information technology infrastructure means the basic facilities, services, and installations needed for the functioning of information technology.

Source: Laws 2002, LB 1105, § 279.

86-510 Statewide technology plan, defined.

Statewide technology plan means the plan developed by the commission pursuant to section 86-516.

Source: Laws 2002, LB 1105, § 280.

86-511 Technical panel, defined.

Technical panel means the panel created in section 86-521.

Source: Laws 2002, LB 1105, § 281.

86-512 Legislative intent.

Nebraskans, and others throughout the world, have become part of the information age, in which information is a primary element of economic, social, and cultural growth. The ability to move information quickly and accurately through electronic means is critical to the success of education, business, agriculture, health care, government, libraries, communities, and other areas of interest in a global society. A statewide vision and strategy is needed to ensure coordinated development of the telecommunications infrastructure necessary for Nebraska to keep pace worldwide and collaboration among entities within the state and with other states.

Source: Laws 1998, LB 924, § 1; R.S.1943, (1999), § 86-1501; Laws 2002, LB 1105, § 282.

86-513 Legislative findings and intent.

(1) The Legislature finds that appropriations for information technology continue to increase. Advances in information technology have the potential to improve government efficiency, broaden educational opportunities, and enhance services to Nebraska communities and citizens. To assure the most cost-effective use of state appropriations:

(a) Responsibility should be assigned for developing a statewide vision and strategic plan to guide investments in information technology;

(b) Organizational and technical support for technology budget decisions should be improved and integrated;

(c) A clearinghouse should be formed for technical support and best practices information; and

(d) Responsibility should be assigned to an office within state government for improving the planning, budgeting, and management of state government's information resources.

(2) It is the intent of the State of Nebraska to support the development of a unified statewide telecommunications infrastructure. The statewide telecommunications infrastructure will be scalable, reliable, and efficient. It is further the intent of the Legislature that the provisions of sections 86-512 to 86-524 serve to coordinate the state's investments in information technology in an efficient and expeditious manner. The provisions are not intended to impede the rapid deployment of appropriate technology or establish cumbersome regulations or bureaucracy.

Source: Laws 1998, LB 924, § 2; R.S.1943, (1999), § 86-1502; Laws 2002, LB 1105, § 283.

86-514 University of Nebraska; Legislature; exemptions.

(1) The Legislature finds that the University of Nebraska, as the state's only public university, has unique needs and requirements in the area of information technology relating to the university's academic research mission. Accordingly, the Legislature intends that sections 86-512 to 86-524 shall not limit the authority of the Board of Regents of the University of Nebraska to make decisions about policies, purchases, and uses of information technology related to its academic research mission. For purposes of this section, academic research mission means those specific activities or programs of the university which are undertaken as a part of sponsored or grant-supported activities, organized research projects, or other similar activities intended to produce one or more research outcomes and conducted by employees of the university or other entities, including, but not limited to, research divisions, bureaus, institutes, and experimental stations. Academic research mission does not include the administrative activities of the university, instruction of students, or services provided by the university to communities when not conducted in the context of research outcomes.

(2) The Legislature finds that, as a separate branch of government, the Legislature must perform its functions independently of other branches. Accordingly, the Legislature shall not be limited by the provisions and requirements of sections 86-512 to 86-524. However the Legislature reserves the right to use the resources established by such sections.

Source: Laws 1998, LB 924, § 3; R.S.1943, (1999), § 86-1503; Laws 2002, LB 1105, § 284.

86-515 Nebraska Information Technology Commission; created; members; expenses; executive director.

(1) The Nebraska Information Technology Commission is created. The commission shall consist of (a) one member representing elementary and secondary education, (b) one member representing postsecondary education, (c) the Governor or his or her designee, (d) one member representing communities, and (e) five members representing the general public who have experience in developing strategic plans and making high-level business decisions. Of the members representing the general public, the principal business or occupation of at least one such member shall be agriculture. A member of the Transportation and Telecommunications Committee of the Legislature shall be appointed by the Executive Board of the Legislative Council to serve as an ex officio, nonvoting member of the commission. The Executive Board shall make the initial appointment of such member after January 5, 2011, and shall appoint a member every two years after the initial appointment. At any time that there is not a member of the Educational Service Unit Coordinating Council serving on the Nebraska Information Technology Commission, the technical panel established pursuant to section 86-521, or any working groups established pursuant to sections 86-512 to 86-524 that establish, coordinate, or prioritize needs for education, the Governor shall appoint to the commission one member who serves on the Educational Service Unit Coordinating Council.

(2) The Governor or a designee of the Governor shall serve as chairperson of the commission.

(3) The members of the commission other than the legislative member shall be appointed by the Governor with the approval of a majority of the Legislature. Members of the commission shall serve for terms of four years, except that two members initially appointed to represent the general public shall be appointed for a term of two years and any member appointed to represent the Educational Service Unit Coordinating Council shall be appointed for a term of one year. Members shall be limited to two consecutive terms. The Governor or his or her designee shall serve on the commission for his or her term. The legislative member of the commission shall serve until he or she is reappointed or a successor is appointed. Each member shall serve until the appointment and qualification of his or her successor. In case of a vacancy occurring prior to the expiration of the term of a member, the appointment shall be made only for the remainder of the term.

(4) Members shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

(5) The commission may employ or designate an executive director to provide administrative and operational support for the commission. The Department of Administrative Services and Nebraska Educational Telecommunications Commission shall assist with administrative and operational support for the Nebraska Information Technology Commission as necessary to carry out its duties.

Source: Laws 1998, LB 924, § 5; R.S.1943, (1999), § 86-1505; Laws 2002, LB 1105, § 285; Laws 2006, LB 1208, § 27; Laws 2007, LB603, § 32; Laws 2010, LB787, § 1; Laws 2020, LB381, § 142; Laws 2024, LB1031, § 5.

Operative date April 16, 2024.

86-516 Commission; duties.

The commission shall:

- (1) Annually by July 1, adopt policies and procedures used to develop, review, and annually update a statewide technology plan;
- (2) Create an information technology clearinghouse to identify and share best practices and new developments, as well as identify existing problems and deficiencies;
- (3) Review and adopt policies to provide incentives for investments in information technology infrastructure services;
- (4) Determine a broad strategy and objectives for developing and sustaining information technology development in Nebraska, including long-range funding strategies, research and development investment, support and maintenance requirements, and system usage and assessment guidelines;
- (5) Adopt guidelines regarding project planning and management and administrative and technical review procedures involving state-owned or state-supported technology and infrastructure. Governmental entities, state agencies, and noneducation political subdivisions shall submit all projects which use any combination of general funds, federal funds, or cash funds for information technology purposes to the process established by sections 86-512 to 86-524. The commission may adopt policies that establish the format and minimum requirements for project submissions. The commission may monitor the progress of any such project and may require progress reports;
- (6) Adopt minimum technical standards, guidelines, and architectures upon recommendation by the technical panel. Such standards and guidelines shall not unnecessarily restrict the use of new technologies or prevent commercial competition, including competition with Network Nebraska;
- (7) Establish ad hoc technical advisory groups to study and make recommendations on specific topics, including workgroups to establish, coordinate, and prioritize needs for education, local communities, intergovernmental data communications, and state agencies;
- (8) By November 15 of each even-numbered year, make recommendations on technology investments to the Governor and the Legislature, including a prioritized list of projects, reviewed by the technical panel pursuant to section 86-521. The recommendations submitted to the Legislature shall be submitted electronically;
- (9) Approve grants from the Community Technology Fund and Government Technology Collaboration Fund;
- (10) Adopt schedules and procedures for reporting needs, priorities, and recommended projects;
- (11) Assist the Chief Information Officer in developing and maintaining Network Nebraska pursuant to section 86-5,100; and
- (12) Determine the format that state agencies, boards, and commissions shall use to report their information technology plans under section 86-524.01. The commission shall include an analysis of such plans in the statewide technology plan.

Source: Laws 1998, LB 924, § 6; Laws 1999, LB 446, § 12; R.S.1943, (1999), § 86-1506; Laws 2002, LB 1105, § 286; Laws 2005, LB 343, § 9; Laws 2006, LB 1208, § 28; Laws 2008, LB823, § 3; Laws 2010, LB1071, § 40; Laws 2012, LB782, § 244.

86-517 Commission; implementation goals.

The commission shall implement sections 86-512 to 86-524 in accordance with the policy objectives described in sections 86-512, 86-513, and 86-516 and with the following goals:

- (1) Expanding access to lifelong educational and training opportunities so that Nebraska's citizens and work force can function in the emerging information society;
- (2) Stimulating and supporting information-based economic development that improves economic opportunity; and
- (3) Expanding citizen access to government information.

Source: Laws 1998, LB 924, § 7; R.S.1943, (1999), § 86-1507; Laws 2002, LB 1105, § 287.

86-518 Progress report.

By November 15 of each even-numbered year, the Nebraska Information Technology Commission shall submit a progress report to the Governor and Legislature. The report submitted to the Legislature shall be submitted electronically.

Source: Laws 1998, LB 924, § 8; R.S.1943, (1999), § 86-1508; Laws 2002, LB 1105, § 288; Laws 2012, LB782, § 245.

86-519 Office of Chief Information Officer; created.

The office of Chief Information Officer is created. The Chief Information Officer shall be appointed by and serve at the pleasure of the Governor with the approval of a majority of the Legislature. For administrative and budgetary purposes, the office of Chief Information Officer shall be located in the Department of Administrative Services which shall provide necessary support services for the office. All administrative and budgetary decisions for the office shall be made by the Chief Information Officer.

Source: Laws 1998, LB 924, § 9; R.S.1943, (1999), § 86-1509; Laws 2002, LB 1105, § 289; Laws 2006, LB 921, § 15.

86-520 Chief Information Officer; duties.

The Chief Information Officer shall:

- (1) Maintain, in cooperation with the Department of Administrative Services, an inventory of noneducation state government technology assets, including hardware, applications, and databases;
- (2) Recommend policies and guidelines for acceptable and cost-effective use of information technology in noneducation state government;
- (3) Advise the Governor and Legislature on policy issues affecting noneducation state government related to information technology;
- (4) Coordinate efforts among other noneducation state government technology agencies and coordinating bodies;
- (5) Implement a strategic, tactical, and project planning process for noneducation state government information technology that is linked to the budget process;

(6) Assist the budget division of the Department of Administrative Services and Legislative Fiscal Analyst in evaluating technology-related budget requests;

(7) Work with each governmental department and noneducation state agency to evaluate and act upon opportunities to more efficiently and effectively deliver government services through the use of information technology;

(8) Recommend to the Governor and Legislature methods for improving the organization and management of data by noneducation agencies to achieve the goals of making information sharable and reusable, eliminating redundancy of data and programs, improving the quality and usefulness of data, and improving access to data, and implement such recommendations as the Governor or Legislature may direct;

(9) Monitor the status of major noneducation state government technology projects;

(10) Establish and maintain Network Nebraska pursuant to section 86-5,100;

(11) Apply in aggregate for reimbursements from the federal Universal Service Fund pursuant to section 254 of the Telecommunications Act of 1996, 47 U.S.C. 254, as such section existed on January 1, 2006, on behalf of school districts requesting to be included in such aggregated application;

(12) Administer such funds as may be appropriated to the Chief Information Officer by the Legislature;

(13) Monitor the status of information technology projects that are enterprise projects;

(14) Collect information from state agencies, boards, and commissions as provided in section 86-524.01; and

(15) Complete other tasks as assigned by the Governor.

Source: Laws 1998, LB 924, § 10; R.S.1943, (1999), § 86-1510; Laws 2002, LB 1105, § 290; Laws 2006, LB 1208, § 29; Laws 2008, LB823, § 4; Laws 2010, LB1071, § 41.

86-520.01 Information technology purchases; standards; use of Network Nebraska; notice required; when.

Information technology purchases made with state funds or local tax receipts by education-related political subdivisions shall meet or exceed any applicable technical standards established by the commission. The Chief Information Officer may bid for such equipment and allow education-related political subdivisions to participate in leasing or purchasing contracts. An education-related political subdivision shall provide notice in writing, if required by guidelines established by the University of Nebraska and the Chief Information Officer for participation in Network Nebraska, to the distance education director of the Educational Service Unit Coordinating Council, the University of Nebraska, and the Chief Information Officer prior to the use of any new or additional equipment that will impact the use of Network Nebraska by such education-related political subdivision or other education-related political subdivisions.

Source: Laws 2010, LB1071, § 42.

86-521 Technical panel; created; duties.

(1) A technical panel is created. The technical panel shall be comprised of one representative from the Nebraska Educational Telecommunications Commission, one representative from the office of Chief Information Officer, one representative from the University of Nebraska Computing Services Network, and such other members as specified by the Nebraska Information Technology Commission.

(2) The technical panel shall review any technology project presented to the Nebraska Information Technology Commission including any recommendations by working groups established under sections 86-512 to 86-524. Upon the conclusion of the review of a technology project or request for additional funding, the technical panel shall provide its analysis to the commission. The technical panel may recommend technical standards and guidelines to be considered for adoption by the commission.

Source: Laws 1998, LB 924, § 11; R.S.1943, (1999), § 86-1511; Laws 2002, LB 1105, § 291; Laws 2006, LB 921, § 16; Laws 2008, LB823, § 5.

86-522 Community Technology Fund; created; use; investment.

The Community Technology Fund is created. The fund shall be granted to public entities or for the public entity's share of public-private partnerships by the commission. The fund shall be used to provide incentives for collaborative community and regional approaches toward more effective and efficient use of technology to meet the needs of citizens, political subdivisions, and other entities as determined by the commission. Expenditures from the fund shall be approved by the commission only after review by the technical panel. The fund shall be administered by the office of Chief Information Officer. 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 1998, LB 924, § 12; R.S.1943, (1999), § 86-1512; Laws 2002, LB 1105, § 292; Laws 2006, LB 921, § 17.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

86-523 Government Technology Collaboration Fund; created; use; investment.

The Government Technology Collaboration Fund is created. The fund shall be granted by the commission. The fund shall be used to provide incentives for collaborative technology projects and programs by state agencies, boards, and commissions and to assist in meeting the technology needs of small agencies as determined by the commission. Expenditures from the fund shall be approved by the commission only after review by the technical panel. The fund shall be administered by the office of Chief Information Officer. 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 1998, LB 924, § 13; R.S.1943, (1999), § 86-1513; Laws 2002, LB 1105, § 293; Laws 2006, LB 921, § 18.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

86-524 Legislative review.

(1) The Appropriations Committee and the Transportation Committee of the Legislature shall jointly review sections 86-512 to 86-524 before January 1, 2001, and every two years thereafter. The Executive Board of the Legislative Council shall designate staff with appropriate technical experience to provide the staff support for the review. The committees shall establish criteria to be used for the review in accordance with the following policy objectives. It shall be the policy of the state to:

(a) Use information technology in education, communities, including health care and economic development, and every level of government service to improve economic opportunities and quality of life for all Nebraskans regardless of location or income;

(b) Stimulate the demand to encourage and enable long-term infrastructure innovation and improvement; and

(c) Organize technology planning in new ways to aggregate demand, reduce costs, and create support networks; encourage collaboration between communities of interest; and encourage competition among technology and service providers.

(2) In the review, the committees shall determine the extent to which:

(a) The vision has been realized and short-term and long-term strategies have been articulated and employed;

(b) The statewide technology plan and other activities of the commission have improved coordination and assisted policymakers;

(c) An information technology clearinghouse has been established, maintained, and utilized of Nebraska's information technology infrastructure and of activities taking place in the state involving information technology, and the information flow between and among individuals and organizations has been facilitated as a result of the information technology clearinghouse;

(d) Policies, standards, guidelines, and architectures have been developed and observed;

(e) Recommendations made by the commission to the Governor and Legislature have assisted policy and funding decisions;

(f) Input and involvement of all interested parties has been encouraged and facilitated; and

(g) Long-term infrastructure innovation, improvement, and coordination has been planned for, facilitated, and achieved with minimal barriers and impediments.

Source: Laws 1998, LB 924, § 14; R.S.1943, (1999), § 86-1514; Laws 2002, LB 1105, § 294.

86-524.01 Information technology plan; report required.

On or before September 15 of each even-numbered year, all state agencies, boards, and commissions shall report to the Chief Information Officer, in a format determined by the commission, an information technology plan that

includes an accounting of all technology assets, including planned acquisitions and upgrades.

Source: Laws 2008, LB823, § 6.

86-525 Enterprise project; legislative findings.

In addition to the findings in section 86-513, the Legislature also finds that:

- (1) The effective, efficient, and cost-effective operation of state government requires that information be considered and managed as a strategic resource;
- (2) Information technologies present numerous opportunities to more effectively manage the information necessary for state government operations;
- (3) Information technologies are changing and advancing at a very rapid rate, increasing the computing power available to individual users;
- (4) The commission should have the responsibility to establish goals, guidelines, and priorities for information technology infrastructure; and
- (5) Periodic investments in the information technology infrastructure are required to develop and maintain the foundation for the effective use of information technologies throughout state government.

Source: Laws 1996, LB 1190, § 3; Laws 2000, LB 1349, § 5; R.S.Supp.,2000, § 81-1192; Laws 2002, LB 1105, § 295.

86-526 Enterprise project; designation.

The commission shall determine which proposed information technology projects are enterprise projects. The commission shall create policies and procedures for the designation of such projects. The commission shall evaluate designated enterprise project plans as authorized in section 86-528.

Source: Laws 1996, LB 1190, § 5; Laws 2000, LB 1349, § 6; R.S.Supp.,2000, § 81-1194; Laws 2002, LB 1105, § 296; Laws 2008, LB823, § 7.

86-527 Information Technology Infrastructure Fund; created; use; investment.

The Information Technology Infrastructure Fund is hereby created. The fund shall contain gifts, grants, and such other money as is appropriated or transferred by the Legislature. The fund shall be used to attain the goals and priorities identified in the statewide technology plan. The fund shall be administered by the office of Chief Information Officer. Expenditures shall be made from the fund to finance the operations of the Information Technology Infrastructure Act in accordance with the appropriations made by the Legislature. Transfers from the fund to the General Fund may be made at the direction of the Legislature. Any money in the Information Technology Infrastructure Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1996, LB 1190, § 6; Laws 1998, LB 924, § 42; Laws 2000, LB 1349, § 7; R.S.Supp.,2000, § 81-1195; Laws 2002, LB 1105, § 297; Laws 2002, Second Spec. Sess., LB 1, § 10; Laws 2003, LB 408, § 7; Laws 2006, LB 921, § 19; Laws 2008, LB823, § 8; Laws 2021, LB509, § 23.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

86-528 Enterprise project; funding.

(1) The Legislature may allocate money from the Information Technology Infrastructure Fund for enterprise projects. The Legislature may recognize multiple-year commitments for large projects, subject to available appropriations, including remaining obligations for the century date change project managed by the department.

(2) No contract or expenditure for the implementation of an enterprise project may be initiated unless the commission has approved a project plan. The project plan shall include, but not be limited to, the objectives, scope, and justification of the project; detailed specifications and analyses that guide the project from beginning to conclusion; technical requirements; and project management. The commission may request clarification, require changes, or provide conditional approval of a project plan. In its review, the commission shall determine whether the objectives, scope, timeframe, and budget of the project are consistent with the proposal authorized by the Legislature in its allocation from the fund.

(3) The commission may also evaluate whether the project plan is consistent with the statewide technology plan and the commission's technical standards and guidelines.

Source: Laws 2000, LB 1349, § 8; R.S.Supp.,2000, § 81-1196.01; Laws 2002, LB 1105, § 298; Laws 2008, LB823, § 9.

86-529 Enterprise project; commission; duties.

To implement enterprise projects pursuant to sections 86-525 to 86-530, the commission shall:

(1) Develop procedures and issue guidelines regarding the review, approval, and monitoring of enterprise projects; and

(2) Coordinate with the Chief Information Officer to monitor the status of enterprise projects, including a complete accounting of all project costs by fund source.

Source: Laws 1996, LB 1190, § 10; Laws 1998, LB 924, § 43; Laws 2000, LB 1349, § 9; R.S.Supp.,2000, § 81-1199; Laws 2002, LB 1105, § 299; Laws 2008, LB823, § 10.

86-530 Enterprise project; report.

The Chief Information Officer shall report annually to the Governor and the Appropriations Committee of the Legislature on the status of enterprise projects. The report submitted to the committee shall be submitted electronically.

Source: Laws 1996, LB 1190, § 13; Laws 2000, LB 1349, § 10; R.S.Supp.,2000, § 81-11,102; Laws 2002, LB 1105, § 300; Laws 2008, LB823, § 11; Laws 2012, LB782, § 246.

(b) INTERGOVERNMENTAL DATA COMMUNICATIONS ACT

86-531 Repealed. Laws 2008, LB 823, § 23.

86-532 Repealed. Laws 2008, LB 823, § 23.

- 86-533 Repealed. Laws 2008, LB 823, § 23.
- 86-534 Repealed. Laws 2008, LB 823, § 23.
- 86-535 Repealed. Laws 2008, LB 823, § 23.
- 86-536 Repealed. Laws 2008, LB 823, § 23.
- 86-537 Repealed. Laws 2008, LB 823, § 23.
- 86-538 Repealed. Laws 2008, LB 823, § 23.
- 86-539 Repealed. Laws 2008, LB 823, § 23.
- 86-540 Repealed. Laws 2008, LB 823, § 23.
- 86-541 Repealed. Laws 2008, LB 823, § 23.
- 86-542 Repealed. Laws 2008, LB 823, § 23.
- 86-543 Repealed. Laws 2008, LB 823, § 23.
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- 86-547 Repealed. Laws 2008, LB 823, § 23.
- 86-548 Repealed. Laws 2008, LB 823, § 23.
- 86-549 Repealed. Laws 2008, LB 823, § 23.

(c) INTERGOVERNMENTAL DATA SERVICES PROGRAM

86-550 Act, how cited.

Sections 86-550 to 86-568 shall be known and may be cited as the Intergovernmental Data Services Program Act.

Source: Laws 2002, LB 1105, § 320.

86-551 Intergovernmental data services program; created.

The intergovernmental data services program is created and shall be located within the information management services division of the office of Chief Information Officer.

Source: Laws 1993, LB 543, § 1; Laws 2000, LB 654, § 31; R.S.Supp.,2000, § 81-1120.35; Laws 2002, LB 1105, § 321; Laws 2006, LB 921, § 21.

86-552 Definitions, where found.

For purposes of the Intergovernmental Data Services Program Act, the definitions found in sections 86-554 to 86-561 apply.

Source: Laws 1993, LB 543, § 2; Laws 2000, LB 654, § 32; R.S.Supp.,2000, § 81-1120.36; Laws 2002, LB 1105, § 322; Laws 2008, LB823, § 12.

86-553 Repealed. Laws 2008, LB 823, § 23.**86-554 Application, defined.**

Application means a computer program that provides a specific service to the user. Application includes the applications specified in Laws 1989, LB 814, section 54, and all applications of statewide or intergovernmental benefit subject to the review set forth in subdivision (2)(a) of section 86-563.

Source: Laws 2002, LB 1105, § 324.

86-555 Office, defined.

Office means the office of Chief Information Officer.

Source: Laws 2002, LB 1105, § 325; Laws 2006, LB 921, § 22.

86-556 Officer, defined.

Officer means the Chief Information Officer.

Source: Laws 2002, LB 1105, § 326; Laws 2006, LB 921, § 23.

86-557 Division, defined.

Division means the information management services division of the office.

Source: Laws 2002, LB 1105, § 327; Laws 2006, LB 921, § 24.

86-558 Intergovernmental data services system, defined.

Intergovernmental data services system means the installation and use of applications on a computer network that allows for the intergovernmental transfer of data, automation of multijurisdictional functions, and integration of governmental entities that involve multiple locations separated by long distances. Intergovernmental data services system includes computers that serve as platforms for statewide applications, cabling, other equipment essential to operating the computers, and operating programs that allow the computers to function. Intergovernmental data services system does not include any applications.

Source: Laws 2002, LB 1105, § 328.

86-559 Local application, defined.

Local application means a computer program intended for use at the local government or state agency level, not of intergovernmental use, serving only limited local needs and proposed to be resident on only a limited part of the system.

Source: Laws 2002, LB 1105, § 329.

86-560 Peripheral device, defined.

Peripheral device means equipment that connects to the system to allow local use and access to applications on the system. Peripheral device includes, but is not limited to, microprocessors, word processors, desktop computers, terminals, and printers.

Source: Laws 2002, LB 1105, § 330.

86-561 System, defined.

System means the intergovernmental data services system.

Source: Laws 2002, LB 1105, § 331.

86-562 System; purposes.

The purpose of the system is to allow for the efficient operation of state government and its political subdivisions. In managing and allocating resources on the system, the officer shall assign first priority to providing capacity for statewide applications that are essential to carrying out the duties of state agencies in an efficient and effective manner. The system may also serve local data processing needs of political subdivisions, provide citizens with a point of access to governmental services and information, and serve other state and local needs, subject to available resources.

Source: Laws 1993, LB 543, § 3; Laws 2000, LB 654, § 33; R.S.Supp.,2000, § 81-1120.37; Laws 2002, LB 1105, § 332; Laws 2008, LB823, § 13.

86-563 Division; duties and powers.

In establishing and maintaining the system:

(1) The division:

(a) Shall provide the computer network and services for the system with assistance from the division of communications of the office;

(b) Shall, within available resources, assist local, state, and federal collaborative efforts to encourage coordination of information systems and data sharing;

(c) Shall coordinate its activities and responsibilities with the functions of the division of communications to minimize overlap and duplication of technical services between the divisions in supporting the system, its applications, and application development; and

(d) May undertake and coordinate planning studies to determine the feasibility, benefits, costs, requirements, and options for the intergovernmental transfer of data;

(2) The officer:

(a) Shall approve and coordinate the design, development, installation, training, and maintenance of applications by state agencies for use on the system. Any agency proposing to add an application to the system shall submit an evaluation to the officer that examines the cost-effectiveness, technical feasibility, and potential use of the proposed application; that identifies the total costs of the application, including design, development, testing, installation, operation, and any changes to the computer network that are necessary for its operation; and that provides a schedule that shows the estimated completion dates for design, development, testing, installation, training, and full operational status. The officer shall not approve an application by a state agency for use on the system unless his or her review shows that the application is cost effective and technically feasible, that funding is available, and that the proposed schedule is reasonable and feasible;

(b) Shall approve changes in the design of applications by state agencies for use on the system. The officer may require such information from the agency as necessary to determine that the proposed change in design is cost effective and

technically feasible, that funding is available, and that the proposed schedule for implementation is reasonable and feasible;

(c) May contract with other governmental entities or private vendors in carrying out the duties relating to the intergovernmental data services program;

(d) Shall establish a rate schedule that reflects the rates adopted by the division of communications and the information management services division, plus any additional costs of the system. Such fees may reflect a base cost for access to the system, costs for actual usage of the system, costs for special equipment or services, or a combination of these factors. The officer may charge for the costs of changes to the system that are requested by or are necessary to accommodate a request by a user. All fees shall be set to recover all costs of operation;

(e) May enter into agreements with other state and local governments, the federal government, or private-sector entities for the purpose of sale, lease, or licensing for third-party resale of applications and system design;

(f) Shall determine whether a local application shall be a component of the system. No local application shall be resident or operational in any component of the system without explicit authorization of the officer; and

(g) Shall approve or disapprove the attachment of any peripheral device to the system and may prescribe standards and specifications that such devices must meet;

(3) The officer shall be responsible for the proper operation of the system, applications, and peripheral devices purchased or developed by the expenditure of state funds. The ownership of such system, applications, and peripheral devices shall be vested with the state; and

(4) All communications and telecommunications services for the intergovernmental data services program and the system shall be secured from the division of communications.

Source: Laws 1993, LB 543, § 4; Laws 1994, LB 1066, § 104; Laws 1998, LB 924, § 40; Laws 2000, LB 654, § 34; R.S.Supp.,2000, § 81-1120.38; Laws 2002, LB 1105, § 333; Laws 2006, LB 921, § 25; Laws 2008, LB823, § 14; Laws 2019, LB298, § 21.

86-564 Budget; duties.

(1) The officer shall submit as part of the biennial budget request of the office a listing of all applications submitted for consideration, cost estimates for development, testing, and full operation of each application, a recommended priority listing of the applications for which an evaluation is completed, and funding recommendations by application contained within the budget request for the division. All application estimates and requests shall be scheduled over ensuing fiscal years such that annual projected costs and completion of application phases to the point of fully operational status can be clearly determined. Local applications shall not be subject to the provisions of this subsection.

(2) All development costs for approved new applications shall be budgeted and appropriated to the division or to participating state agencies at the discretion of the Legislature. Agencies may independently request appropriations for such application development, however such requests shall be subject to the review and prioritization set forth in subdivision (2)(a) of section 86-563, and at such time as the application becomes an authorized application and

funded by the Legislature, the cost of such development shall be appropriated to the division or to participating state agencies. To the extent possible, if office cash or revolving funds or federal funds may be used for application development, such funds may be transferred to the division and expended for application development in order to properly account for all costs associated with application development.

Source: Laws 2002, LB 1105, § 334; Laws 2006, LB 921, § 26; Laws 2008, LB823, § 15.

86-565 Rules and regulations.

The officer may adopt and promulgate rules, regulations, guidelines, and procedures to carry out sections 86-563 and 86-564.

Source: Laws 2002, LB 1105, § 335; Laws 2008, LB823, § 16.

86-566 Repealed. Laws 2019, LB298, § 25.

86-567 Intergovernmental Data Services Program Revolving Fund; created; use; investment.

The Intergovernmental Data Services Program Revolving Fund is created. The fund shall be administered by the division. The fund shall consist of fees paid for services provided to state agencies, political subdivisions, or other governmental or private entities by the division and shall be used to pay for expenses incurred by the division. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1994, LB 1194, § 3; Laws 1995, LB 7, § 121; Laws 2000, LB 654, § 35; R.S.Supp.,2000, § 81-1120.40; Laws 2002, LB 1105, § 337.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

86-568 Miscellaneous cash and revolving funds; authorized.

The budget division of the Department of Administrative Services shall administratively create such cash and revolving funds as may be required to properly account for the receipt of charges for use of applications and the payment of expenses for operation of the system. It is the intent of the Legislature that operations of the system shall be fully financed by user charges with the exception of development costs for new applications and initial costs of operation as applications progress to full operating status and are unable to generate sufficient fee revenue to finance operating costs.

Source: Laws 2002, LB 1105, § 338; Laws 2006, LB 921, § 27.

(d) GEOGRAPHIC INFORMATION SYSTEM

86-569 Findings and intent.

(1) The Legislature finds that Geographic Information Systems are a computer-based technology that captures, stores, analyzes, and displays information about the earth's surface from geographically referenced systems, that an

interest in the systems is rapidly increasing at all levels of government, and that an institutional mechanism is needed to encourage initiatives, coordinate efforts, avoid duplication, seek efficiencies, develop guidelines, policies, and standards for operations and management, promote education and training, and make recommendations so that such technology will benefit the entire state and endure as an analysis tool for decisionmakers.

(2) It is the intent of the Legislature that a Geographic Information Systems Council be created with statewide responsibilities to take an active role in implementing Geographic Information Systems. Such council would help facilitate acquisition of such technology at all levels of government and make recommendations to the Legislature for program initiatives and funding and the fostering of communication, training, and education.

(3) It is the intent of the Legislature that the Geographic Information Systems Council serve as an advisory council to the Nebraska Information Technology Commission and assist the commission in its overall information technology planning and oversight and provide technical advice and recommendations related to the specialized needs of Geographic Information Systems.

Source: Laws 1991, LB 639, § 1; R.S.1943, (1999), § 81-2601; Laws 2002, LB 1105, § 339; Laws 2008, LB823, § 17.

86-570 Geographic Information Systems Council; created; members; appointment; terms; expenses.

(1) The Geographic Information Systems Council is hereby created and shall consist of:

(a) The Chief Information Officer or his or her designee, the chief executive officer or designee of the Department of Health and Human Services, and the director or designee of the Department of Environment and Energy, the Conservation and Survey Division of the University of Nebraska, the Department of Natural Resources, and the Governor's Policy Research Office;

(b) The Director-State Engineer or designee;

(c) The State Surveyor or designee;

(d) The Clerk of the Legislature or designee;

(e) The secretary of the Game and Parks Commission or designee;

(f) The Property Tax Administrator or designee;

(g) One representative of federal agencies appointed by the Governor;

(h) One representative of the natural resources districts nominated by the Nebraska Association of Resources Districts and appointed by the Governor;

(i) One representative of the public power districts appointed by the Governor;

(j) Two representatives of the counties nominated by the Nebraska Association of County Officials and appointed by the Governor;

(k) One representative of the municipalities nominated by the League of Nebraska Municipalities and appointed by the Governor;

(l) Two members at large appointed by the Governor; and

(m) Such other members as nominated by the Nebraska Information Technology Commission and appointed by the Governor.

(2) The appointed members shall serve terms as determined by the Nebraska Information Technology Commission.

(3) The members shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 1991, LB 639, § 2; Laws 1993, LB 3, § 72; Laws 1998, LB 924, § 48; Laws 1999, LB 594, § 71; Laws 2000, LB 900, § 250; R.S.Supp.,2000, § 81-2602; Laws 2002, LB 1105, § 340; Laws 2006, LB 921, § 28; Laws 2007, LB296, § 812; Laws 2008, LB797, § 29; Laws 2008, LB823, § 18; Laws 2019, LB302, § 177; Laws 2020, LB381, § 143.

86-571 Council; officers; advisory committees; meetings; expenses.

(1) The Geographic Information Systems Council shall elect a chairperson from its members and such other officers as the council deems necessary.

(2) As the need arises, advisory committees may be established by the council from various levels of government, industry, or the general public to assist the council. The members of advisory committees shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

(3) The council shall meet quarterly or upon the call of the chairperson.

Source: Laws 1991, LB 639, § 3; Laws 1999, LB 238, § 2; R.S.1943, (1999), § 81-2603; Laws 2002, LB 1105, § 341; Laws 2008, LB823, § 19; Laws 2020, LB381, § 144.

86-572 Council; duties.

The Geographic Information Systems Council shall:

(1) Make recommendations to the Legislature and the Nebraska Information Technology Commission for program initiatives and funding. The recommendations submitted to the Legislature shall be submitted electronically;

(2) Establish guidelines and policies for statewide Geographic Information Systems operations and management to include:

(a) The acquisition, development, maintenance, quality assurance such as standards, access, ownership, cost recovery, and priorities of databases;

(b) The compatibility, acquisition, and communications of hardware and software;

(c) The assessment of needs, identification of scope, setting of standards, and determination of an appropriate enforcement mechanism;

(d) The fostering of training programs and promoting education and information about Geographic Information Systems; and

(e) The promoting of Geographic Information Systems development in the State of Nebraska and providing or coordinating additional support to address Geographic Information Systems issues as such issues arise;

(3) Report to, assist, and advise the Chief Information Officer in setting information technology policy; and

(4) Provide assistance as requested by the commission and support the technical panel created in section 86-521.

Source: Laws 1991, LB 639, § 4; Laws 1998, LB 924, § 49; Laws 1999, LB 446, § 11; R.S.1943, (1999), § 81-2604; Laws 2002, LB 1105, § 342; Laws 2005, LB 343, § 11; Laws 2008, LB823, § 20; Laws 2012, LB782, § 247.

86-573 Council; report.

The Geographic Information Systems Council shall provide a report of its activities to the Nebraska Information Technology Commission for inclusion in the biannual progress report submitted to the Governor and the Legislature by the commission pursuant to section 86-518.

Source: Laws 1991, LB 639, § 5; Laws 1998, LB 924, § 50; R.S.1943, (1999), § 81-2605; Laws 2002, LB 1105, § 343; Laws 2008, LB823, § 21.

(e) PUBLICLY OWNED DARK FIBER

86-574 Dark fiber, defined.

For purposes of sections 86-574 to 86-578, dark fiber means any unused fiber optic cable through which no light is transmitted or any installed fiber optic cable not carrying a signal.

Source: Laws 2001, LB 827, § 1; R.S.Supp.,2001, § 86-2301; Laws 2002, LB 1105, § 344.

86-575 Agency or political subdivision; dark fiber; disposition; powers.

(1) Any agency or political subdivision of the state may:

- (a) Own dark fiber;
- (b) Sell dark fiber pursuant to section 86-576; and
- (c) Lease or license dark fiber pursuant to section 86-577.

(2) Any agency or political subdivision which sells, leases, or licenses its dark fiber pursuant to sections 86-574 to 86-578 shall not be deemed to be providing telecommunications services as defined in section 86-593.

Source: Laws 2001, LB 827, § 2; R.S.Supp.,2001, § 86-2302; Laws 2002, LB 1105, § 345; Laws 2005, LB 645, § 9; Laws 2024, LB61, § 6. Effective date July 19, 2024.

Under former law, subsection (2) of this section is preempted by federal law and is unconstitutional. In re Application of Lincoln Electric System, 265 Neb. 70, 655 N.W.2d 363 (2003).

86-576 Agency or political subdivision; dark fiber; sale.

Any agency or political subdivision of the state may sell its dark fiber by any method, including auction, sealed bid, or public sale, which it deems to be most advantageous to the public. The sales agreement may require that the agency or political subdivision be solely responsible for the maintenance of the dark fiber and that the buyer is responsible, on a pro rata basis, for any such maintenance costs.

Source: Laws 2001, LB 827, § 3; R.S.Supp.,2001, § 86-2303; Laws 2002, LB 1105, § 346.

86-577 Agency or political subdivision; dark fiber; lease or license.

(1) For purposes of this section:

(a) Enforceable commitment means a binding legal agreement between an Internet service provider and the federal government or this state by which the Internet service provider receives a grant of federal or state funds in exchange for the Internet service provider deploying broadband service infrastructure to one or more unserved locations and that includes administrative or other penalties if the Internet service provider fails to meet the terms of such agreement; and

(b) Unserved location means a location, as determined in accordance with the Nebraska location fabric broadband access map created by the Nebraska Broadband Office pursuant to section 86-333, where:

(i) Broadband is not available by fiber-optic technology or cable modem or hybrid fiber-coaxial technology at speeds of at least one hundred megabits per second for downloading and at least twenty megabits per second for uploading with a latency sufficient to support real-time, interactive applications; and

(ii) No Internet service provider has an enforceable commitment to make broadband service available at speeds of at least one hundred megabits per second for downloading and at least twenty megabits per second for uploading with a latency sufficient to support real-time, interactive applications.

(2) Any agency or political subdivision of the state may lease or license its dark fiber and related infrastructure under such terms as determined by such agency or political subdivision pursuant to its duly adopted and promulgated rules and regulations, issued orders, written policies, enacted ordinances, or adopted resolutions if:

(a) The lessee or licensee is a certificated telecommunications common carrier or a permitted telecommunications contract carrier pursuant to section 86-128 or an Internet service provider;

(b) The lease or license terms are fair, reasonable, and nondiscriminatory;

(c) All locations where service will be made available pursuant to the lease or license are, at the time the lease or license is filed pursuant to subsection (3) of this section, unserved locations; and

(d) The lease or license complies with this section.

(3)(a) Before a lease or license of dark fiber under this section becomes effective, it shall be filed by the lessee or licensee with the commission, and the lease or license shall become effective upon such filing. The lease or license rate shall be within or above the safe harbor range of market rates established pursuant to subdivision (4)(a) of this section.

(b) Within five days after a lease or license is filed, the commission shall provide notice of the lease or license to all Internet service providers providing service in the counties where any unserved locations subject to the lease or license are located.

(c) Any Internet service provider may challenge a lease or license filed with the commission pursuant to this subsection alleging that such lease or license does not serve an unserved location in violation of subdivision (2)(c) of this section. A provider shall file such challenge with the commission within thirty days after receipt of the notice described in subdivision (b) of this subsection.

The commission shall make a determination regarding such alleged violation within thirty days after the challenge is filed.

(d) If an Internet service provider files a challenge under subdivision (c) of this subsection alleging that a location is not an unserved location and the commission finds that it is an unserved location, the Internet service provider filing such challenge may be prohibited from filing any other challenge pursuant to subdivision (c) of this subsection for a period of two years from the date such challenge was filed.

(4)(a) For the lease or license of dark fiber under this section, the commission shall establish a safe harbor range of market rates for all dark fiber leases or licenses using a competitive price determination comparison. When conducting a competitive price determination comparison, the commission, in its discretion, shall use rate schedules, interconnection agreements, or other documents within its regulatory oversight and shall gather other market rate information as deemed necessary. If a lease or license utilizes rates within or above the safe harbor range, such rates shall be deemed approved.

(b) Revenue obtained by any agency or political subdivision from the lease or license of dark fiber under this section shall only be used for billing, construction, operation, and maintenance costs associated with the lease or license of such dark fiber or for any existing dark fiber or fiber-related infrastructure.

(c) Revenue obtained by any agency or political subdivision from the sale or delivery of electricity shall not be used for billing, construction, operation, or maintenance costs associated with the lease or license of dark fiber under this section.

(5)(a) If a dispute arises between an Internet service provider claiming an enforceable commitment for a location and an Internet service provider seeking to utilize a dark fiber lease or license to serve such location, either party may file a request with the state entity with which there is an enforceable commitment to verify the enforceable commitment. Upon the filing of the request, such state entity shall require, and the Internet service provider claiming the enforceable commitment shall provide, documentation related to the enforceable commitment. The state entity shall review the documentation and make a finding as to the Internet service provider's compliance with the enforceable commitment and the reasonable likelihood of meeting its deployment obligations under the enforceable commitment. All documentation submitted to the state entity under this subdivision shall be deemed confidential and not subject to public disclosure pursuant to sections 84-712 to 84-712.09.

(b) There is no enforceable commitment and a location is considered an unserved location when:

(i) A grant of federal or state funds is forfeited by the Internet service provider for such location;

(ii) The Internet service provider is disqualified by the granting governmental entity from receiving a grant of federal or state funds to deploy broadband service infrastructure to such location; or

(iii) After reviewing documentation submitted pursuant to this subsection, the state entity verifying the enforceable commitment finds that the Internet service

provider is not in compliance with the enforceable commitment or will fail to meet the terms of the enforceable commitment for such location.

Source: Laws 2001, LB 827, § 4; R.S.Supp.,2001, § 86-2304; Laws 2002, LB 1105, § 347; Laws 2020, LB992, § 12; Laws 2024, LB61, § 7; Laws 2024, LB1031, § 6.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB61, section 7, with LB1031, section 6, to reflect all amendments.

Note: Changes made by LB61 became effective July 19, 2024. Changes made by LB1031 became operative April 16, 2024.

86-578 Dark fiber; violation; procedure; appeal.

In an original action concerning a violation of any provision of sections 86-574 to 86-578 by an agency or political subdivision of the state, the Public Service Commission shall have the jurisdiction set forth in section 75-132.01. After all administrative remedies before the Public Service Commission have been exhausted, an appeal may be brought by an interested party. Such appeal shall be in accordance with section 75-136.

Source: Laws 2001, LB 827, § 5; R.S.Supp.,2001, § 86-2305; Laws 2002, LB 1105, § 348; Laws 2003, LB 187, § 32; Laws 2013, LB545, § 15.

(f) INTERNET ENHANCEMENT

86-579 Repealed. Laws 2023, LB818, § 45.

86-580 Repealed. Laws 2020, LB992, § 17.

(g) COUNTY TELEPHONE SYSTEMS

86-581 Repealed. Laws 2005, LB 645, § 11.

86-582 Repealed. Laws 2005, LB 645, § 11.

86-583 Repealed. Laws 2005, LB 645, § 11.

86-584 Repealed. Laws 2005, LB 645, § 11.

86-585 Repealed. Laws 2005, LB 645, § 11.

86-586 Repealed. Laws 2005, LB 645, § 11.

86-587 Repealed. Laws 2005, LB 645, § 11.

86-588 Repealed. Laws 2005, LB 645, § 11.

86-589 Repealed. Laws 2005, LB 645, § 11.

86-590 Repealed. Laws 2005, LB 645, § 11.

86-591 Repealed. Laws 2005, LB 645, § 11.

86-592 Repealed. Laws 2005, LB 645, § 11.

(h) RETAIL OR WHOLESALE SERVICES

86-593 Terms, defined.

For purposes of sections 86-593 to 86-598:

(1) Broadband services means the offering of a capability for high-speed broadband telecommunications capability at a speed or bandwidth in excess of two hundred kilobits per second that enables users to originate and receive high-quality voice, data, and video telecommunications using any technology;

(2) Internet services means the offering of Internet service provider services, providing voice over Internet protocol services, or providing Internet protocol-based video services;

(3) Public power supplier means a public power district, a public power and irrigation district, a municipal electric system, a joint entity formed under the Interlocal Cooperation Act, a joint public agency formed under the Joint Public Agency Act, an agency formed under the Municipal Cooperative Financing Act, or any other governmental entity providing electric service;

(4) Telecommunications has the same meaning as telecommunications defined in section 86-117;

(5) Telecommunications services has the same meaning as telecommunications service defined in section 86-121; and

(6) Video services means the delivery of any subscription video service except those described in section 70-625.

Source: Laws 2005, LB 645, § 1; Laws 2009, LB154, § 22.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

Municipal Cooperative Financing Act, see section 18-2401.

86-594 Agency or political subdivision of state; limitation on power.

(1) Except as provided in the Educational Service Units Act and sections 79-1319, 81-1120.01 to 81-1120.28, 85-401 to 85-411, 85-1501 to 85-1542, and 86-575, an agency or political subdivision of the state that is not a public power supplier shall not provide on a retail or wholesale basis any broadband services, Internet services, telecommunications services, or video services.

(2) The provisions of subsection (1) of this section shall not apply to services which an agency or political subdivision of the state was authorized to provide and was providing prior to January 1, 2005.

Source: Laws 2005, LB 645, § 2; Laws 2021, LB384, § 25.

Cross References

Educational Service Units Act, see section 79-1201.

86-595 Public power supplier; limitation on retail services.

(1) A public power supplier shall not provide on a retail basis any broadband services, Internet services, telecommunications services, or video services.

(2) The provisions of subsection (1) of this section shall not apply to services which a public power supplier was authorized to provide and was providing prior to January 1, 2005.

Source: Laws 2005, LB 645, § 3.

86-596 Repealed. Laws 2014, LB 658, § 4.

86-597 Retail or wholesale service; how construed.

(1) For purposes of sections 86-594 and 86-595, providing a service on a retail or wholesale basis shall not include an agency or political subdivision of the state, whether or not a public power supplier, deploying or utilizing broadband services, Internet services, telecommunications services, or video services, for its own use either individually or jointly through the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act for the internal use and purpose of the agency, political subdivision, or public power supplier or to carry out the public purposes of the agency, political subdivision, or public power supplier.

(2) Nothing in sections 86-593 to 86-598 prohibits or restricts the ability of an agency, political subdivision, or public power supplier from deploying or utilizing broadband services, Internet services, telecommunications services, or video services for the internal use and purpose of the agency, political subdivision, or public power supplier, or to carry out the public purposes of the agency, political subdivision, or public power supplier.

Source: Laws 2005, LB 645, § 5; Laws 2009, LB154, § 23; Laws 2014, LB658, § 1.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

Municipal Cooperative Financing Act, see section 18-2401.

86-598 Sections; how construed.

Except as otherwise provided in section 86-595, nothing in sections 86-593 to 86-598 shall be construed to restrict or expand any authority of a public power supplier as that authority existed prior to September 4, 2005.

Source: Laws 2005, LB 645, § 6; Laws 2009, LB154, § 24; Laws 2014, LB658, § 2.

86-599 Repealed. Laws 2009, LB 154, § 27.

(i) NETWORK NEBRASKA

86-5,100 Network Nebraska; development and maintenance; access; Chief Information Officer; duties; cost; report.

The Chief Information Officer, in partnership with the University of Nebraska, shall develop and maintain a statewide, multipurpose, high capacity, scalable telecommunications network to be called Network Nebraska. The network shall consist of contractual arrangements with providers to meet the demand of state agencies, local governments, and educational entities as defined in section 79-1201.01. Such network shall provide access to a reliable and affordable infrastructure capable of carrying a spectrum of services and applications, including distance education, across the state. The Chief Information Officer shall provide access to each school district, each educational service unit, each community college, each state college, and the University of Nebraska at the earliest feasible date and no later than July 1, 2012. Access may be provided through educational service units or other aggregation points. Participation in Network Nebraska shall not be required for any educational entity. The Chief Information Officer shall aggregate demand for those state

agencies and educational entities choosing to participate and shall reduce costs for participants whenever feasible. The Chief Information Officer shall establish a cost structure based on actual costs, including necessary administrative expenses but not including administrative travel or conference expenses, and shall charge participants according to such cost structure. The Chief Information Officer shall annually provide a detailed report of such costs to each participant and to the Legislative Fiscal Analyst. The report submitted to the Legislative Fiscal Analyst shall be submitted electronically.

Source: Laws 2006, LB 1208, § 30; Laws 2007, LB603, § 33; Laws 2010, LB1071, § 43; Laws 2012, LB782, § 248.

86-5,101 Repealed. Laws 2009, LB 545, § 26.

(j) BROADBAND INTERNET SERVICE INFRASTRUCTURE ACT

86-5,102 Act, how cited.

Sections 86-5,102 to 86-5,108 shall be known and may be cited as the Broadband Internet Service Infrastructure Act.

Source: Laws 2020, LB992, § 1.

86-5,103 Legislative findings.

The Legislature finds and declares that (1) it is in the public interest for commercial broadband suppliers and electric utilities to enter into broadband facility agreements and (2) the use of electric utility easements and electric utility infrastructure for commercial broadband facilities pursuant to a broadband facility agreement does not diminish the value of underlying real estate.

Source: Laws 2020, LB992, § 2.

86-5,104 Terms, defined.

For purposes of the Broadband Internet Service Infrastructure Act:

(1) Attached facility means a broadband facility or a broadband network, or any portion of a broadband network, located substantially:

(a) Aboveground and attached to an electric utility's electric utility infrastructure; or

(b) Underground in an electric utility easement;

(2) Broadband facility agreement means an agreement between an electric utility and a commercial broadband supplier for the use of electric utility infrastructure and electric utility easements for attached facilities;

(3) Commercial broadband service means broadband service as such term is defined in 7 U.S.C. 950bb(b)(1), as such section existed on January 1, 2020, or broadband Internet service;

(4)(a) Commercial broadband supplier means:

(i) A provider of commercial broadband service; or

(ii) A person that directly or indirectly sells, leases, or otherwise transfers an attached facility or a right to install, operate, maintain, or use an attached facility for another person's provision of commercial broadband service or a person that intends to sell, lease, or otherwise transfer an attached facility or a right to install, operate, maintain, or use an attached facility; and

- (b) Commercial broadband supplier does not include an electric utility;
- (5) Electric utility means any entity referred to in subdivision (8) of section 70-601;
- (6) Electric utility easement means a recorded or unrecorded easement, right-of-way, or similar right in or to real property, including prescriptive rights, no matter how acquired, held by an electric utility for the siting of electric utility infrastructure or for the purpose of delivering electric service;
- (7) Electric utility infrastructure means electric utility poles, structures, or other facilities used for the distribution of electric service and street lighting, but does not include poles, structures, or other facilities used for electric transmission service;
- (8) Notice means a written letter substantially complying with the requirements set forth in subdivision (2)(b) of section 86-5,105, which notice shall be deemed delivered on the date postmarked or otherwise time stamped;
- (9) Person means an individual, a firm, a partnership, a company, a corporation, a trust, a limited liability company, an association, a joint venture, or any other legal entity; and
- (10) Property owner means a person with a recorded interest in real property upon which an electric utility easement is located.

Source: Laws 2020, LB992, § 3.

86-5,105 Broadband facility agreement; purpose; contents; notice; electric utility easement; effect; claim for compensation; responsibility for payment; conditions on agreement.

- (1) An electric utility and a commercial broadband supplier may enter into a broadband facility agreement for the use of an electric utility easement or electric utility infrastructure, or both, to:
 - (a) Install, maintain, or own, or permit any commercial broadband supplier to install, maintain, or own, an attached facility for operation by a commercial broadband supplier in providing commercial broadband service; and
 - (b) Lease or otherwise provide to a commercial broadband supplier any excess capacity of attached facilities for purposes of providing commercial broadband service.
- (2)(a) A broadband facility agreement shall contain one of the following with respect to the use of any electric utility easement:
 - (i) A statement that the electric utility has the legal right to authorize the use of the electric utility easement for commercial broadband facilities;
 - (ii) A statement that the commercial broadband supplier has compensated property owners for the use of the electric utility easement for commercial broadband facilities pursuant to subsection (5) of this section; or
 - (iii) A statement that the electric utility has given notice to property owners pursuant to subdivision (2)(b) of this section and the time for making a claim has expired.
- (b) Notice pursuant to this subsection shall:
 - (i) Be sent by certified mail from or on behalf of the electric utility to the property owner at each of the following, as applicable:

(A) The last-known address for the property owner based on the electric utility's records; and

(B) The address listed for the property owner in the records of the office of the county assessor;

(ii) Include the name, address, telephone number, and named point of contact for the electric utility and, if delivered by a commercial broadband supplier designated by the electric utility, the name, address, telephone number, and named point of contact for the designated commercial broadband supplier;

(iii) Include the recording number, if any, of the electric utility easement or recorded memorandum of the electric utility easement;

(iv) Include:

(A) A reference to the Broadband Internet Service Infrastructure Act; and

(B) A statement that the electric utility intends to enter into a broadband facility agreement, within ninety days after the notice is delivered, for the use of the electric utility easement with the commercial broadband supplier named in the notice;

(v) Give an estimated time for the start of installation or construction with regard to any new installation or construction that is to occur in connection with the broadband facility agreement; and

(vi) Include a statement regarding the statute of limitations for the property owner to file a claim with respect to the electric utility's exercise of action.

(3) The terms and conditions of a written electric utility easement apply to the use of the electric utility easement for commercial broadband facilities pursuant to a broadband facility agreement. A prohibition on aboveground electric utility infrastructure contained within a written electric utility easement constitutes a prohibition on aboveground attached facilities. An electric utility or its designated commercial broadband supplier shall comply with any notice requirements contained in a written electric utility easement held by the electric utility relating to entering the real property subject to the electric utility easement or commencing any construction or installation on the real property.

(4) Nothing in this section requires an electric utility to comply with subdivision (2)(b) of this section in order to take any action or exercise any rights under an electric utility easement that is already permitted within the scope of the electric utility easement. An electric utility easement shall be liberally construed in favor of its use for commercial broadband facilities pursuant to a broadband facility agreement.

(5) If, within ninety days after a notice pursuant to this section is sent by an electric utility or a designated commercial broadband supplier acting on the electric utility's behalf, a property owner submits a written claim for compensation relating to the use of an electric utility easement in connection with a broadband facility agreement, then the commercial broadband supplier, through communications handled by the electric utility, shall be responsible for the payment of compensation to the property owner for such claim, and the electric utility shall cooperate with the commercial broadband supplier in connection with the resolution of the claim.

(6) The electric utility shall not be required to enter into a broadband facility agreement until one of the following events occurs:

(a) The time period set forth in subsection (5) of this section has expired without a written claim from property owners of record;

(b) Any written claim for compensation by a property owner pursuant to this subsection has been resolved by a written instrument that shall be recorded with the register of deeds of the county where the electric utility easement is located; or

(c) The statute of limitations set forth in section 86-5,106 has expired.

(7) This section shall not apply to railroad right-of-way or electric utility easements in or to railroad right-of-way property. Crossings of railroad rights-of-way by telecommunications carriers are governed by section 86-164.

Source: Laws 2020, LB992, § 4.

86-5,106 Electric utility easement; use for commercial broadband facilities; claim or cause of action; limitations; exceptions; acceptance of damage award; effect.

(1)(a) No cause of action against an electric utility or a commercial broadband supplier concerning the use of an electric utility easement for commercial broadband facilities pursuant to a broadband facility agreement may be brought by or on behalf of a property owner more than two years after the later of:

(i) November 14, 2020; or

(ii) The date of mailing of notice by an electric utility or a designated commercial broadband supplier acting on the electric utility's behalf pursuant to subsection (5) of section 86-5,105.

(b) Subdivision (1)(a) of this section does not apply to a cause of action based on:

(i) Physical damage to property;

(ii) Injury to natural persons; or

(iii) Breach of the terms and conditions of a written electric easement as the terms and conditions apply in accordance with subsection (3) of section 86-5,105.

(c) Nothing in this section extends the statute of limitations applicable to a claim or revives an expired claim.

(2) A cause of action to which subdivision (1)(a) of this section applies shall not be brought against a commercial broadband supplier for notice provided by the commercial broadband supplier on behalf of an electric utility under subdivision (2)(b) of section 86-5,105. Nothing in this subsection prohibits an electric utility and a commercial broadband supplier from contracting to allocate liability for notice required under subdivision (2)(b) of section 86-5,105.

(3) If a property owner brings a trespass claim, inverse condemnation claim, or any other claim or cause of action to which subdivision (1)(a) of this section applies for an electric utility's or commercial broadband supplier's performance of actions described in subdivision (1)(a) or (1)(b) of section 86-5,105, the following applies to the claim or cause of action:

(a) The measure of damages for all claims or causes of action to which subdivision (1)(a) of this section applies, taken together, is the fair market value of the reduction in value of the property owner's interest in the real property. In determining or providing the fair market value under this subdivision (a):

(i) The following shall not be used and are not admissible as evidence in any proceeding:

(A) Profits, fees, or revenue derived from the attached facilities; or

(B) The rental value of the real property interest or the electric utility easement, including the rental value of any attached facilities or an assembled broadband corridor; and

(ii) Consideration shall be given to any increase in value to the real property interest resulting from the availability of commercial broadband service to the real property underlying the real property interest that arises from the installation of attached facilities;

(b) The property owner shall make reasonable accommodations for the electric utility or commercial broadband supplier to perform an appraisal or inspection of the real property within ninety days following any written request for an appraisal or inspection. If a property owner fails to make such accommodations, the electric utility or commercial broadband supplier has no further liability to the property owner with respect to such claim or cause of action. The electric utility or commercial broadband supplier shall promptly provide to the property owner a copy of any appraisal performed pursuant to this subdivision (b);

(c) Any damages for any claims or causes of action to which subdivision (1)(a) of this section applies:

(i) Are limited to those damages that existed at the time the electric utility or commercial broadband supplier first performed the actions; and

(ii) Shall not be deemed to continue, accrue, or accumulate; and

(d) With regard to a claim or cause of action to which subdivision (1)(a) of this section applies:

(i) A property owner is not entitled to reimbursement from an electric utility or commercial broadband supplier for the cost of any appraisal, attorney's fees, or award for special, consequential, indirect, or punitive damages; and

(ii) For purposes of this subdivision (d), any action or failure to act by an electric utility or a commercial broadband supplier in furtherance of the electric utility's or commercial broadband supplier's exercise of action set forth in subsection (1) of section 86-5,105 shall not be deemed negligence or willful misconduct.

(4) By accepting a damage award for any claim or cause of action to which subdivision (1)(a) of this section applies, a property owner shall be deemed to have granted an increase in the scope of the electric utility easement, equal in duration to the term of the electric utility easement and subject to this section, to the extent of the property owner's rights in the real property, for all of the uses of the real property and actions set forth in subsection (1) of section 86-5,105.

Source: Laws 2020, LB992, § 5.

86-5,107 Electric utility; broadband facility agreement; requirements; electric service; avoid material interference; effect of act.

(1) In entering into a broadband facility agreement, an electric utility shall:

(a) Not discriminate among commercial broadband suppliers in offering or granting rights to install or attach any attached facilities; or

(b) Charge fees that are nondiscriminatory among commercial broadband suppliers for a substantially similar lease or use of the capacity of attached facilities owned or controlled by the electric utility, but only to the extent an electric utility chooses, in its sole discretion, to offer the lease or use to a particular commercial broadband supplier.

(2) Nothing in this section requires an electric utility to offer or grant a right to access or use an electric utility easement or to use attached facilities or electric utility infrastructure owned or controlled by the electric utility in a manner that would, in the electric utility's sole discretion, materially interfere with the electric utility's construction, maintenance, or use of any electric utility infrastructure for the provision of electric service.

(3) Nothing in the Broadband Internet Service Infrastructure Act:

(a) Is intended to subject an electric utility to regulation by the Federal Communications Commission;

(b) Constitutes an exercise of, or an obligation or intention to exercise, the right of the state under 47 U.S.C. 224(c), as such section existed on January 1, 2020, to regulate the rates, terms, and conditions for pole attachments as defined in 47 U.S.C. 224(a)(4), as such section existed on January 1, 2020;

(c) Constitutes a certification, or an obligation or intention to certify, to the Federal Communications Commission under 47 U.S.C. 224, as such section existed on January 1, 2020;

(d) Prevents the parties involved from filing a claim or cause of action in any court of competent jurisdiction for any dispute arising under the Broadband Internet Service Infrastructure Act; or

(e) In any way affects the authority of electric utilities to enter into agreements with any party, outside the requirements of the Broadband Internet Service Infrastructure Act, relating to the use of its easements or electric system facilities.

Source: Laws 2020, LB992, § 6.

86-5,108 Act; applicability.

The Broadband Internet Service Infrastructure Act does not apply to railroad right-of-way or electric utility easements in or to railroad right-of-way property. Crossings of railroad rights-of-way by telecommunications carriers are governed by section 86-164.

Source: Laws 2020, LB992, § 7.

(k) BROADBAND SERVICES

86-5,109 Legislative declaration; federal funds; scalability requirements; broadband infrastructure; requirements.

The Legislature declares that it is in the public interest for the state, cities of all classes, villages, and counties to expend federal funds received for the creation and expansion of high-speed broadband services throughout the state. Any political subdivision that directly receives federal funds used for broadband service enhancement purposes shall ensure that the construction of any new infrastructure to provide broadband service is scalable to one hundred megabits per second or greater for downloading and one hundred megabits per

second or greater for uploading. Such federal funds shall not be used to serve locations currently capable of receiving broadband service at a minimum download speed of one hundred megabits per second and a minimum upload speed of twenty megabits per second that enables users to originate and receive high-quality voice, data, graphics, and video communications using any technology. Any broadband infrastructure built with federal funds is subject to section 86-594.

Source: Laws 2021, LB338, § 8.

ARTICLE 6

ELECTRONIC INFORMATION

(a) TELEGRAPH COMPANIES

Section

- 86-601. Telegraph companies; laws governing.
- 86-602. Telegraph companies and press associations; statement; filing.
- 86-603. Certificate of authority; fee; issuance; effect.
- 86-604. Telegraph companies and press associations; statement; failure to register; penalty.
- 86-605. Dispatches; transmission; duties.
- 86-606. Dispatches; unlawful delay or disclosure; penalty.
- 86-607. Dispatches; rates; violation; penalty.
- 86-608. Dispatches; duties; violation; penalty.
- 86-609. Dispatches; unlawful delay or refusal; nondelivery of notice; violation; penalty.
- 86-610. Dispatches; nondelivery; mistakes; liability.

(b) DIGITAL SIGNATURE

- 86-611. Digital and electronic signatures and electronic communications authorized; rules and regulations.

(c) UNIFORM ELECTRONIC TRANSACTIONS ACT

- 86-612. Act, how cited.
- 86-613. Definitions, where found.
- 86-614. Agreement, defined.
- 86-615. Automated transaction, defined.
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- 86-634. Legal recognition of electronic records, electronic signatures, and electronic contracts.
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- 86-637. Effect of change or error.
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Section

- 86-639. Retention of electronic records; originals.
- 86-640. Admissibility in evidence.
- 86-641. Automated transaction.
- 86-642. Time and place of sending and receipt.
- 86-643. Transferable records.

(d) ELECTRONIC POSTMARK

- 86-644. Electronic postmark; use by state agency; authorized.

(a) TELEGRAPH COMPANIES

86-601 Telegraph companies; laws governing.

All associations organized or incorporated under the laws of this state, by and under authority of any other state, or by authority of the United States, whose object and purpose is the transmission, collection, and distribution of dispatches by telegraph, are subject to sections 86-602 to 86-610.

Source: Laws 1883, c. 80, § 1, p. 321; R.S.1913, § 7395; C.S.1922, § 7070; C.S.1929, § 86-101; R.S.1943, § 86-101; R.S.1943, (1999), § 86-101; Laws 2002, LB 1105, § 363.

86-602 Telegraph companies and press associations; statement; filing.

Every telegraph company and every press association or corporation engaged in the transmission, collection, distribution, or delivery of telegraph dispatches, either for private use or for publication in newspapers, shall file in the office of the Secretary of State a statement, a copy of its articles of incorporation or other articles of organization, and a copy of its regulations and bylaws. The statement shall be certified under oath by the president and secretary or by two of the officers and shall contain: (1) The name of the association; (2) the amount of capital invested; and (3) the character of its business.

Source: Laws 1883, c. 80, § 2, p. 322; R.S.1913, § 7396; C.S.1922, § 7071; C.S.1929, § 86-102; R.S.1943, § 86-102; Laws 1993, LB 121, § 549; R.S.1943, (1999), § 86-102; Laws 2002, LB 1105, § 364.

86-603 Certificate of authority; fee; issuance; effect.

The Secretary of State shall issue a certificate to every company, association, or corporation that has filed the statement required by section 86-602 and has paid a filing fee of five dollars. The certificate conveys authority to such company, association, or corporation to conduct its business within this state under sections 86-607 to 86-610.

Source: Laws 1883, c. 80, § 3, p. 322; R.S.1913, § 7397; C.S.1922, § 7072; C.S.1929, § 86-103; R.S.1943, § 86-103; R.S.1943, (1999), § 86-103; Laws 2002, LB 1105, § 365.

86-604 Telegraph companies and press associations; statement; failure to register; penalty.

Every telegraph company, and press association or corporation engaged in the transmission, collection, and delivery of telegraph dispatches, that refuses or fails to comply with section 86-602 shall forfeit its right to carry on the collection, transmission, and delivery of dispatches for publication or for private use and shall forfeit to the county where such business is conducted one

thousand dollars for each violation of sections 86-601 to 86-603. Each day a violation continues constitutes a separate violation. The county attorney shall prosecute such violations at the expense of the county where the violations occurred.

Source: Laws 1883, c. 80, § 4, p. 322; R.S.1913, § 7398; C.S.1922, § 7073; C.S.1929, § 86-104; R.S.1943, § 86-104; R.S.1943, (1999), § 86-104; Laws 2002, LB 1105, § 366.

86-605 Dispatches; transmission; duties.

All telegraph companies and press associations or corporations operating telegraph lines in this state shall (1) transmit and forward all dispatches directed to newspapers, private individuals, or public officers with impartiality in the order in which they are received and (2) use due diligence in their delivery without discrimination as to any person or party to whom they may be directed.

Source: Laws 1883, c. 80, § 5, p. 323; R.S.1913, § 7399; C.S.1922, § 7074; C.S.1929, § 86-105; R.S.1943, § 86-105; R.S.1943, (1999), § 86-105; Laws 2002, LB 1105, § 367.

A telegraph company is liable for failure to deliver message promptly when contents show importance. Western Union Tel. Co. v. Church, 3 Neb. Unof. 22, 90 N.W. 878 (1902).

86-606 Dispatches; unlawful delay or disclosure; penalty.

(1) It is unlawful for any officer or employee of any telegraph company, or press association or corporation engaged in the transmission of dispatches, to willfully delay the transmission or delivery of any dispatch, or to willfully divulge the contents of any dispatch entrusted to his or her care, to any person except the party entitled to receive such dispatch.

(2) A violation of this section is a Class III misdemeanor.

Source: Laws 1883, c. 80, § 6, p. 323; R.S.1913, § 7400; C.S.1922, § 7075; C.S.1929, § 86-106; R.S.1943, § 86-106; Laws 1977, LB 39, § 320; R.S.1943, (1999), § 86-106; Laws 2002, LB 1105, § 368.

86-607 Dispatches; rates; violation; penalty.

(1) Except as otherwise provided in this section, it is unlawful for any telegraph company, its agents, or its operators to demand, charge, or receive from any individual, association, or corporation a greater sum for the transmission and delivery of any telegram or message over a given distance than it demands, charges, or receives for the transmission and delivery of any telegram or message containing an equal number of words over a greater distance. A dispatch transmitted during the night and a dispatch for publication in a newspaper may be forwarded and delivered at reduced rates if such rates are uniform for the same service.

(2) It is unlawful for any telegraph company, or press association or organization engaged in the business of forwarding dispatches by telegraph, to demand, collect, or receive from any publisher or proprietor of a newspaper any greater sum for a given service than it demands, charges, or collects from the publisher or proprietor of any other newspaper for a like service.

(3) A violation of this section is a Class II misdemeanor. In addition, such telegraph company or press association or organization shall be liable for all damages sustained by the person or party as a result of such discrimination.

Source: Laws 1883, c. 80, § 7, p. 323; R.S.1913, § 7401; C.S.1922, § 7076; C.S.1929, § 86-107; R.S.1943, § 86-107; R.S.1943, (1999), § 86-107; Laws 2002, LB 1105, § 369.

In order to constitute an unjust discrimination, there must be a difference in rates under substantially similar circumstances as to services. *Western Union Tel. Co. v. Call Pub. Co.*, 58 Neb. 192, 78 N.W. 519 (1899), 44 Neb. 326, 62 N.W. 506 (1895).

86-608 Dispatches; duties; violation; penalty.

(1) Any telegraph company, and press association or organization engaged in the transmission, collection, distribution, or publication of dispatches, shall afford the same and equal facilities to all publishers of newspapers and shall furnish the dispatches collected by them for publication in any given locality to all newspapers published in such locality on the same conditions as to payment and delivery.

(2) A violation of this section is a Class II misdemeanor. In addition, such telegraph company or press association or organization and its members shall be jointly and severally liable for all damages sustained by the owner of any newspaper as a result of such discrimination.

Source: Laws 1883, c. 80, § 9, p. 324; R.S.1913, § 7403; C.S.1922, § 7078; C.S.1929, § 86-109; R.S.1943, § 86-109; R.S.1943, (1999), § 86-109; Laws 2002, LB 1105, § 370.

86-609 Dispatches; unlawful delay or refusal; nondelivery of notice; violation; penalty.

(1) It is unlawful for any telegraph company, any press association or organization engaged in the transmission of telegraph dispatches from any place in this state, or the person having the control or management of the company, association, or organization, to refuse to receive a dispatch from any person, corporation, or telegraph company or to refuse to transmit the dispatch with fidelity and without unreasonable delay.

(2) Upon application to send a dispatch, any telegraph company or its operator, agent, clerk, or servant shall inform the applicant, and write upon the dispatch if required by him or her, that the line is not in working order or that the dispatches already on hand for transmission will occupy the line so that the dispatch offered cannot be transmitted within the time required, if applicable. It is unlawful for any telegraph company or its operator, agent, clerk, or servant to omit or to intentionally give false information to the applicant in relation to the time within which the dispatch offered may be sent.

(3) A violation of this section is a Class V misdemeanor. In addition, such company, association, corporation, or person shall be liable for damages to the person or corporation sustaining a loss by reason of such refusal or failure.

Source: Laws 1883, c. 80, § 11, p. 324; R.S.1913, § 7405; C.S.1922, § 7080; C.S.1929, § 86-111; R.S.1943, § 86-111; R.S.1943, (1999), § 86-111; Laws 2002, LB 1105, § 371.

86-610 Dispatches; nondelivery; mistakes; liability.

Any telegraph company is liable for the nondelivery of dispatches entrusted to its care, for mistakes in transmitting messages made by its employee or agent, and for damages resulting from a failure to perform any other duty required by law. Such telegraph company shall not be exempted from such liability by reason of any clause, condition, or agreement contained in its printed blanks.

Source: Laws 1883, c. 80, § 12, p. 325; R.S.1913, § 7406; C.S.1922, § 7081; C.S.1929, § 86-112; R.S.1943, § 86-112; R.S.1943, (1999), § 86-112; Laws 2002, LB 1105, § 372.

Message was sufficient on its face to apprise company that failure to transmit promptly might result in substantial loss, and recovery of damages was affirmed. *C. B. Nash Co. v. Western Union Tel. Co.*, 98 Neb. 210, 152 N.W. 387 (1915).

Company is liable for failure to transmit correctly and deliver message, notwithstanding agreement printed on blank to contrary. *American Express Co. v. Postal Telegraph-Cable Co.*, 97 Neb. 701, 151 N.W. 240 (1915); *Western Union Tel. Co. v. Beals*, 56 Neb. 415, 76 N.W. 903 (1898); *Pacific Tel. Co. v. Underwood*, 37 Neb. 315, 55 N.W. 1057 (1893).

Unless the language of the message itself discloses that special loss will probably result from failure to transmit, measure of damages will not exceed cost of transmission. *Smith v. Western Union Tel. Co.*, 80 Neb. 395, 114 N.W. 288 (1907).

Where telegraph company failed to deliver message resulting in loss of sale of corn, measure of damages was difference between contract price and its market value. *Western Union Tel. Co. v. Nye & Schneider Co.*, 70 Neb. 251, 97 N.W. 305 (1903).

Telephone company was liable for loss of profits which would have been made on exchange of land for failure to deliver message. *Western Union Tel. Co. v. Wilhelm*, 48 Neb. 910, 67 N.W. 870 (1896).

Provisions are obligatory upon all telegraph companies in the state. *Western Union Tel. Co. v. Kemp*, 44 Neb. 194, 62 N.W. 451 (1895).

Section 86-112 (recodified in 2002 as section 86-610) is constitutional. *Western Union Tel. Co. v. Lowrey*, 32 Neb. 732, 49 N.W. 707 (1891).

Requirements are reasonable, and cover interstate messages. *Kemp v. Western Union Tel. Co.*, 28 Neb. 661, 44 N.W. 1064 (1890).

Copy of telegram received at office of destination is not admissible in evidence without proof of authenticity. *Yeiser v. Cathers*, 5 Neb. Unof. 204, 97 N.W. 840 (1903).

(b) DIGITAL SIGNATURE

86-611 Digital and electronic signatures and electronic communications authorized; rules and regulations.

(1) It is the intent of the Legislature to promote economic growth and the efficient operation of business and government in Nebraska through the electronic exchange of information and legally binding electronic transactions. In order to facilitate the electronic exchange of information, Nebraska must establish means to ensure that electronic transactions are legally binding and enforceable, while ensuring that security measures are in place to prevent opportunities for fraud and misuse.

(2) In any written communication in which a signature is required or used, any party to the communication may affix a signature by use of a digital signature that complies with the requirements of this section. The use of a digital signature shall have the same force and effect as the use of a manual signature if and only if it embodies all of the following attributes:

- (a) It is unique to the person using it;
- (b) It is capable of verification;
- (c) It is under the sole control of the person using it;
- (d) It is linked to data in such a manner that if the data is changed, the digital signature is invalidated; and
- (e) It conforms to rules and regulations adopted and promulgated by the Secretary of State.

(3) In any communication in which a signature is required or used, a state agency or political subdivision may accept a digital signature or an electronic signature and may accept the communication in electronic format. Any use of a

digital signature, an electronic signature, or an electronic communication by a court is subject to the rules of the Supreme Court.

(4) The Secretary of State shall adopt and promulgate rules and regulations to carry out this section which:

(a) Identify and define the type of signature which may be used in the electronic communications governed by the rules and regulations;

(b) Identify and define the type of electronic communications for which a digital signature or an electronic signature may be used; and

(c) Provide a degree of security reasonably related to the risks and consequences of fraud or misuse for the type of electronic communication which, at a minimum, shall require the maintenance of an audit trail of the assignment or approval and the use of the unique access code or unique electronic identifier.

(5) This section shall not be construed to invalidate digital signatures, electronic signatures, or electronic communications which are valid under any other applicable law.

(6) Unless otherwise provided by law, the use or acceptance of a digital signature or an electronic signature shall be at the option of the parties to the communication. This section shall not be construed to require a person to use or permit the use of a digital signature or electronic signature.

(7) In developing the rules and regulations, the Secretary of State shall seek the advice of public and private entities, including the Department of Administrative Services.

(8) The register of deeds or county clerk of each county shall provide one or more electronic recording services for the purpose of accepting electronically submitted real estate documents for recording.

(9) For purposes of this section:

(a) Electronic signature means a unique access code or other unique electronic identifier assigned or approved by the state agency for use in communications with the state agency;

(b) Digital signature means an electronic identifier, created by computer, intended by the person using it to have the same force and effect as a manual signature; and

(c) State agency means any agency, board, court, or constitutional officer of the executive, judicial, and legislative branches of state government, except individual members of the Legislature.

Source: Laws 1998, LB 924, § 69; Laws 2000, LB 628, § 4; R.S.Supp.,2000, § 86-1701; Laws 2002, LB 1105, § 373; Laws 2019, LB186, § 25.

(c) UNIFORM ELECTRONIC TRANSACTIONS ACT

86-612 Act, how cited.

Sections 86-612 to 86-643 shall be known and may be cited as the Uniform Electronic Transactions Act.

Source: Laws 2000, LB 929, § 1; R.S.Supp.,2000, § 86-2101; Laws 2002, LB 1105, § 374.

86-613 Definitions, where found.

For purposes of the Uniform Electronic Transactions Act, the definitions found in sections 86-614 to 86-629 apply.

Source: Laws 2000, LB 929, § 2; R.S.Supp.,2000, § 86-2102; Laws 2002, LB 1105, § 375.

86-614 Agreement, defined.

Agreement means the bargain of the parties in fact as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.

Source: Laws 2002, LB 1105, § 376.

86-615 Automated transaction, defined.

Automated transaction means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.

Source: Laws 2002, LB 1105, § 377.

86-616 Computer program, defined.

Computer program means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.

Source: Laws 2002, LB 1105, § 378.

86-617 Contract, defined.

Contract means the total legal obligation resulting from the parties' agreement as affected by the Uniform Electronic Transactions Act and other applicable law.

Source: Laws 2002, LB 1105, § 379.

86-618 Electronic, defined.

Electronic means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

Source: Laws 2002, LB 1105, § 380.

86-619 Electronic agent, defined.

Electronic agent means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances, in whole or in part, without review or action by an individual.

Source: Laws 2002, LB 1105, § 381.

86-620 Electronic record, defined.

Electronic record means a record created, generated, sent, communicated, received, or stored by electronic means.

Source: Laws 2002, LB 1105, § 382.

86-621 Electronic signature, defined.

Electronic signature means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

Source: Laws 2002, LB 1105, § 383.

86-622 Governmental agency, defined.

Governmental agency means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or a county, municipality, or other political subdivision of a state.

Source: Laws 2002, LB 1105, § 384.

86-623 Information, defined.

Information means data, text, images, sounds, codes, computer programs, software, databases, or the like.

Source: Laws 2002, LB 1105, § 385.

86-624 Information processing system, defined.

Information processing system means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

Source: Laws 2002, LB 1105, § 386.

86-625 Person, defined.

Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.

Source: Laws 2002, LB 1105, § 387.

86-626 Record, defined.

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 2002, LB 1105, § 388.

86-627 Security procedure, defined.

Security procedure means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. Security procedure includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

Source: Laws 2002, LB 1105, § 389.

86-628 State, defined.

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. State includes an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state.

Source: Laws 2002, LB 1105, § 390.

86-629 Transaction, defined.

Transaction means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.

Source: Laws 2002, LB 1105, § 391.

86-630 Applicability of act.

(1) Except as otherwise provided in subsection (2) of this section, the Uniform Electronic Transactions Act applies to electronic records and electronic signatures relating to a transaction.

(2) The act does not apply to a transaction to the extent it is governed by:

(a) A law governing the creation and execution of wills, codicils, or testamentary trusts; or

(b) The Uniform Commercial Code other than article 2 and article 2A.

(3) The act applies to an electronic record or electronic signature otherwise excluded from the application of the act under subsection (2) of this section to the extent it is governed by a law other than those specified in subsection (2) of this section.

(4) A transaction subject to the act is also subject to other applicable substantive law.

Source: Laws 2000, LB 929, § 3; R.S.Supp.,2000, § 86-2103; Laws 2002, LB 1105, § 392; Laws 2005, LB 570, § 4.

86-631 Prospective application.

The Uniform Electronic Transactions Act applies to any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after July 13, 2000.

Source: Laws 2000, LB 929, § 4; R.S.Supp.,2000, § 86-2104; Laws 2002, LB 1105, § 393.

86-632 Use of electronic records and electronic signatures; variation by agreement.

(1) The Uniform Electronic Transactions Act does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(2) The act applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

(3) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.

(4) Except as otherwise provided in the act, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of the act of the words “unless otherwise agreed”, or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

(5) Whether an electronic record or electronic signature has legal consequences is determined by the act and other applicable law.

Source: Laws 2000, LB 929, § 5; R.S.Supp.,2000, § 86-2105; Laws 2002, LB 1105, § 394.

86-633 Construction and application.

The Uniform Electronic Transactions Act must be construed and applied:

- (1) To facilitate electronic transactions consistent with other applicable law;
- (2) To be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and
- (3) To effectuate its general purpose to make uniform the law with respect to the subject of the act among states enacting it.

Source: Laws 2000, LB 929, § 6; R.S.Supp.,2000, § 86-2106; Laws 2002, LB 1105, § 395.

86-634 Legal recognition of electronic records, electronic signatures, and electronic contracts.

(1) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(2) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(3) If a law requires a record to be in writing, an electronic record satisfies the law.

(4) If a law requires a signature, an electronic signature satisfies the law.

Source: Laws 2000, LB 929, § 7; R.S.Supp.,2000, § 86-2107; Laws 2002, LB 1105, § 396.

86-635 Provision of information in writing; presentation of records.

(1) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

(2) If a law other than the Uniform Electronic Transactions Act requires a record to be posted or displayed in a certain manner; to be sent, communicated, or transmitted by a specified method; or to contain information that is formatted in a certain manner, the following rules apply:

(a) The record must be posted or displayed in the manner specified in the other law;

(b) Except as otherwise provided in subdivision (4)(b) of this section, the record must be sent, communicated, or transmitted by the method specified in the other law; and

(c) The record must contain the information formatted in the manner specified in the other law.

(3) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

(4) The requirements of this section may not be varied by agreement, but:

(a) To the extent a law other than the act requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under subsection (1) of this section that the information be in the form of an electronic record capable of retention may also be varied by agreement; and

(b) A requirement under a law other than the act to send, communicate, or transmit a record by first-class mail, postage prepaid or regular United States mail, may be varied by agreement to the extent permitted by the other law.

Source: Laws 2000, LB 929, § 8; R.S.Supp.,2000, § 86-2108; Laws 2002, LB 1105, § 397.

86-636 Attribution and effect of electronic record and electronic signature.

(1) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(2) The effect of an electronic record or electronic signature attributed to a person under subsection (1) of this section is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

Source: Laws 2000, LB 929, § 9; R.S.Supp.,2000, § 86-2109; Laws 2002, LB 1105, § 398.

86-637 Effect of change or error.

If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

(1) If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record;

(2) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:

(a) Promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;

(b) Takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

(c) Has not used or received any benefit or value from the consideration, if any, received from the other person;

(3) If neither subdivision (1) or subdivision (2) of this section applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any; and

(4) Subdivisions (2) and (3) of this section may not be varied by agreement.

Source: Laws 2000, LB 929, § 10; R.S.Supp.,2000, § 86-2110; Laws 2002, LB 1105, § 399.

86-638 Notarization and acknowledgment.

If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

Source: Laws 2000, LB 929, § 11; R.S.Supp.,2000, § 86-2111; Laws 2002, LB 1105, § 400.

86-639 Retention of electronic records; originals.

(1) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:

(a) Accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and

(b) Remains accessible for later reference.

(2) A requirement to retain a record in accordance with subsection (1) of this section does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.

(3) A person may satisfy subsection (1) of this section by using the services of another person if the requirements of that subsection are satisfied.

(4) If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with subsection (1) of this section.

(5) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection (1) of this section.

(6) A record retained as an electronic record in accordance with subsection (1) of this section satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after July 13, 2000, specifically prohibits the use of an electronic record for the specified purpose.

(7) This section does not preclude a governmental agency of this state from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

Source: Laws 2000, LB 929, § 12; R.S.Supp.,2000, § 86-2112; Laws 2002, LB 1105, § 401.

86-640 Admissibility in evidence.

In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

Source: Laws 2000, LB 929, § 13; R.S.Supp.,2000, § 86-2113; Laws 2002, LB 1105, § 402.

86-641 Automated transaction.

In an automated transaction, the following rules apply:

(1) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements;

(2) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance; and

(3) The terms of the contract are determined by the substantive law applicable to it.

Source: Laws 2000, LB 929, § 14; R.S.Supp.,2000, § 86-2114; Laws 2002, LB 1105, § 403.

86-642 Time and place of sending and receipt.

(1) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

(a) Is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;

(b) Is in a form capable of being processed by that system; and

(c) Enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.

(2) Unless otherwise agreed between a sender and the recipient, an electronic record is received when:

(a) It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(b) It is in a form capable of being processed by that system.

(3) Subsection (2) of this section applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under subsection (4) of this section.

(4) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection, the following rules apply:

(a) If the sender or recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction; and

(b) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

(5) An electronic record is received under subsection (2) of this section even if no individual is aware of its receipt.

(6) Receipt of an electronic acknowledgment from an information processing system described in subsection (2) of this section establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

(7) If a person is aware that an electronic record purportedly sent under subsection (1) of this section, or purportedly received under subsection (2) of this section, was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection may not be varied by agreement.

Source: Laws 2000, LB 929, § 15; R.S.Supp.,2000, § 86-2115; Laws 2002, LB 1105, § 404.

86-643 Transferable records.

(1) In this section, transferable record means an electronic record that:

(a) Would be a note under article 3 of the Uniform Commercial Code or a document under article 7 of the Uniform Commercial Code if the electronic record were in writing; and

(b) The issuer of the electronic record expressly has agreed is a transferable record.

(2) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(3) A system satisfies subsection (2) of this section, and a person is deemed to have control of a transferable record, if the transferable record is created, stored, and assigned in such a manner that:

(a) A single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in subdivisions (d), (e), and (f) of this subsection, unalterable;

(b) The authoritative copy identifies the person asserting control as:

(i) The person to which the transferable record was issued; or

(ii) If the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(c) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(d) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(e) 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

(f) Any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(4)(a) Prior to July 1, 2001, except as otherwise agreed, a person having control of a transferable record is the holder, as defined in subdivision (21) of section 1-201, Uniform Commercial Code, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code, including, if the applicable statutory requirements under subsection (a) of section 3-302, Uniform Commercial Code, or section 7-501 or 9-308, Uniform Commercial Code, are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and indorsement are not required to obtain or exercise any of the rights under this subdivision.

(b) On or after July 1, 2001, except as otherwise agreed, a person having control of a transferable record is the holder, as defined in subdivision (21) of section 1-201, Uniform Commercial Code, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code, including, if the applicable statutory requirements under subsection (a) of section 3-302, Uniform Commercial Code, or section 7-501 or 9-330, Uniform Commercial Code, are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and indorsement are not required to obtain or exercise any of the rights under this subdivision.

(5) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under the Uniform Commercial Code.

(6) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

Source: Laws 2000, LB 929, § 16; R.S.Supp.,2000, § 86-2116; Laws 2002, LB 1105, § 405; Laws 2005, LB 570, § 5.

(d) ELECTRONIC POSTMARK

86-644 Electronic postmark; use by state agency; authorized.

(1) It is the intent of the Legislature to promote economic growth and the efficient operation of business and government in Nebraska through the electronic exchange of information and legally binding electronic communications. In order to facilitate the electronic exchange of information, Nebraska must establish means to ensure that electronic communications are legally binding and enforceable, while ensuring that security measures are in place to prevent opportunities for fraud and misuse.

(2) A state agency may use an email address from any person the state agency regulates or does business with, or an email address from the agent for service of process of that person, for any communication with such person.

(3) A communication postmarked by an electronic postmark provided by the United States Postal Service may be used to verify that a record of a state agency is true and correct. Notwithstanding any other statute to the contrary, a communication postmarked by an electronic postmark by the United States Postal Service may be used by a state agency in lieu of certified mail or certified mail, return receipt requested, in complying with any statutory requirement for providing a communication by certified mail or certified mail, return receipt requested. However, the use or acceptance of an electronic postmark shall be at the option of the parties to the communication and shall require consent by the sender and the receiver of the communication to that method of communication.

(4) This section shall not be construed to require a person or state agency to use or permit the use of an electronic postmark, to authorize the use of an email address for service of process of legal documents upon a party to a lawsuit, or to invalidate electronic communications or verification of such communications which are valid under any other applicable law.

(5) The Secretary of State may adopt and promulgate rules and regulations to carry out this section. The rules and regulations shall consider the persons who do not have an email address. In developing the rules and regulations, the Secretary of State shall seek the advice of public and private entities, including the Department of Administrative Services.

(6) For purposes of this section:

(a) Electronic postmark means an electronic service provided by the United States Postal Service that provides evidentiary proof that an electronic document existed in a certain form at a certain time and the electronic document was opened or the contents of the electronic document were displayed at a time and date documented by the United States Postal Service; and

(b) State agency means any agency, board, court, state postsecondary educational institution, or constitutional officer of the executive, judicial, and legislative branches of state government, except individual members of the Legislature.

Source: Laws 2005, LB 11, § 1.

ARTICLE 7

TELECOMMUNICATIONS RIGHTS-OF-WAY

Cross References

Interference with poles, wires, and facilities, penalty, see section 76-2325.01.

Transmission lines, regulation by Public Service Commission, see Chapter 75, article 7.

Section

- 86-701. Telecommunications rights-of-way; definitions, where found.
 86-702. Highway, defined.
 86-703. Telecommunications company, defined.
 86-704. Telecommunications companies; right-of-way; wires; municipalities; powers and duties; increase in occupation tax; procedure; election.
 86-705. Right-of-way; condemnation; procedure.
 86-706. Right-of-way; condemnation; location; costs; abandonment.
 86-707. Right-of-way; state and federal highways; regulation by Department of Transportation.
 86-708. Telephone lines; notice of widening of roads; when given.
 86-709. Telephone lines; notice of widening of roads; contents.
 86-710. Telephone lines; liability; cost of removal.

86-701 Telecommunications rights-of-way; definitions, where found.

For purposes of sections 86-701 to 86-710, the definitions found in sections 86-702 and 86-703 apply.

Source: Laws 2002, LB 1105, § 406.

86-702 Highway, defined.

Highway has the same meaning as in section 60-624.

Source: Laws 2002, LB 1105, § 407.

86-703 Telecommunications company, defined.

Telecommunications company has the same meaning as in section 86-119.

Source: Laws 2002, LB 1105, § 408.

86-704 Telecommunications companies; right-of-way; wires; municipalities; powers and duties; increase in occupation tax; procedure; election.

(1) Any telecommunications company, incorporated or qualified to do business in this state, is granted the right to construct, operate, and maintain telecommunications lines and related facilities along, upon, across, and under the public highways of this state, and upon and under lands in this state, whether state or privately owned, except that (a) such lines and related facilities shall be so constructed and maintained as not to interfere with the ordinary use of such lands or of such highways by the public and (b) all aerial wires and cables shall be placed at a height of not less than eighteen feet above all highway crossings.

(2) Sections 86-701 to 86-707 shall not transfer the rights now vested in municipalities in relation to the regulation of the poles, wires, cables, and other appliances or authorize a telecommunications company to erect any poles or construct any conduit, cable, or other facilities along, upon, across, or under a public highway within a municipality without first obtaining the consent of the governing body of the municipality. The municipality shall not exercise any authority over any rights the telecommunications company may have to deliver telecommunications services as authorized by the Public Service Commission or the Federal Communications Commission.

(3) Consent from a governing body for the use of a public highway within a municipality shall be based upon a lawful exercise of its statutory and constitutional authority. Such consent shall not be unreasonably withheld, and a preference or disadvantage shall not be created through the granting or

withholding of such consent. A municipality shall not adopt an ordinance that prohibits or has the effect of prohibiting the ability of a telecommunications company to provide telecommunications service.

(4)(a) A municipality shall not levy a tax, fee, or charge for any right or privilege of engaging in a telecommunications business or for the use by a telecommunications company of a public highway other than:

(i) An occupation tax authorized under section 14-109, 15-202, 15-203, 16-205, or 17-525 that meets the following requirements:

(A) The occupation tax shall be imposed only on the receipts from the sale of telecommunications service as defined in subdivision (7)(aa) of section 77-2703.04; and

(B) Except as provided in subsection (5) of this section, the occupation tax shall not exceed:

(I) Before October 1, 2024, six and twenty-five hundredths percent; and

(II) Beginning October 1, 2024, four percent; and

(ii) A public highway construction permit fee or charge to the extent that the fee or charge applies to all persons seeking use of the public highway in a substantially similar manner. All public highway construction permit fees or charges shall be directly related to the costs incurred by the municipality in providing services relating to the granting or administration of permits. Any highway construction permit fee or charge shall also be reasonably related in time to the occurrence of such costs.

(b) Any tax, fee, or charge imposed by a municipality shall be competitively neutral.

(5) A municipality may increase an occupation tax described in subdivision (4)(a)(i) of this section to a rate that exceeds the limit contained in subdivision (4)(a)(i)(B) of this section if the question of whether to increase such rate has been submitted at a primary or general election at which members of the governing body of the municipality are nominated or elected or at a special election held within the municipality and in which all registered voters shall be entitled to vote on such question. A municipality may not increase its existing rate pursuant to this subsection by more than twenty-five hundredths percent at any one election. The officials of the municipality shall order the submission of the question by submitting a certified copy of the resolution proposing the rate increase to the election commissioner or county clerk at least fifty days before the election. The election shall be conducted in accordance with the Election Act. If a majority of the votes cast upon such question are in favor of such rate increase, then the governing body of such municipality shall be empowered to impose the rate increase. If a majority of those voting on the question are opposed to such rate increase, then the governing body of the municipality shall not impose such rate increase.

(6) The changes made by Laws 1999, LB 496, shall not be construed to affect the terms or conditions of any franchise, license, or permit issued by a municipality prior to August 28, 1999, or to release any party from any obligations thereunder. Such franchises, licenses, or permits shall remain fully enforceable in accordance with their terms. A municipality may lawfully enter into agreements with franchise holders, licensees, or permittees to modify or terminate an existing franchise, license, or agreement.

(7) Taxes or fees shall not be collected by a municipality through the provision of in-kind services by a telecommunications company, and a municipality shall not require the provision of in-kind services as a condition of consent to the use of a public highway.

(8) The terms of any agreement between a municipality and a telecommunications company regarding use of public highways shall be matters of public record and shall be made available to any member of the public upon request, except that information submitted to a municipality by a telecommunications company which such telecommunications company determines to be proprietary shall be deemed to be a trade secret pursuant to subdivision (3) of section 84-712.05 and shall be accorded full protection from disclosure to third parties in a manner consistent with state law.

Source: Laws 1887, c. 87, § 1, p. 634; R.S.1913, § 7418; C.S.1922, § 7097; C.S.1929, § 86-301; Laws 1931, c. 158, § 1, p. 419; Laws 1941, c. 193, § 1, p. 762; C.S.Supp.,1941, § 86-301; Laws 1943, c. 231, § 1, p. 778; R.S.1943, § 86-301; Laws 1999, LB 496, § 1; R.S.1943, (1999), § 86-301; Laws 2002, LB 1105, § 409; Laws 2011, LB165, § 1; Laws 2024, LB1023, § 18.
Operative date July 19, 2024.

Cross References

Election Act, see section 32-101.

Rural telephone company is not a common carrier, subject to railway commission, merely because its poles and wires are on a public highway. *State v. Southern Elkhorn Tel. Co.*, 106 Neb. 342, 183 N.W. 562 (1921).

Telephone company is required to maintain line, where it crosses pasture, at such height and in such condition as not to injure persons and domestic animals. *Coen v. Central Tel. Co.*, 95 Neb. 814, 146 N.W. 998 (1914).

All road crossings refer to private as well as public roads. Traveler is not required to anticipate danger from low-strung wires. *Weaver v. Dawson County Mut. Tel. Co.*, 82 Neb. 696, 118 N.W. 650 (1908).

Use of city, town, and village streets may be granted by authorities. *City of Plattsmouth v. Nebraska Tel. Co.*, 80 Neb. 460, 114 N.W. 588 (1908).

Suit by taxpayer to prevent city from granting franchise to telephone company must show that granting thereof will in-

crease taxation. *Clark v. Interstate Ind. Tel. Co.*, 72 Neb. 883, 101 N.W. 977 (1904).

Section 86-301 (recodified in 2002 as section 86-704) does not include streets and alleys of a municipal corporation. *Nebraska Tel. Co. v. Western Ind. L. D. Tel. Co.*, 68 Neb. 772, 95 N.W. 18 (1903).

Property owner is entitled to compensation for burden on his property constituted by erection of line. Company is liable for destruction of and injury to trees. *Bronson v. Albion Tel. Co.*, 67 Neb. 111, 93 N.W. 201 (1903).

Discrimination by telephone company is prohibited. *State ex rel. Webster v. Nebraska Tel. Co.*, 17 Neb. 126, 22 N.W. 237 (1885).

Telegraph company's property within state is subject to state taxation, though company rightfully exercised rights and privileges in nature of franchise from federal government and was engaged in interstate commerce. *Western Union Telegraph Co. v. Weaver*, 5 F.Supp. 493 (D. Neb. 1932).

86-705 Right-of-way; condemnation; procedure.

Any telecommunications company may enter upon private lands to survey the lands for the purpose of obtaining a right-of-way. Every owner of an interest in private lands to be occupied by any telecommunications lines shall be compensated for any right-of-way appropriated pursuant to sections 86-701 to 86-707. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1931, c. 158, § 1, p. 419; Laws 1941, c. 193, § 1, p. 762; C.S.Supp.,1941, § 86-301; Laws 1943, c. 231, § 1, p. 778; R.S. 1943, § 86-302; Laws 1951, c. 101, § 123, p. 504; Laws 1999, LB 496, § 2; R.S.1943, (1999), § 86-302; Laws 2002, LB 1105, § 410.

86-706 Right-of-way; condemnation; location; costs; abandonment.

Any right-of-way obtained under sections 86-701 to 86-707 by condemnation proceedings for poles, aerial wires, and aerial cables shall be located only on

section boundary lines as established by law or property boundary lines adjoining public highways as established by law. All expense of surveying, court costs, and reasonable attorney's fees shall be paid by the telecommunications company obtaining the right-of-way. If any telecommunications line constructed under sections 86-701 to 86-707 is abandoned for three years, the right-of-way or easement shall revert to the property affected.

Source: Laws 1931, c. 158, § 1, p. 419; Laws 1941, c. 193, § 1, p. 762; C.S.Supp., 1941, § 86-301; Laws 1943, c. 231, § 1, p. 778; R.S. 1943, § 86-303; Laws 1999, LB 496, § 3; R.S. 1943, (1999), § 86-303; Laws 2002, LB 1105, § 411.

86-707 Right-of-way; state and federal highways; regulation by Department of Transportation.

If the right to construct, operate, and maintain the telecommunications lines and related facilities is granted along, upon, across, or under a state or federal highway, the location and installation of such lines and related facilities, insofar as they pertain to the present and future use of the right-of-way for highway purposes, is subject to rules and regulations of the Department of Transportation. If the future use of the state or federal highway requires the moving or relocating of the facilities, such facilities shall be removed or relocated by the owner at the owner's cost and expense and as directed by the Department of Transportation except as provided by section 39-1304.02.

Source: Laws 1943, c. 231, § 1, p. 778; R.S. 1943, § 86-303.01; Laws 1957, c. 171, § 3, p. 592; Laws 1999, LB 496, § 4; R.S. 1943, (1999), § 86-303.01; Laws 2002, LB 1105, § 412; Laws 2017, LB 339, § 296.

86-708 Telephone lines; notice of widening of roads; when given.

Whenever any county or township road construction, widening, repair, or grading project requires, or can reasonably be expected to require, the performance of any work within six feet of any telephone 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 thirty days prior to the start of any work when, because of road construction, widening, repair, or grading, or for any other reason, it is necessary to relocate such line, poles, or anchors.

Source: Laws 1957, c. 400, § 1, p. 1368; Laws 1959, c. 181, § 19, p. 662; Laws 1994, LB 421, § 31; R.S. 1943, (1999), § 86-334; Laws 2002, LB 1105, § 413.

86-709 Telephone lines; notice of widening of roads; contents.

The notice required by section 86-708 shall state the nature and location of the work to be done and the date on which such work is scheduled to commence. In the event of any change in the scheduled time of starting such work, notice of such change shall be given as soon as practicable.

Source: Laws 1957, c. 400, § 2, p. 1369; R.S. 1943, (1999), § 86-335; Laws 2002, LB 1105, § 414.

86-710 Telephone lines; liability; cost of removal.

Any owner of any telephone line failing to move its lines, poles, or anchors located near a public highway in accordance with the notice provided by section 86-708 shall be liable to the county or township for the cost of relocating such lines, poles, or anchors. When an owner of such facilities located on private right-of-way is required to move such lines, poles, or anchors, it shall be at the expense of the county or township. The county or township shall be liable to the owner of any telephone line for loss of use of such line for failure to give the notice required by sections 86-708 and 86-709.

Source: Laws 1957, c. 400, § 3, p. 1369; Laws 1971, LB 328, § 1; R.S.1943, (1999), § 86-336; Laws 2002, LB 1105, § 415.

ARTICLE 8 KELSEY SMITH ACT

Section

86-801. Act, how cited.

86-802. Terms, defined.

86-803. Wireless carrier; provide call location information.

86-804. Limitation on liability.

86-805. Wireless carrier; provide contact information; Nebraska State Patrol; duties.

86-806. Nebraska State Patrol; provide information to law enforcement agencies.

86-807. Voluntary disclosure of call location information.

86-801 Act, how cited.

Sections 86-801 to 86-807 shall be known and may be cited as the Kelsey Smith Act.

Source: Laws 2010, LB735, § 1.

86-802 Terms, defined.

For purposes of the Kelsey Smith Act:

(1) Call location information means the best available location information, including, but not limited to, information obtained using historical cellular site information or a mobile locator tool;

(2) Law enforcement agency means a police department, a town marshal, the office of sheriff, and the Nebraska State Patrol;

(3) Wireless carrier has the same meaning as in section 86-456; and

(4) Wireless communication device means any wireless electronic communication device that provides for voice or data communication between two or more parties, including a mobile or cellular telephone.

Source: Laws 2010, LB735, § 2.

86-803 Wireless carrier; provide call location information.

Upon request of any law enforcement agency, a wireless carrier shall provide call location information concerning the wireless communication device of a user as soon as practicable following receipt of the request to facilitate the response to a call for emergency services or in an emergency situation that involves the risk or threat of death or serious physical harm.

Source: Laws 2010, LB735, § 3.

86-804 Limitation on liability.

No cause of action shall lie in any court against any wireless carrier or its officers, employees, agents, or assigns for providing call location information while acting at the request of a law enforcement agency in accordance with the provisions of the Kelsey Smith Act. All wireless carriers shall be held harmless from any and all claims, damages, costs, and expenses, including attorney's fees, arising from or related to the release of call location information while acting at the request of a law enforcement agency.

Source: Laws 2010, LB735, § 4.

86-805 Wireless carrier; provide contact information; Nebraska State Patrol; duties.

(1) Any wireless carrier authorized to do business in this state or submitting to the jurisdiction of this state shall provide updated contact information to the Nebraska State Patrol on a semiannual basis or within three working days after a change in such information that would render previous contact information invalid or inefficient for use under the Kelsey Smith Act.

(2) The Nebraska State Patrol shall collect and maintain a register of contact information for all such wireless carriers.

Source: Laws 2010, LB735, § 5.

86-806 Nebraska State Patrol; provide information to law enforcement agencies.

The Nebraska State Patrol shall provide the information collected pursuant to section 86-805 to all law enforcement agencies in this state on a quarterly basis or as soon as practicable if a change in such information has occurred.

Source: Laws 2010, LB735, § 6.

86-807 Voluntary disclosure of call location information.

Notwithstanding any other provision of law to the contrary, nothing in the Kelsey Smith Act shall prohibit a wireless carrier from establishing protocols by which the wireless carrier could voluntarily disclose call location information.

Source: Laws 2010, LB735, § 7.

ARTICLE 9

PREPAID WIRELESS SURCHARGE ACT

Section

86-901. Act, how cited.

86-902. Terms, defined.

86-903. Prepaid wireless surcharge; determination; Department of Revenue; duties; collection; disclosure; liability of consumer.

86-904. Sellers; remittance; deduction authorized; audit and appeal provisions applicable; Department of Revenue; duties; deduction.

86-905. Prepaid wireless surcharge; no imposition for other tax, fee, surcharge, or other charge.

86-901 Act, how cited.

Sections 86-901 to 86-905 shall be known and may be cited as the Prepaid Wireless Surcharge Act.

Source: Laws 2012, LB1091, § 1.

86-902 Terms, defined.

For purposes of the Prepaid Wireless Surcharge Act:

- (1) Consumer means a person who purchases prepaid wireless telecommunications service in a retail transaction;
- (2) Prepaid wireless surcharge means the charge that is required to be collected by a seller from a consumer in the amount established under section 86-903;
- (3) Prepaid wireless telecommunications service means a wireless telecommunications service that allows a caller to dial 911 to access the 911 system, which service must be paid for in advance and is sold in predetermined units or dollars of which the number declines with use in a known amount or expiration of time;
- (4) Provider means a person that provides prepaid wireless telecommunications service pursuant to a license issued by the Federal Communications Commission;
- (5) Retail transaction means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale;
- (6) Seller means a person who sells prepaid wireless telecommunications service to another person; and
- (7) Wireless telecommunications service means mobile service as defined by 47 C.F.R. 20.3, as such section existed on July 19, 2012.

Source: Laws 2012, LB1091, § 2; Laws 2018, LB157, § 5.

86-903 Prepaid wireless surcharge; determination; Department of Revenue; duties; collection; disclosure; liability of consumer.

- (1) The Department of Revenue shall determine the prepaid wireless surcharge annually, effective January 1, based on the charges described in subsection (2) of this section as in effect on the preceding July 1. The department shall provide not less than ninety days' advance notice of any change in the prepaid wireless surcharge on the department's website.
- (2) The rate of the prepaid wireless surcharge shall be the sum of the following three percentages, rounded up to the nearest tenth of one percent:
 - (a) The percentage obtained by dividing (i) the amount of the wireless E-911 surcharge authorized under subdivision (1)(b) of section 86-457 by (ii) fifty;
 - (b) The percentage obtained by dividing (i) the amount of the Nebraska Telecommunications Relay System Fund surcharge set by the Public Service Commission pursuant to the Telecommunications Relay System Act by (ii) fifty; and
 - (c) The percentage obtained by multiplying (i) the Nebraska Telecommunications Universal Service Fund surcharge percentage rate set by the Public Service Commission by (ii) one minus the Federal Communications Commission safe harbor percentage for determining the interstate portion of a fixed monthly wireless charge.
- (3) The Department of Revenue shall provide the Public Service Commission with prepaid wireless surcharge calculation and collection data upon request by the commission.

(4) Beginning January 1, 2013, each seller shall collect the prepaid wireless surcharge from the consumer with respect to each retail transaction occurring in this state. The seller shall disclose the amount of the prepaid wireless surcharge either separately on an invoice, receipt, or other similar document that is provided to the consumer by the seller or otherwise. A retail transaction that is effected in person by a consumer at a business location of the seller shall be treated as occurring in this state if that business location is in this state, and any other retail transaction shall be treated as occurring in this state if the retail transaction is treated as occurring in this state for purposes of section 77-2703.

(5) The prepaid wireless surcharge is the liability of the consumer and not of the seller or of any provider, except that the seller shall be liable to remit all prepaid wireless surcharges that the seller collects from consumers as provided in section 86-904, including all such charges that the seller is deemed to collect when the amount of the charge has not been separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller.

(6) The amount of the prepaid wireless surcharge that is collected by a seller from a consumer, whether or not such amount is separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller, shall not be included in the base for measuring any tax, fee, surcharge, or other charge that is imposed by this state, any political subdivision of this state, or any intergovernmental agency.

(7) For purposes of subsection (4) of this section, when prepaid wireless telecommunications service is sold with one or more other products or services for a single, non-itemized price, the seller shall elect to treat the price of the prepaid wireless telecommunications service (a) as such entire non-itemized price, (b) if the amount of prepaid wireless telecommunications service is disclosed to the consumer as a dollar amount, as such dollar amount, or (c) if the retailer can identify the portion of the price that is attributable to the prepaid wireless telecommunications service by reasonable and verifiable standards from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes, as such portion. If the amount of prepaid wireless telecommunications service is denominated as ten minutes or less or as five dollars or less, the seller may elect not to collect any prepaid wireless surcharge with respect to the retail transaction.

Source: Laws 2012, LB1091, § 3; Laws 2018, LB157, § 6.

Cross References

Telecommunications Relay System Act, see section 86-301.

86-904 Sellers; remittance; deduction authorized; audit and appeal provisions applicable; Department of Revenue; duties; deduction.

(1) Sellers shall remit collected prepaid wireless surcharges to the Department of Revenue in the manner provided in the Nebraska Revenue Act of 1967 with respect to sales tax. Sellers shall remit the prepaid wireless surcharges to the department on a monthly basis, except that if a seller collected less than one thousand dollars of prepaid wireless surcharges in the prior year, the seller may remit on an annual basis. The department shall establish registration and payment procedures that substantially coincide with the registration and payment procedures that apply to sales tax.

(2) A seller shall be permitted to deduct and retain three percent of prepaid wireless surcharges that are collected by the seller from consumers.

(3) The audit and appeal procedures applicable to sales tax under the Nebraska Revenue Act of 1967 shall apply to prepaid wireless surcharges.

(4) The Department of Revenue shall establish procedures by which a seller of prepaid wireless telecommunications service may document that a sale is not a retail transaction, which procedures shall substantially coincide with the procedures for documenting sale for resale transactions for sales tax purposes.

(5) After deducting an amount, not to exceed one-half of one percent of charges, to be retained by the department to reimburse its direct costs of administering the collection and remittance of prepaid wireless surcharges, the department shall remit all collected prepaid wireless surcharges to the State Treasurer for credit to the 911 Service System Fund, the Nebraska Telecommunications Relay System Fund, and the Nebraska Telecommunications Universal Service Fund in the proportions that the respective corresponding components of the prepaid wireless surcharge under subsection (2) of section 86-903 bear to the total prepaid wireless surcharge.

Source: Laws 2012, LB1091, § 4; Laws 2018, LB157, § 7; Laws 2018, LB993, § 7.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

86-905 Prepaid wireless surcharge; no imposition for other tax, fee, surcharge, or other charge.

The prepaid wireless surcharge shall be the only funding obligation imposed with respect to prepaid wireless telecommunications service for E-911 service, telecommunications relay service, and universal service in this state, and no tax, fee, surcharge, or other charge shall be imposed by this state, any political subdivision of this state, or any intergovernmental agency, for purposes of funding E-911 service, telecommunications relay service, or universal service, upon any provider, seller, or consumer with respect to the sale, purchase, use, or provision of prepaid wireless telecommunications service.

Source: Laws 2012, LB1091, § 5; Laws 2018, LB157, § 8.

ARTICLE 10

911 SERVICE

(a) 911 SERVICE SYSTEM ACT

Section	
86-1001.	Act, how cited.
86-1002.	Purpose of act.
86-1003.	Legislative intent.
86-1004.	Definitions, where found.
86-1005.	Basic 911 service, defined.
86-1006.	Commission, defined.
86-1006.01.	Committee, defined.
86-1007.	Emergency services, defined.
86-1008.	Enhanced-911 service, defined.
86-1009.	Enhanced wireless 911 service, defined.
86-1010.	Interconnected voice over Internet protocol service, defined.
86-1011.	Internet protocol, defined.
86-1012.	Internet protocol-enabled service, defined.

Section	
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	(b) 911 SERVICE OUTAGE
86-1031.	911 service outage; reports; required; hearing.

(a) 911 SERVICE SYSTEM ACT

86-1001 Act, how cited.

Sections 86-1001 to 86-1029.04 shall be known and may be cited as the 911 Service System Act.

Source: Laws 2016, LB938, § 1; Laws 2018, LB993, § 8; Laws 2024, LB1031, § 7.
Operative date July 19, 2024.

86-1002 Purpose of act.

The purpose of the 911 Service System Act is to establish the Public Service Commission as the statewide implementation and coordinating authority to plan, implement, coordinate, manage, maintain, and provide funding assistance for a 911 service system consistent and compatible with national public safety standards advanced by recognized standards and development organizations.

Source: Laws 2016, LB938, § 2.

86-1003 Legislative intent.

It is the intent of the Legislature that:

- (1) The commission plan, implement, coordinate, manage, maintain, and provide funding assistance for a cost-efficient 911 service system;
- (2) The commission provide for the coordination of 911 service on a state-wide basis;

(3) Local governing bodies be responsible for the dispatch and provision of emergency services;

(4) As part of the coordination of statewide 911 service, the commission secure stakeholder support and provide public education, training, standards enforcement, dispute resolution, and program evaluation for public safety answering points;

(5) The jurisdictions of the state, regional, and local governing bodies be clearly defined and aligned to produce the most efficient provision of 911 service, including next-generation 911 service capability;

(6) The commission adopt statewide uniform standards for technical support, training efficiency, and quality assurance for public safety answering points;

(7) The express authority granted to the commission to implement the 911 Service System Act not be deemed to supersede or otherwise modify section 86-124 or to provide the commission with any additional authority not provided by law existing on April 19, 2016, including, but not limited to, regulatory authority over originating service providers except as provided under section 86-1029.04; and

(8) Except as specifically provided in the 911 Service System Act, nothing in the 911 Service System Act be deemed to supersede or modify any commission authority provided by law or any commission order, rule, or regulation existing on April 19, 2016.

Source: Laws 2016, LB938, § 3; Laws 2024, LB1031, § 8.
Operative date July 19, 2024.

86-1004 Definitions, where found.

For purposes of the 911 Service System Act, the definitions found in sections 86-1005 to 86-1024.01 apply.

Source: Laws 2016, LB938, § 4; Laws 2018, LB993, § 9; Laws 2024, LB1031, § 9.
Operative date July 19, 2024.

86-1005 Basic 911 service, defined.

Basic 911 service means an emergency telephone system which automatically connects a 911 call to a designated public safety answering point.

Source: Laws 2016, LB938, § 5.

86-1006 Commission, defined.

Commission means the Public Service Commission.

Source: Laws 2016, LB938, § 6.

86-1006.01 Committee, defined.

Committee means the 911 Service System Advisory Committee.

Source: Laws 2018, LB993, § 10.

86-1007 Emergency services, defined.

Emergency services means the provision through a public safety agency of firefighting, law enforcement, ambulance, emergency, medical, or other public

emergency services, as determined by a local governing body, to respond to and manage emergency incidents.

Source: Laws 2016, LB938, § 7.

86-1008 Enhanced-911 service, defined.

Enhanced-911 service has the same meaning as in section 86-425.

Source: Laws 2016, LB938, § 8.

86-1009 Enhanced wireless 911 service, defined.

Enhanced wireless 911 service has the same meaning as in section 86-448.

Source: Laws 2016, LB938, § 9.

86-1010 Interconnected voice over Internet protocol service, defined.

Interconnected voice over Internet protocol service means an interconnected voice over Internet protocol service as defined in 47 C.F.R. part 9, as such regulations existed on January 1, 2016.

Source: Laws 2016, LB938, § 10.

86-1011 Internet protocol, defined.

Internet protocol means the method by which data is sent from one computer to another on the Internet or other networks.

Source: Laws 2016, LB938, § 11.

86-1012 Internet protocol-enabled service, defined.

Internet protocol-enabled service means any service, capability, functionality, or application provided using Internet protocol, or any successor protocol, that enables a service user to send or receive a communication in Internet protocol format including, but not limited to, voice, data, or video.

Source: Laws 2016, LB938, § 12.

86-1013 Local governing body, defined.

Local governing body means a county board, city council of a city, board of trustees of a village, board of directors of any rural or suburban fire protection district, or any governing body of an entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act.

Source: Laws 2016, LB938, § 13.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

86-1014 Network, defined.

Network means (1) a legacy telecommunications network that supports basic 911 service and enhanced-911 service or (2) a managed Internet protocol network that is used for 911 calls, that can be shared by all public safety answering points, and that provides the Internet protocol transport infrastructure upon which independent application platforms and core functional processes can be deployed, including, but not limited to, those necessary for

providing next-generation 911 service capability. A network may be constructed from a mix of dedicated and shared facilities and may be interconnected at local, regional, state, national, and international levels.

Source: Laws 2016, LB938, § 14.

86-1015 Next-generation 911, defined.

Next-generation 911 means an Internet protocol-based system (1) comprised of networks, functional elements, and databases that replicate basic 911 service and enhanced-911 service features and functions and provide additional capabilities and (2) designed to provide access to emergency services from all connected communications sources and to provide multimedia data capabilities for public safety answering points and other emergency services organizations.

Source: Laws 2016, LB938, § 15.

86-1016 Next-generation 911 service, defined.

Next-generation 911 service means 911 service using in whole or in part next-generation 911.

Source: Laws 2016, LB938, § 16.

86-1017 911 call, defined.

911 call means any form of communication requesting any type of emergency services by contacting a public safety answering point, including voice or nonvoice communications as well as transmission of any analog or digital data. 911 call includes a voice call, video call, text message, or data-only call.

Source: Laws 2016, LB938, § 17.

86-1018 911 service, defined.

911 service means the service a public safety answering point uses to receive and process 911 calls over a 911 service system.

Source: Laws 2016, LB938, § 18.

86-1019 911 service system, defined.

911 service system means a coordinated system of technologies, software applications, databases, customer-premise equipment components, and operations and management procedures used to provide 911 service through the operation of an efficient and effective network for accepting, processing, and delivering 911 calls to a public safety answering point, including, but not limited to, basic 911 service, enhanced-911 service, enhanced wireless 911 service, next-generation 911 service, and any emerging technologies, networks, and systems that allow access to 911 service.

Source: Laws 2016, LB938, § 19.

86-1020 Originating service provider, defined.

Originating service provider means an entity that provides the capability for customers to originate 911 calls to public safety answering points.

Source: Laws 2016, LB938, § 20.

86-1021 Public safety agency, defined.

Public safety agency means an agency which provides emergency services.

Source: Laws 2016, LB938, § 21.

86-1022 Public safety answering point, defined.

Public safety answering point means a local governmental entity responsible for receiving 911 calls and processing those calls according to a specific operational policy.

Source: Laws 2016, LB938, § 22.

86-1023 Service user, defined.

Service user means any person who initiates a 911 call to receive emergency services.

Source: Laws 2016, LB938, § 23.

86-1024 Stakeholder, defined.

Stakeholder means a public safety answering point, a public safety agency, and any person, organization, agency of government, originating service provider, or other organization that has a vital interest in the 911 service system.

Source: Laws 2016, LB938, § 24.

86-1024.01 Telecommunications relay services, defined.

Telecommunications relay services has the same meaning as in 47 C.F.R. 9.3, as such regulation existed on January 1, 2024.

Source: Laws 2024, LB1031, § 10.

Operative date July 19, 2024.

86-1025 Commission; duties.

The commission shall:

(1) Serve as the statewide coordinating authority for the implementation of the 911 service system;

(2) Be responsible for statewide planning, implementation, coordination, funding assistance, deployment, and management and maintenance of the 911 service system to ensure that coordinated 911 service is provided to all residents of the state at a consistent level of service in a cost-effective manner;

(3) Be responsible for establishing mandatory and uniform technical and training standards applicable to public safety answering points and adopting and promulgating rules and regulations applicable to public safety answering points for quality assurance standards;

(4) Appoint the members of the committee and act on the committee's recommendations as provided in section 86-1025.01;

(5)(a) Determine how to allocate the 911 Service System Fund in order to facilitate the planning, implementation, coordination, operation, management, and maintenance of the 911 service system;

(b) Create a mechanism for determining the level of funding available to or for the benefit of local governing bodies, public safety answering points, and third-party service or infrastructure providers for costs determined to be eligible by the commission under subdivision (5)(c) of this section; and

(c) Establish standards and criteria concerning disbursements from the 911 Service System Fund for the planning, implementation, coordination, operation, management, and maintenance of the 911 service system. In establishing such standards and criteria, the following may be eligible for funding:

(i) Costs incurred by or on behalf of governing bodies or public safety answering points to provide 911 service, including, but not limited to, (A) acquisition of new equipment and related maintenance costs and license fees, (B) upgrades and modifications, (C) delivering next-generation 911 core services, and (D) training personnel used to provide 911 services; and

(ii) Costs incurred by or on behalf of governing bodies or public safety answering points for the acquisition, installation, maintenance, and operation of telecommunications equipment and telecommunications service required for the provision of 911 service; and

(6) Adopt statewide uniform standards for technical enhancement, support, training, and quality assurance that will allow the 911 service system to communicate, coordinate, and engage with the 988 Suicide and Crisis Lifeline. Such standards shall provide that service users calling the 911 service system can be connected to the 988 Suicide and Crisis Lifeline, and individuals calling the 988 Suicide and Crisis Lifeline can be connected to the 911 service system, when deemed appropriate by the call-center operators. The purpose of such dual capability is to facilitate the provision of appropriate emergency services, including instances requiring counseling services for an individual in psychological distress. The standards shall be completed so that the dual capability to connect individuals between both the 988 Suicide and Crisis Lifeline and the 911 service system is operational no later than January 1, 2025.

Source: Laws 2016, LB938, § 25; Laws 2018, LB993, § 12; Laws 2024, LB1200, § 68.

Operative date July 19, 2024.

86-1025.01 911 Service System Advisory Committee; created; members; duties; vacancy; terms; expenses.

(1) The 911 Service System Advisory Committee is created. The committee shall advise the commission concerning the implementation, coordination, operation, management, maintenance, and funding of the 911 service system and provide input on technical training and quality assurance. The state 911 director and the Chief Information Officer or his or her designee shall serve as ex officio members. The committee shall include the following individuals appointed by the commission:

(a) Four representatives of public safety agencies within the state, including an emergency manager, a member of a law enforcement agency, a member of a fire department, and a member of an emergency medical service as defined in section 38-1207;

(b) Two county officials or employees;

(c) Two municipal officials or employees;

(d) Two representatives of the telecommunications industry;

(e) Two managers of public safety answering points, one of whom is employed by a county sheriff and one of whom is not employed by a county sheriff;

(f) One representative of the Nebraska Association of County Officials; and

(g) One representative of the League of Nebraska Municipalities.

(2) Of the fourteen appointed members of the committee described in subdivisions (1)(a) through (g) of this section, at least four members shall be appointed from each of the three congressional districts. The appointed members of the committee shall serve for terms of three years. A vacancy shall be filled for the remainder of the unexpired term. The committee shall annually select a chairperson and vice-chairperson and meet as often as necessary to carry out its duties. Members of the committee shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

(3) The committee shall make any recommendations to the commission regarding the exercise of the commission's duties administering the 911 service system pursuant to section 86-1025, including recommending the adoption and promulgation of any rules and regulations necessary to carry out the purposes of the 911 Service System Act or the introduction of any legislation. The commission may consider and implement any such recommendations.

Source: Laws 2018, LB993, § 11; Laws 2020, LB381, § 145.

86-1026 State 911 director.

The commission shall appoint a state 911 director to manage the department established within the commission for the 911 service system. The commission shall ensure that the department has all necessary staffing and resources. The commission may retain contracted experts or consultants who may be required for the administration of the 911 Service System Act.

Source: Laws 2016, LB938, § 26; Laws 2018, LB993, § 13.

86-1027 Plan for 911 service system; contents; public hearings; report.

(1) The commission and the state 911 director shall develop and prepare a plan for a 911 service system, to be approved by the commission, and to be implemented by the commission and the state 911 director on or after July 1, 2018. The commission shall hold at least two public hearings on the plan: One hearing at least ninety days prior to the adoption of the plan; and one hearing at least thirty days prior to the adoption of the plan. The commission shall present the adopted plan to the Appropriations Committee of the Legislature and the Transportation and Telecommunications Committee of the Legislature no later than December 1, 2017. The state 911 director, with the approval of the commission, shall prepare and provide a report to the Appropriations Committee and the Transportation and Telecommunications Committee on the progress of the development of the plan no later than February 1, 2017. The report shall be submitted electronically.

(2) The plan adopted by the commission shall, at a minimum, detail the following:

(a) The costs associated with the implementation and estimated ongoing operation and maintenance of the 911 service system. The discussion of costs shall detail which costs the commission determines should be paid from the 911 Service System Fund, which costs would be the obligation of local governing bodies, and how the proposed costs represent a cost-effective plan;

(b) Recommendations to the Legislature for cost recovery for the implementation, operation, and maintenance of the 911 service system;

(c) The commission's proposal for carrying out its role as coordinator of the 911 service system;

(d) A recommendation of the number of public safety answering points that should be maintained in the state that are capable of next-generation 911 service; and

(e) Recommendations for any additional legislation required to implement the 911 service system.

Source: Laws 2016, LB938, § 27; Laws 2018, LB993, § 17.

86-1028 911 Service System Fund; created; use; investment.

(1) The 911 Service System Fund is created. The fund shall consist of surcharges collected pursuant to sections 86-457 and 86-904, money transferred from the Enhanced Wireless 911 Fund, any federal funds received for implementation and development of 911 service, and any other money designated for credit to the 911 Service System Fund. The fund shall be used for the costs of administering the fund, for the purposes specified in section 86-465 unless otherwise directed by federal law with respect to any federal funds, and for the purposes specified in the 911 Service System Act. The costs of administering the 911 Service System Fund shall be kept to a minimum.

(2) The fund shall not be subject to any fiscal-year limitation or lapse provision of unexpended balance at the end of any fiscal year or biennium. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act, and for the period July 1, 2017, through June 30, 2019, any interest earned by the fund shall be credited to the General Fund.

(3) Money in the 911 Service System Fund may be used to pay for costs incurred by or on behalf of governing bodies or public safety answering points to provide 911 service that are determined by the commission to be eligible for funding. The commission is not required to provide funding from the 911 Service System Fund to more than one public safety answering point in any county. Each entity that receives disbursements from the fund under this subsection shall make a full accounting of the money in a manner and form prescribed by the commission.

(4) The State Treasurer shall transfer any money in the Enhanced Wireless 911 Fund on July 1, 2018, to the 911 Service System Fund.

Source: Laws 2016, LB938, § 28; Laws 2018, LB993, § 18.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

86-1029 Authority of commission; how construed.

The express authority granted to the commission to implement the 911 Service System Act shall not be deemed to supersede or otherwise modify section 86-124 or to provide the commission with any additional authority not provided by law existing on April 19, 2016, including, but not limited to,

regulatory authority over originating service providers except as provided under section 86-1029.04.

Source: Laws 2016, LB938, § 29; Laws 2024, LB1031, § 12.
Operative date July 19, 2024.

86-1029.01 Federal and other funds; commission; powers.

The commission may apply for any federal or other funds available for next-generation 911 service and may distribute such federal funds consistent with federal law and other funds consistent with the directives, purposes, or conditions of such other funds. Except for intentional acts, the commission shall be immune from liability or the payment of damages in applying for any such federal funds. The state 911 director shall be the designated single point of contact for any federal 911 grant program.

Source: Laws 2018, LB993, § 14.

86-1029.02 Immunity from liability.

Any person involved in the provision of next-generation 911 service who: (1) Receives, develops, collects, or processes information for any 911 database; (2) provides local exchange, interexchange, or transport service in connection with any next-generation 911 service; (3) relays, transfers, operates, maintains, or provides next-generation 911 service or systems capabilities, including interoperable connections between the 911 service system and the 988 Suicide and Crisis Lifeline; or (4) provides next-generation 911 communications service for emergency service providers shall, except for failure to use reasonable care or for intentional acts, be immune from liability or the payment of damages in the performance of installing, maintaining, or providing next-generation 911 service.

Source: Laws 2018, LB993, § 15; Laws 2024, LB1200, § 69.
Operative date July 19, 2024.

86-1029.03 Rules and regulations.

The commission shall adopt and promulgate rules and regulations necessary to carry out the 911 Service System Act.

Source: Laws 2018, LB993, § 16.

86-1029.04 911 calls; transmission to next-generation 911 network; requirements; agreements; required; report.

(1) For purposes of this section, originating service provider means the telecommunications service provider, whether by wireline or wireless service, or the voice over Internet protocol service provider providing the capability for customers to originate 911 calls.

(2)(a) Except as provided in subdivision (2)(c) of this section, or unless otherwise required by the Federal Communications Commission, no later than January 1, 2026, an originating service provider and the next-generation 911 service contractor shall cause:

(i) All 911 calls to be transmitted to the next-generation 911 network that allows 911 calls to be answered; and

(ii) All translation and routing to be completed to deliver all 911 calls, including associated location information in the requested Internet protocol-enabled service format, to the next-generation 911 network that allows 911 calls to be answered.

(b) No later than ten months prior to the date set forth in subdivision (2)(a) of this section, an originating service provider and the next-generation 911 service contractor shall enter into an agreement to cause the requirements of such subdivision to be met. If the originating service provider and the next-generation 911 service contractor have not entered into an agreement by such date, the originating service provider and the next-generation 911 service contractor shall notify the Public Service Commission to seek resolution of any unresolved issues in accordance with the commission's policies relating to interconnection arbitration and mediation.

(c) An originating service provider may enter into an agreement with the commission to establish an alternative timeframe for meeting the requirements of subdivision (2)(a) of this section. The originating service provider shall notify the commission of the dates and terms of the alternative timeframe within thirty days after entering into such agreement.

(3)(a) Except as provided in subdivision (3)(c) of this section, or unless otherwise required by the Federal Communications Commission, no later than January 1, 2026, a provider of telecommunications relay services and the next-generation 911 service contractor shall cause:

(i) All 911 calls to be transmitted to the next-generation 911 network that allows 911 calls to be answered; and

(ii) All translation and routing to be completed to deliver all 911 calls, including associated location information if received from the originating service provider in the requested Internet protocol-enabled service format, to the next-generation 911 network that allows 911 calls to be answered.

(b) No later than ten months prior to the date set forth in subdivision (3)(a) of this section, a provider of telecommunications relay services and the next-generation 911 service contractor shall enter into an agreement to cause the requirements of such subdivision to be met. If the provider of telecommunications relay services and the next-generation 911 service contractor have not entered into an agreement by such date, the provider of telecommunications relay services and the next-generation 911 service contractor shall notify the Public Service Commission to seek resolution of any unresolved issues in accordance with the commission's policies relating to interconnection arbitration and mediation.

(c) A provider of telecommunications relay services may enter into an agreement with the commission to establish an alternative timeframe for meeting the requirements of subdivision (3)(a) of this section. The telecommunications relay provider shall notify the commission of the dates and terms of the alternative timeframe within thirty days after entering into such agreement.

(4) No later than November 15, 2024, and no later than November 15 of each year thereafter, the next-generation 911 service contractor shall submit an annual report electronically to the Transportation and Telecommunications Committee of the Legislature and to the commission on the capabilities and redundancies of the next-generation 911 service network.

(5) Nothing in this section shall be construed to modify or change any requirement for an originating service provider to file a report with state and federal entities, including with public safety answering points and local governing bodies, in accordance with applicable local, state, or federal regulations and policies, regarding any impediment to transmitting and delivering 911 calls to the next-generation 911 network.

Source: Laws 2024, LB1031, § 11.
Operative date July 19, 2024.

86-1030 Repealed. Laws 2018, LB993, § 20.

(b) 911 SERVICE OUTAGE

86-1031 911 service outage; reports; required; hearing.

(1) For purposes of this section:

(a) Communications service provider means a cable operator as defined in 47 U.S.C. 522, a provider of information service as defined in 47 U.S.C. 153, or a telecommunications carrier as defined in 47 U.S.C. 153, but does not include a wireless provider;

(b) 911 service has the same meaning as in section 86-1018; and

(c) Outage has the same meaning as described in 47 C.F.R. 4.5(e).

(2) A communications service provider that is required to file reports with the Federal Communications Commission regarding a 911 service outage pursuant to 47 C.F.R. 4.9(h) shall also file copies of such reports with the Public Service Commission. The reports filed with the Public Service Commission shall follow the same timelines and provide the same information as outlined in 47 C.F.R. 4.9 and 4.11. Reports filed pursuant to this section shall be deemed confidential and shall not be subject to public disclosure pursuant to sections 84-712 to 84-712.09.

(3)(a) The Public Service Commission shall hold a public hearing no later than ninety days after receipt of the first report filed by a communications service provider pursuant to subsection (2) of this section. The commission may delay the hearing for good cause shown, but such delay shall be extended no longer than thirty days. The commission may hold subsequent hearings as it deems necessary.

(b) This subsection shall not apply if:

(i) The communications service provider has, in good faith, withdrawn the first report filed pursuant to subsection (2) of this section; or

(ii) The Public Service Commission has waived the requirements of this subsection by a majority vote of the commission.

(4) The Public Service Commission may adopt and promulgate rules and regulations to carry out this section.

(5) This section shall only apply to 911 service outages in Nebraska.

(6) Nothing in this section shall be construed to authorize the Public Service Commission to regulate any activities prohibited by section 86-124.

Source: Laws 2024, LB1031, § 13.
Operative date July 19, 2024.

ARTICLE 11

RURAL BROADBAND TASK FORCE

Section

- 86-1101. Broadband telecommunications service; legislative intent.
86-1102. Rural Broadband Task Force; created; members; terms; advisory groups; staff assistance; powers; duties; expenses; meetings; report.
86-1103. Rural Broadband Task Force Fund; created; use; investment.

86-1101 Broadband telecommunications service; legislative intent.

The Legislature finds and declares that:

(1) The availability, quality, and affordability of broadband telecommunications service is important to the residents of Nebraska; and

(2) Because availability, quality, and affordability of broadband telecommunications service is lacking in certain rural areas in Nebraska, combined with greater investment in urban areas, the state may be facing a digital divide.

It is the intent of the Legislature that broadband telecommunications service in rural areas of the state should be comparable in download and upload speed and price to urban areas in the state where possible and that state resources should be utilized to ensure that the rural residents of the state should not be penalized simply because of their rural residence. It is further the intent of the Legislature that the residents of this state should have access to broadband telecommunications service at a minimum download speed of one hundred megabits per second and a minimum upload speed of one hundred megabits per second.

Source: Laws 2018, LB994, § 1; Laws 2024, LB1031, § 14.
Operative date April 16, 2024.

86-1102 Rural Broadband Task Force; created; members; terms; advisory groups; staff assistance; powers; duties; expenses; meetings; report.

(1) The Rural Broadband Task Force is hereby created. Task force members shall include the chairperson of the Transportation and Telecommunications Committee of the Legislature and a member of the Legislature selected by the Executive Board of the Legislative Council who shall both serve as nonvoting, ex officio members, a member of the Public Service Commission who shall be selected by the chairperson of such commission, the chairperson of the Nebraska Information Technology Commission or his or her designee who shall act as chairperson of the task force, the Director of Economic Development or his or her designee, the Director of Agriculture or his or her designee, and the following members to be appointed by the Governor: A representative of the agribusiness community, a representative of the Nebraska business community, a representative of the regulated wireline telecommunications industry, a representative of the wireless telecommunications industry, a representative of the public power industry, a representative of health care providers, a representative of Nebraska postsecondary educational institutions, and a representative of rural schools offering kindergarten through grade twelve. The members appointed by the Governor shall serve for a term of two years and may be reappointed.

(2) The task force may appoint advisory groups to assist the task force in providing technical expertise and advice on any issue. The advisory groups may

be composed of representatives of stakeholder groups which may include, but not necessarily be limited to, representatives from small and large wireline companies, wireless companies, public power districts, electric cooperative corporations, cable television companies, Internet service providers, low-income telecommunications and electric utility customers, health care providers, and representatives of educational sectors. No compensation or expense reimbursement shall be provided to any member of any advisory group appointed by the task force.

(3) The Nebraska Information Technology Commission shall provide staff assistance to the task force in consultation with staff from the Public Service Commission and other interested parties. The task force may hire consultants to assist in carrying out its duties. The task force shall review issues relating to availability, adoption, and affordability of broadband services in rural areas of Nebraska. In particular, the task force shall:

(a) Determine how Nebraska rural areas compare to neighboring states and the rest of the nation in average download and upload speeds and in subscription rates to higher speed tiers, when available;

(b) Examine the role of the Nebraska Telecommunications Universal Service Fund in bringing comparable and affordable broadband services to rural residents and any effect of the fund in deterring or delaying capital formation, broadband competition, and broadband deployment;

(c) Review the feasibility of alternative technologies and providers in accelerating access to faster and more reliable broadband service for rural residents;

(d) Examine alternatives for deployment of broadband services to areas that remain unserved or underserved, such as funding redirection programs described in section 86-330, public-private partnerships, funding for competitive deployment, and other measures, and make recommendations to the Public Service Commission to encourage deployment in such areas;

(e) Recommend state policies to effectively utilize state universal service fund dollars to leverage federal universal service fund support and other federal funding;

(f) Make recommendations to the Governor and Legislature as to the most effective and efficient ways that federal broadband rural infrastructure funds received after July 1, 2018, should be expended if such funds become available; and

(g) Determine other issues that may be pertinent to the purpose of the task force.

(4) Task force members shall serve on the task force without compensation but shall be entitled to receive reimbursement for expenses incurred for such service as provided in sections 81-1174 to 81-1177.

(5) The task force shall meet at the call of the chairperson and shall present its findings in a report to the Executive Board of the Legislative Council no later than November 1, 2019, and by November 1 every odd-numbered year thereafter. The report shall be submitted electronically.

(6) For purposes of this section, broadband services means high-speed telecommunications capability at a minimum download speed of one hundred megabits per second and a minimum upload speed of one hundred megabits

per second, and that enables users to originate and receive high-quality voice, data, and video telecommunications using any technology.

Source: Laws 2018, LB994, § 2; Laws 2020, LB381, § 146; Laws 2020, LB992, § 14; Laws 2021, LB338, § 7; Laws 2024, LB1031, § 15. Operative date April 16, 2024.

86-1103 Rural Broadband Task Force Fund; created; use; investment.

The Rural Broadband Task Force Fund is created. The fund shall be used to carry out the purposes of the Rural Broadband Task Force as described in section 86-1102. For administrative purposes, the fund shall be located in the Nebraska Information Technology Commission. The fund shall consist of money appropriated or transferred by the Legislature and gifts, grants, or bequests from any source, including federal, state, public, and private sources. 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 2018, LB994, § 3; Laws 2021, LB384, § 26; Laws 2023, LB683, § 24.

Cross References

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

ARTICLE 12

SMALL WIRELESS FACILITIES DEPLOYMENT ACT

- Section
- 86-1201. Act, how cited.
- 86-1202. Legislative findings and declarations.
- 86-1203. Definitions, where found.
- 86-1204. Antenna, defined.
- 86-1205. Applicable codes, defined.
- 86-1206. Applicant, defined.
- 86-1207. Application, defined.
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86-1201 Act, how cited.

Sections 86-1201 to 86-1244 shall be known and may be cited as the Small Wireless Facilities Deployment Act.

Source: Laws 2019, LB184, § 1.

86-1202 Legislative findings and declarations.

The Legislature finds and declares that:

(1) The deployment of small wireless facilities and other next-generation wireless facilities is a matter of statewide concern and interest and public policy;

(2) Wireless products and services are a significant and continually growing part of the state's economy. Encouraging the development of strong and robust wireless communications networks throughout the state is necessary to address public need and policy and is integral to the state's economic competitiveness;

(3) Rapid deployment of small wireless facilities will serve numerous important statewide goals and public policy, including meeting growing consumer demand for wireless data, increasing competitive options for communications services available to the state's residents, improving the ability of the state's residents to communicate with other residents and with their state and local governments, and promoting public safety;

(4) Small wireless facilities, including facilities commonly referred to as small cells and distributed antenna systems, are deployed most effectively in public rights-of-way;

(5) To meet the public need and policy and the key objectives of the Small Wireless Facilities Deployment Act, wireless providers must have access to the public rights-of-way to densify their networks and provide next-generation wireless services;

(6) Uniform procedures, rates, and fees for permit issuance and deployment of small wireless facilities in public rights-of-way and on authority infrastructure, including poles, throughout the state are reasonable and will encourage

the development of robust next-generation wireless networks for the benefit of residents throughout the state; and

(7) The procedures, rates, and fees in the Small Wireless Facilities Deployment Act, together with any taxes, fees, or charges imposed under section 86-704, (a) are fair and reasonable when viewed from the perspective of the state's residents and the state's interest in having robust, reliable, and technologically advanced wireless networks and (b) reflect a balancing of the interests of the wireless providers deploying new facilities and the interests of authorities in receiving fair value by recovering their costs of managing access to the public rights-of-way and the attachment space provided on authority infrastructure and reviewing and processing applications for the installation of small wireless facilities within the rights-of-way.

Source: Laws 2019, LB184, § 2.

86-1203 Definitions, where found.

For purposes of the Small Wireless Facilities Deployment Act, the definitions in sections 86-1204 to 86-1235 apply.

Source: Laws 2019, LB184, § 3.

86-1204 Antenna, defined.

Antenna means communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.

Source: Laws 2019, LB184, § 4.

86-1205 Applicable codes, defined.

Applicable codes means uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to such codes so long as such amendments are not in conflict with the Small Wireless Facilities Deployment Act and to the extent such codes have been adopted by the authority and are generally applicable in the jurisdiction.

Source: Laws 2019, LB184, § 5.

86-1206 Applicant, defined.

Applicant means any person who submits an application and is a wireless provider.

Source: Laws 2019, LB184, § 6.

86-1207 Application, defined.

Application means a written request submitted by an applicant to an authority (1) for a permit to collocate small wireless facilities on an existing utility pole or wireless support structure or (2) for a permit for approval for the installation, modification, or replacement of a utility pole to support the installation of a small wireless facility.

Source: Laws 2019, LB184, § 7.

86-1208 Authority, defined.

Authority means the State of Nebraska or any agency, county, city, village, or other political subdivision thereof, except as otherwise excluded herein. Author-

ity does not include public power suppliers, state courts having jurisdiction over an authority, or an entity that does not have zoning or permit-granting authority.

Source: Laws 2019, LB184, § 8.

86-1209 Authority pole, defined.

Authority pole means a utility pole owned, managed, or operated by or on behalf of an authority.

Source: Laws 2019, LB184, § 9.

86-1210 Collocate or collocation, defined.

Collocate or collocation means to install, mount, maintain, modify, operate, or replace small wireless facilities on or adjacent to a wireless support structure or utility pole. Collocate or collocation does not include the installation of a new utility pole or new wireless support structure in the right-of-way.

Source: Laws 2019, LB184, § 10.

86-1211 Communications facility, defined.

Communications facility means the set of equipment and network components including wires, cables, and associated facilities used by a cable operator as defined in 47 U.S.C. 522(5), as such section existed on January 1, 2019, a telecommunications carrier as defined in 47 U.S.C. 153(51), as such section existed on January 1, 2019, a provider of information service as defined in 47 U.S.C. 153(24), as such section existed on January 1, 2019, or a wireless services provider, to provide communications services, including cable service as defined in 47 U.S.C. 153(8), as such section existed on January 1, 2019, an information service as defined in 47 U.S.C. 153(24), as such section existed on January 1, 2019, wireless services, or other one-way or two-way communications service.

Source: Laws 2019, LB184, § 11.

86-1212 Communications network, defined.

Communications network means a network used to provide communications service.

Source: Laws 2019, LB184, § 12.

86-1213 Communications service, defined.

Communications service means a cable service as defined in 47 U.S.C. 522, as such section existed on January 1, 2019, an information service as defined in 47 U.S.C. 153, as such section existed on January 1, 2019, a telecommunications service as defined in 47 U.S.C. 153, as such section existed on January 1, 2019, or a wireless service.

Source: Laws 2019, LB184, § 13.

86-1214 Communications service provider, defined.

Communications service provider means a cable operator as defined in 47 U.S.C. 522, a provider of information service as defined in 47 U.S.C. 153, or a telecommunications carrier as defined in 47 U.S.C. 153, as such sections

existed on January 1, 2019. Communications service provider includes a wireless provider.

Source: Laws 2019, LB184, § 14.

86-1215 Decorative pole, defined.

Decorative pole means an authority pole that is specially designed and placed for aesthetic purposes.

Source: Laws 2019, LB184, § 15.

86-1216 Fee, defined.

Fee means a one-time, nonrecurring charge.

Source: Laws 2019, LB184, § 16.

86-1217 Historic district, defined.

Historic district means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places, in accordance with Stipulation VI.D.1.a (i)-(v) of the Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission codified at 47 C.F.R. part 1, Appendix C, as such regulation existed on January 1, 2019, or designated pursuant to state historic preservation law if such designation exists at the time of application.

Source: Laws 2019, LB184, § 17.

86-1218 Law, defined.

Law means federal, state, or local law, statute, common law, code, rule, regulation, order, or ordinance.

Source: Laws 2019, LB184, § 18.

86-1219 Microwireless facility, defined.

Microwireless facility means a small wireless facility that is not larger in dimension than twenty-four inches in length, fifteen inches in width, and twelve inches in height and with any exterior antenna no longer than eleven inches.

Source: Laws 2019, LB184, § 19.

86-1220 Permit, defined.

Permit means a written authorization required by an authority to perform an action, initiate, continue, or complete installation of a small wireless facility on an existing utility pole or attached to an existing wireless support structure, or to install, modify, or replace a utility pole to support installation of a small wireless facility.

Source: Laws 2019, LB184, § 20.

86-1221 Person, defined.

Person means an individual, a corporation, a limited liability company, a partnership, an association, a trust, or any other entity or organization, including an authority.

Source: Laws 2019, LB184, § 21.

86-1222 Public power supplier, defined.

Public power supplier means a public power district or any other governmental entity providing electric service. Public power supplier includes a municipal electric utility or a rural public power supplier.

Source: Laws 2019, LB184, § 22.

86-1223 Rate, defined.

Rate means a recurring charge.

Source: Laws 2019, LB184, § 23.

86-1224 Right-of-way, defined.

Right-of-way means the area on, below, or above a public roadway, highway, street, sidewalk, alley, dedicated utility easement, or similar property, but not including a freeway as defined in section 39-1302, the National System of Interstate and Defense Highways, or a private easement.

Source: Laws 2019, LB184, § 24.

86-1225 Rural public power supplier, defined.

Rural public power supplier means a public power district, a public power and irrigation district, an electric cooperative, or an electric membership association, that does not provide electric service to any city of the metropolitan class, city of the primary class, or city of the first class.

Source: Laws 2019, LB184, § 25.

86-1226 Small wireless facility, defined.

Small wireless facility means a wireless facility that meets each of the following conditions: (1) The facilities (a) are mounted on structures fifty feet or less in height including the antennas or (b) are mounted on structures no more than ten percent taller than other adjacent structures; (2) each antenna associated with the deployment is no more than three cubic feet in volume; (3) all other equipment associated with the structure, whether ground-mounted or pole-mounted, is no more than twenty-eight cubic feet in volume; (4) the facilities do not require antenna structure registration under 47 C.F.R. part 17, as such regulation existed on January 1, 2019; (5) the facilities are not located on tribal lands, as defined in 36 C.F.R. 800.16(x), as such regulation existed on January 1, 2019; and (6) the facilities do not result in human exposure to radio frequency radiation in excess of the applicable safety standards specified in 47 C.F.R. 1.1307(b), as such regulation existed on January 1, 2019.

Source: Laws 2019, LB184, § 26.

86-1227 Technically feasible, defined.

Technically feasible means that by virtue of engineering or spectrum usage, the proposed placement for a small wireless facility, or its design or site

location, can be implemented without a reduction in the functionality of the small wireless facility.

Source: Laws 2019, LB184, § 27.

86-1228 Utility pole, defined.

Utility pole means a pole located in the right-of-way that is used for wireline communications, lighting, the vertical portion of support structures for traffic control signals or devices or a similar function, or for the collocation of small wireless facilities and located in the right-of-way. Utility pole does not include (1) wireless support structures, (2) any transmission infrastructure owned or operated by a public power supplier or rural public power supplier, and (3) any distribution or communications infrastructure owned or operated by a rural public power supplier.

Source: Laws 2019, LB184, § 28.

86-1229 Wireless facility, defined.

(1) Wireless facility means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including (a) equipment associated with wireless communications and (b) radio transceivers, antennas, coaxial or fiber optic cable, regular power supply, and small back-up battery, regardless of technological configuration. Wireless facility includes small wireless facilities.

(2) Wireless facility does not include (a) the structure or improvements on, under, or within the equipment which is collocated, (b) coaxial or fiber optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to, or directly associated with, a particular antenna, or (c) a wireline backhaul facility.

Source: Laws 2019, LB184, § 29.

86-1230 Wireless infrastructure provider, defined.

Wireless infrastructure provider means any person, including a person authorized to provide telecommunications service in the State of Nebraska, when acting to build or install wireless communication transmission equipment, wireless facilities, or wireless support structures, but that is not a wireless services provider.

Source: Laws 2019, LB184, § 30.

86-1231 Wireless provider, defined.

Wireless provider means a wireless services provider or a wireless infrastructure provider when acting as a coapplicant for a wireless services provider.

Source: Laws 2019, LB184, § 31.

86-1232 Wireless services, defined.

Wireless services means any services using licensed or unlicensed spectrum, including the use of Wi-Fi, whether mobile or at a fixed location, provided to the public using wireless facilities.

Source: Laws 2019, LB184, § 32.

86-1233 Wireless services provider, defined.

Wireless services provider means a person who provides wireless services.

Source: Laws 2019, LB184, § 33.

86-1234 Wireless support structure, defined.

Wireless support structure means a structure such as a guyed or self-supporting tower, billboard, building, or other existing or proposed structure designed to support or capable of supporting wireless facilities other than a structure designed solely for the collocation of small wireless facilities. Wireless support structure does not include a utility pole.

Source: Laws 2019, LB184, § 34.

86-1235 Wireline backhaul facility, defined.

Wireline backhaul facility means an above-ground or underground facility used to transport communications services from a wireless facility to a communications network.

Source: Laws 2019, LB184, § 35.

86-1236 Activities of wireless provider within right-of-way to deploy small wireless facilities and associated utility poles; provisions applicable.

(1) This section applies only to activities of a wireless provider within the right-of-way to deploy small wireless facilities and associated utility poles.

(2) An authority shall not enter into an exclusive arrangement with any person for use of the right-of-way.

(3) Subject to the exception in subsection (7) of section 86-1237, an authority may only charge a wireless provider on a nondiscriminatory basis the rate or fee provided in section 86-1239 for the use of any right-of-way for the collocation of small wireless facilities or the installation, maintenance, modification, operation, or replacement of a utility pole in the right-of-way if the authority charges other entities for the use of the right-of-way. An authority may, on a nondiscriminatory basis, refrain from charging any rate to a wireless provider for the use of the right-of-way.

(4) Except as provided in this section, a wireless provider shall have the right, as a permitted use not subject to zoning review or approval, to collocate small wireless facilities and install, maintain, modify, operate, and replace utility poles along, across, upon, and under the right-of-way so long as such facilities and poles do not obstruct or hinder the usual travel or public safety on such right-of-way or obstruct the legal use of such right-of-way by utilities or the safe operation of their systems or provision of service.

(5)(a) Any new or modified utility pole installed in a right-of-way shall not exceed the greater of (i) five feet in height above the tallest existing utility pole in place as of September 1, 2019, located within five hundred feet of the new utility pole in the same right-of-way or (ii) fifty feet above ground level.

(b) New small wireless facilities in a right-of-way shall not extend more than the greater of (i) fifty feet in height, including antenna, or (ii) more than five feet above an existing utility pole in place as of September 1, 2019, and located within five hundred feet in the same right-of-way.

(c) An authority shall have the right, at its sole discretion and subject to applicable nondiscriminatory regulations, to consider and approve an application to install a utility pole or wireless support structure that exceeds the height limits in this subsection for the right to collocate a small wireless facility and install, maintain, modify, operate, and replace a utility pole that exceeds such height limits along, across, upon, and under a right-of-way.

(6) An applicant may request approval from an authority, as part of the application process, to replace a decorative pole when necessary to collocate a small wireless facility. Any replacement decorative pole shall conform to the nondiscriminatory design aesthetics of the decorative pole being replaced.

(7) Except for facilities excluded from evaluation for effects on historic properties under 47 C.F.R. 1.1307(a)(4), as such regulation existed on January 1, 2019, an authority shall have the right to require design or concealment measures in a historic district established prior to January 1, 2019. Such design or concealment measures shall be objective and directed to avoid or remedy the intangible public harm of unsightly or out-of-character wireless facilities deployed at the proposed location within the authority's jurisdiction. Any such design or concealment measures shall be reasonable, nondiscriminatory, and published in advance, and shall not be considered a part of the small wireless facility for purposes of the size restrictions of a small wireless facility.

(8) An authority may require a wireless provider to repair all damage to a right-of-way directly caused by the activities of the wireless provider in the right-of-way and return the right-of-way to equal or better condition to that before the damage occurred pursuant to the competitively neutral and reasonable requirements and specifications of the authority. If the applicant fails to make the repairs that are reasonably required by the authority within fourteen days after written notice, the authority may undertake such repairs and charge the wireless provider the reasonable, documented cost of such repairs. An authority shall grant an extension of up to ten days to complete such repairs if the wireless provider requests such extension within the original fourteen-day period. In the event of immediate threat to life, safety, or to prevent serious injury, the authority may immediately undertake to restore the site and then notify the applicant and charge the applicant for all reasonable restoration costs.

Source: Laws 2019, LB184, § 36.

86-1237 Issuance of permit for small wireless facility within right-of-way; applicant; procedure; cost; authority; powers; denial; grounds; Department of Transportation; powers.

(1) This section applies to the issuance of a permit for a small wireless facility within the right-of-way as specified in subsection (4) of this section and to the issuance of a permit for the installation, modification, and replacement of a utility pole by an applicant within a right-of-way.

(2) Except as provided in the Small Wireless Facilities Deployment Act, an authority shall not prohibit, regulate, or charge for the collocation of small wireless facilities or the installation, modification, or replacement of utility poles to support small wireless facilities.

(3)(a) An applicant that collocates a small wireless facility within an authority right-of-way or on a utility pole assumes the risk of loss, damage to, or loss of use of such facility when such pole is damaged, destroyed, or taken out of

service on authority property, except to the extent that such loss or damage is due to or caused by the negligence or willful misconduct of the authority or its employees, contractors, or agents. This subdivision does not preclude claims against entities other than the authority.

(b) The construction, operation, maintenance, collocation, or placement of wireless facilities, utility poles, or wireless support structures shall occur at no cost from an applicant to an authority unless otherwise agreed to in advance between an applicant and the authority.

(c) If the future maintenance or construction of an authority road requires the moving or relocating of wireless facilities, utility poles, or wireless support structures currently located within a right-of-way, such facilities, poles, or structures shall be removed or relocated by the owner of such small wireless facilities, poles, or structures at the owner's expense and as directed by the authority.

(4) Small wireless facilities shall be classified as a permitted use and not subject to zoning review or approval if collocated within the right-of-way. Small wireless facilities to be located in an airport hazard area as defined by section 3-301 shall comply with any regulations governing such area.

(5) An authority may require an applicant to apply for and obtain one or more permits to collocate a small wireless facility or install a new, modified, or replacement utility pole associated with a small wireless facility. Such permits shall be of general applicability and not apply exclusively to wireless facilities. An authority shall receive applications for, process, and issue such permits subject to the following requirements:

(a) Except as otherwise provided in subdivision (b) of this subsection, an authority shall not directly or indirectly require an applicant to perform services or provide goods unrelated to the permit, such as in-kind contributions to the authority, including reserving fiber, conduit, or utility pole space for the authority;

(b) An authority shall be allowed to reserve space on authority poles and the applicant shall cooperate with the authority in any such reservation, except that the authority shall first notify the applicant in writing that it is interested in reserving such pole space or sharing the trenches or bores in the area where the collocation is to occur. The applicant shall allow the authority to place its infrastructure in the applicant's trenches or bores or on the utility pole as requested by the authority, except that the authority shall incur the incremental costs of placing the conduit or infrastructure as requested. The authority shall be responsible for maintaining its facilities in the trenches and bores and on the authority pole;

(c) An applicant shall not be required to provide more information to obtain a permit than a communications service provider that is not a wireless provider, except as directly related to the impairment of wireless service in the immediate area of the proposed small wireless facility and except that an applicant may be required to include construction and engineering drawings and information demonstrating compliance with the criteria in subdivision (j) of this subsection;

(d) An authority may propose a technically feasible alternate utility pole location. The wireless provider shall cooperate with the authority to address the authority's reasonable proposal. The authority shall not require the placement

of small wireless facilities on any specific utility pole or category of poles or require multiple antenna systems on a single utility pole;

(e) An authority shall not limit the placement of small wireless antennas by minimum horizontal separation distances;

(f) An authority may require an applicant to include an attestation that the small wireless facilities will be operational for use by a wireless services provider within nine months after the later of the completion of all make-ready work or the permit issuance date unless a delay is caused by lack of commercial power or communications transport facilities to the site. In such case the applicant shall have an extension not to exceed nine months. The authority and applicant may mutually agree to an additional extension;

(g) Within twenty days after receiving an application, an authority shall determine and notify the applicant in writing whether the application is complete. If an application is incomplete, the authority shall specifically identify the missing information in writing. The processing deadline in subdivision (h) of this subsection shall restart upon the first finding of incompleteness. The applicant may resubmit the completed application within thirty days without additional charge. Subsequent findings of incompleteness shall toll the application processing deadline in subdivision (h) of this subsection. The subsequent review shall be limited to the specifically identified information subsequently completed except to the extent material changes have been made by the applicant, other than those required by the authority, in which case a new application and application fee shall be submitted. Subsequent findings of incompleteness will toll the deadline from the time the authority sends notice of incompleteness to the time the applicant provides the missing information. The application processing deadline also may be tolled by agreement of the applicant and the authority;

(h) An application shall be processed on a nondiscriminatory basis and deemed approved if the authority fails to approve or deny the application within ninety days after receipt of the application. An authority may extend the application processing deadline described in subdivision (g) of this subsection for a single period of ten business days if the authority notifies the applicant in advance before the day on which approval or denial is originally due. Upon mutual agreement between the applicant and the authority, the authority may extend the period for consideration of an application for thirty days;

(i) A permit shall authorize an applicant to undertake only certain activities in accordance with this section and does not create a property right or grant authority to the applicant to infringe upon the rights of others who may own or have other interests in a right-of-way, utility easement, or other privately owned property;

(j) An authority may deny a proposed collocation of a small wireless facility or installation, modification, or replacement of a utility pole that meets the requirements of section 86-1236 only if the proposed application:

(i) Materially and demonstrably interferes with the safe operation of traffic control equipment or the right-of-way;

(ii) Materially interferes with sight lines or clear zones for air or land transportation or pedestrians;

(iii) Materially interferes with compliance with the federal Americans with Disabilities Act of 1990 or similar federal or state standards regarding pedestrian access or movement;

(iv) Fails to comply with reasonable and nondiscriminatory spacing requirements of general application adopted by ordinance or resolution that concern the location of ground-mounted equipment and new utility poles. Such spacing requirements shall not prevent a wireless provider from serving any location;

(v) Fails to comply with applicable codes if they are of general applicability and do not apply exclusively to wireless facilities;

(vi) Fails to comply with the authority's aesthetic requirements that are reasonable, objective, and published in advance; or

(vii) Designates the location of a new utility pole within seven feet in any direction of an electrical conductor unless the wireless provider obtains the written consent of the public power supplier that owns or manages the electrical conductor;

(k) An authority shall document the basis for a permit application denial, including any specific code provisions on which the denial was based, and send such documentation to the applicant on or before the day the authority denies the application. The applicant may cure the deficiencies identified by the authority and resubmit the application within thirty days after the denial without paying an additional application fee. The authority shall approve or deny the resubmitted application within thirty days. Any subsequent review shall be limited to the deficiencies cited in the denial;

(l) An applicant seeking to collocate small wireless facilities within the jurisdiction of a single authority may, at the applicant's discretion, file a consolidated application for up to thirty individual small wireless facilities if the population within the jurisdiction of the authority is fifty thousand people or more, or up to five individual small wireless facilities if the population within the jurisdiction of the authority is less than fifty thousand people, instead of filing a separate application for each individual small wireless facility. Each small wireless facility within a consolidated application is subject to individual review, except that the denial of one or more small wireless facilities in a consolidated application shall not delay processing of any other small wireless facilities in the same application or be a basis upon which to deny the consolidated application as a whole. If an applicant applies to construct or collocate several small wireless facilities within the jurisdiction of a single authority, the authority shall:

(i) Allow the applicant, at the applicant's discretion, to file a single set of documents that apply to all of the applicant's small wireless facilities; and

(ii) Render a decision regarding all of the applicant's small wireless facilities in a single administrative proceeding unless local requirements require an elected or appointed body to render such decision;

(m) Installation or collocation for which a permit is granted pursuant to this section shall be completed within one year of the later of the completion of all make-ready work or permit issuance date unless a delay is caused by the lack of commercial power or communications transport facilities at the site. In such case the applicant shall have an extension up to nine months. The authority and applicant may mutually agree to an additional extension. Approval of an application authorizes the applicant to maintain and operate the small wireless

facilities and any associated utility pole covered by the permit for a period of not less than five years, subject to applicable relocation requirements and the applicant's right to terminate at any time. The authority shall renew such permit for an equivalent duration so long as the applicant is in compliance with the criteria set forth in subdivision (j) of this subsection as such criteria existed at the time the permit was granted;

(n) An authority shall not institute a moratorium on filing, receiving, or processing applications or issuing permits or other approvals, if any, for the collocation of small wireless facilities or the installation, modification, or replacement of utility poles to support small wireless facilities; and

(o) Nothing in the Small Wireless Facilities Deployment Act shall be construed to allow any entity to provide communications services without complying with all laws applicable to such providers. Nothing in the act shall be construed to authorize the collocation, installation, placement, maintenance, or operation of any communications facility, including a wireline backhaul facility, other than a small wireless facility or a utility pole, in a right-of-way.

(6)(a) Notwithstanding any other provision of the Small Wireless Facilities Deployment Act, for any construction, operation, collocation, maintenance, management, relocation, or placement of wireless facilities, utility poles, decorative poles, or wireless support structures that occurs above, across, under, or upon a state or federal highway right-of-way, as such term is defined in section 39-1302, or upon a state-owned utility pole, decorative pole, or wireless support structure, the application process, location, and installation of such facilities, poles, or structures, as such pertain to the present and future use of the right-of-way or state-owned poles or wireless support structures for highway purposes, shall be subject to the rules and regulations, guidance documents, and usual and customary permitting requirements of the State of Nebraska and the Department of Transportation, including, but not limited to, requirements, fees, rates, and deadlines for location and engineering review and response, liability and automobile insurance, indemnification of the Department of Transportation from liability, protection of public safety and property interests, and compliance with federal transportation funding requirements. Nothing in this subdivision affects, modifies, expands, or narrows the application or effect of any federal law, statute, rule, regulation, or order.

(b) Traffic signal utility poles and traffic control devices owned by the Department of Transportation shall not be used for the collocation of small wireless facilities under the Small Wireless Facilities Deployment Act. State highway lighting utility poles or decorative poles may be used for collocation of small wireless facilities only if:

(i) There are insufficient reasonable alternative collocation options at or near the requested location;

(ii) The small wireless facilities can be safely installed, operated, and maintained; and

(iii) The collocation of the small wireless facilities will not violate reasonable wind, ice, weight, and seismic load requirements on state highway lighting utility poles or decorative poles.

(c) Applicants that collocate small wireless facilities on state highway lighting utility poles or decorative poles assume the risk of loss or damage to, or loss of use of, such facilities when such poles are damaged, destroyed, or taken out of service on state property, except to the extent that such loss or damage is due to

or caused by the negligence or willful misconduct of the Department of Transportation or its employees, contractors, or agents. This subdivision does not preclude claims against entities other than the Department of Transportation.

(d) The construction, operation, maintenance, collocation, or placement of wireless facilities, utility poles, decorative poles, or wireless support structures shall occur at no cost to the Department of Transportation unless otherwise agreed in advance between an applicant and the department.

(e) The Department of Transportation may set and collect a reasonable application fee to cover its costs in administering the activities described in this subsection, a uniform and nondiscriminatory system of annual occupancy rates for the use and occupancy of state-owned property, and a uniform and nondiscriminatory system for setting fees, rates, terms, and conditions for make-ready work.

(f) If the future maintenance or construction of a state or federal highway by the Department of Transportation requires the moving or relocating of wireless facilities, utility poles, decorative poles, or wireless support structures located within the right-of-way, such facilities, poles, or structures shall be removed or relocated by the owner of the facilities, poles, or structures at the owner's expense and as directed by the department.

(g) Nothing in the Small Wireless Facilities Deployment Act affects or prevents the Department of Transportation from imposing its usual and customary permitting requirements for the deployment of wireless facilities that are not small wireless facilities.

(7) An authority shall not require an application, permit, or other approval or charge fees or rates for routine maintenance of small wireless facilities, replacement of small wireless facilities with small wireless facilities that are substantially similar in weight or windage or the same size or smaller, or for the installation, placement, maintenance, operation, or replacement of microwireless facilities that are strung on cables between existing utility poles in compliance with the National Electrical Safety Code. An authority may require a permit for work that exceeds original weight or windage or requires excavation or closing of sidewalks or vehicular lanes within the right-of-way for such activities.

(8) Any small wireless facility that is not operated for a continuous period of ninety days after completion of initial installation, excluding nonoperation due to a natural disaster or other unforeseeable circumstance or temporary equipment failure, shall be considered abandoned. If a small wireless facility is abandoned, the small wireless facility owner shall notify the authority within thirty days of the abandoned status of such facility and such owner shall remove the abandoned facility. The related utility pole shall also be removed unless such pole is otherwise being used by another utility or is owned by a party other than the owner of the removed small wireless facility.

Source: Laws 2019, LB184, § 37.

86-1238 Activities of wireless provider within right-of-way; authorized; procedure; rates; terms and conditions.

(1) This section applies to the activities of a wireless provider within the right-of-way.

(2) A person owning, managing, or controlling authority poles in a right-of-way may enter into an exclusive arrangement with any person for the management of an attachment to such poles. A person who manages attachments to authority poles or who manages, purchases, or otherwise acquires an authority pole is subject to the requirements of the Small Wireless Facilities Deployment Act.

(3) An authority shall allow the collocation of small wireless facilities on authority poles using the process in section 86-1237.

(4) The rates provided under section 86-1239 to collocate on authority poles shall be nondiscriminatory regardless of the services provided by the collocating person.

(5)(a) The rates, fees, terms, and conditions for make-ready work to collocate on an authority pole shall be nondiscriminatory, competitively neutral, and commercially reasonable and shall reimburse all reasonable costs incurred by an authority in compliance with the Small Wireless Facilities Deployment Act.

(b) An authority shall provide a good faith estimate for any make-ready work necessary to enable the authority pole to support the requested collocation by an applicant, including pole replacement if necessary, within one hundred twenty days after receipt of a completed application. Make-ready work, including any pole replacement, shall be completed within ninety days after written acceptance of the good faith estimate by the applicant. An authority may require replacement of the authority pole only if it determines and provides details indicating that the collocation would make the authority pole structurally unsound.

(c) The person owning, managing, or controlling the authority pole shall not require more make-ready work than required to meet applicable codes or industry standards. Fees for make-ready work shall not include costs related to known preexisting or prior damage or noncompliance. Fees for make-ready work, including any pole replacement, shall not exceed actual costs or the amount charged to other communications service providers for reasonably similar work and may include reasonable consultant fees or expenses.

(d) For purposes of this subsection, make-ready work generally refers to the modification of utility poles or lines or the installation of guys and anchors to accommodate additional facilities.

Source: Laws 2019, LB184, § 38.

86-1239 Requirement to pay rate, fee, or compensation; authority; limitation; occupation tax; application fee; limitation.

(1) An authority shall not require a wireless provider to pay any rate, fee, or compensation to the authority or other person other than what is expressly authorized by section 86-704, or, where applicable, section 14-109, 15-203, 16-205, or 17-525, or the Small Wireless Facilities Deployment Act for the right to use or occupy a right-of-way for collocation of small wireless facilities on wireless support structures or utility poles in the right-of-way or for the installation, maintenance, modification, operation, and replacement of utility poles in the right-of-way.

(2)(a) An authority that charges occupation taxes under section 86-704 shall not charge a wireless services provider any additional amount for the use of a right-of-way. An authority may charge a wireless provider that does not pay the

authority's occupation tax under section 86-704 either a rate of two hundred fifty dollars for each small wireless facility each year, or a fee equal to the occupation tax charged by the authority under section 14-109, 15-203, 16-205, or 17-525.

(b) The application fees for collocation of small wireless facilities on an existing or replacement authority pole shall not exceed five hundred dollars for up to five small wireless facilities on the same application and one hundred dollars for each additional small wireless facility on the same application.

(c) The application fees for the installation, modification, or replacement of a utility pole and the collocation of an associated small wireless facility that are a permitted use in accordance with the specifications in subsection (5) of section 86-1236 shall not exceed two hundred fifty dollars per pole.

(d) In the case of coapplicants for a single site, only one application fee may be charged for the site.

(3) The rate for collocation of a small wireless facility on an authority pole in the right-of-way shall be no more than twenty dollars per authority pole per year.

Source: Laws 2019, LB184, § 39.

86-1240 Interpretation of Small Wireless Facilities Deployment Act; limitations.

Nothing in the Small Wireless Facilities Deployment Act shall be interpreted to allow any entity to provide services regulated under 47 U.S.C. 521 to 573, as such sections existed on January 1, 2019, without compliance with all laws applicable to providers of such services. The Small Wireless Facilities Deployment Act shall not be interpreted to impose any new requirements on cable operators for the provision of cable service in this state.

Source: Laws 2019, LB184, § 40.

86-1241 Authority; powers and duties; limitations.

(1) Except as provided by the Small Wireless Facilities Deployment Act or applicable federal law, an authority shall continue to exercise zoning, land-use, planning, and permit-granting authority within its territorial boundaries, including with respect to wireless support structures and utility poles, except that no authority shall have or exercise any jurisdiction or authority over the design, engineering, construction, installation, or operation of any small wireless facility located in an interior structure or upon the site of any college or university campus, stadium, or athletic facility not owned or controlled by the authority, other than to comply with applicable codes. An authority shall evaluate the structure classification for wireless support structures under the standard of the American National Standards Institute found in ANSI/TIA-222, as such standard existed on January 1, 2019. Nothing in the Small Wireless Facilities Deployment Act shall authorize the State of Nebraska or any agency or political subdivision thereof, including an authority, to require wireless facility deployment or to regulate wireless services.

(2) Except as provided in the Small Wireless Facilities Deployment Act or as otherwise specifically authorized by state or federal law, an authority may not impose or collect a tax, fee, or rate on a communications service provider authorized to operate in a right-of-way by federal, state, or local law for the

provision of communications service over the communications service provider's communications facilities in the right-of-way, adopt or enforce any regulations or requirements on the placement or operation of communications facilities in the right-of-way by the communications service provider, or regulate any communications services. This subsection does not apply to the activities of a communications service provider that are outside the scope of the Small Wireless Facilities Deployment Act.

Source: Laws 2019, LB184, § 41; Laws 2023, LB683, § 25.

86-1242 Disputes; court jurisdiction; rates; applicability.

A court of competent jurisdiction shall have jurisdiction to determine all disputes arising under the Small Wireless Facilities Deployment Act. Pending resolution of a dispute concerning rates for collocation of small wireless facilities on authority poles, the rates listed in section 86-1239 shall apply.

Source: Laws 2019, LB184, § 42.

86-1243 Applicability of act.

The Small Wireless Facilities Deployment Act does not apply to the University of Nebraska system and its affiliates, the Nebraska state college system, the community college system, and all campuses, areas, and property of such systems.

Source: Laws 2019, LB184, § 43.

86-1244 Public power supplier; negotiated pole attachment agreement; annual pole attachment rate; applicability of act.

(1) A public power supplier shall not be required to allow the collocation of small wireless facilities on utility poles owned, operated, or managed by a public power supplier except pursuant to a negotiated pole attachment agreement containing reasonable and nondiscriminatory terms and conditions, including, but not limited to, applicable rates, and the permit, operational, and safety requirements of the public power supplier.

(2) The annual pole attachment rate for the collocation of a small wireless facility supported by or installed on a utility pole owned, operated, or managed by a public power supplier shall be fair, reasonable, nondiscriminatory, cost-based, and set by the board of such public power supplier in accordance with section 70-655.

(3) Except for the findings and declarations set forth in section 86-1202, the definitions set forth in sections 86-1204 to 86-1235, and subsections (1) and (2) of this section, the Small Wireless Facilities Deployment Act shall not apply to public power suppliers or to the collocation of small wireless facilities on utility poles owned, operated, or managed by a public power supplier.

Source: Laws 2019, LB184, § 44.

ARTICLE 13

NEBRASKA BROADBAND BRIDGE ACT

Section

86-1301. Act, how cited.

86-1302. Terms, defined.

86-1303. Broadband Bridge Program; created; purpose; administration; funding; legislative intent.

Section

- 86-1304. Grant; purpose; application; matching funds; required, when; qualifications; testing; repayment, when; restriction on eligibility.
- 86-1305. Grants; priority for distribution.
- 86-1306. Grant applications; weighted scoring system.
- 86-1307. Grants; applications; commission publish proposed projects, project areas, and broadband Internet service speeds; challenge; procedure; civil penalty.
- 86-1308. Grants; funding; conditions; limitation; maximum amount.
- 86-1309. Nebraska Broadband Bridge Fund; created; use; investment.
- 86-1310. Rules and regulations.
- 86-1311. Act; how construed; commission; duties.
- 86-1312. Federal funds; administration; coordination; allocation.
- 86-1313. Report; contents.

86-1301 Act, how cited.

Sections 86-1301 to 86-1313 shall be known and may be cited as the Nebraska Broadband Bridge Act.

Source: Laws 2021, LB388, § 1; Laws 2022, LB1144, § 5; Laws 2024, LB1031, § 16.

Operative date July 19, 2024.

86-1302 Terms, defined.

For purposes of the Nebraska Broadband Bridge Act:

- (1) Commission means the Public Service Commission;
- (2) Development costs means the amount paid for project planning, obtaining construction permits, construction of facilities including both middle-mile and last-mile infrastructure, equipment, and installation and testing of the broadband Internet service;
- (3) Digital inclusion means access to and use of information and communication technologies by all individuals and communities, including the most disadvantaged individuals and communities;
- (4) Eligible telecommunications carrier means an eligible telecommunications carrier as designated under 47 U.S.C. 214(e), as such section existed on January 1, 2021;
- (5) Grant means money provided to an applicant for purposes of a project under the act;
- (6) Program means the Broadband Bridge Program created under the act;
- (7) Project means the development of a broadband network in an unserved or underserved area;
- (8) Project area means the geographical area in which a broadband network is to be developed pursuant to a grant;
- (9) Provider means a broadband Internet service provider, including any telecommunications company, cable television company, or wireless network provider that provides broadband Internet service;
- (10) Speed test means a measurement of download and upload speeds for access to broadband Internet service between a specific consumer location and a specific remote server location that meets the specifications of the commission;
- (11) Underserved area means a geographical area of the state which lacks broadband Internet service providing access to the Internet at speeds of at least

one hundred megabits per second for downloading and twenty megabits per second for uploading; and

(12) Unserved area means a geographical area of the state which lacks broadband Internet service providing access to the Internet at speeds of at least twenty-five megabits per second for downloading and three megabits per second for uploading.

Source: Laws 2021, LB388, § 2.

86-1303 Broadband Bridge Program; created; purpose; administration; funding; legislative intent.

The Broadband Bridge Program is created. The purpose of the program is to facilitate and fund the development of broadband networks in unserved and underserved areas in addition to the reverse auction program available pursuant to section 86-330. The commission shall administer the program. It is the intent of the Legislature to appropriate twenty million dollars annually from the General Fund beginning with fiscal year 2021-22 to the commission to be distributed as grants through the program and to pay for administrative costs associated with the program.

Source: Laws 2021, LB388, § 3.

86-1304 Grant; purpose; application; matching funds; required, when; qualifications; testing; repayment, when; restriction on eligibility.

(1)(a) A provider, a cooperative, a political subdivision, or an Indian tribe may apply to the commission for a grant on forms provided by the commission. The grant shall only be used for development costs for a qualifying project. The application shall indicate the project area. The applicant shall provide matching funds equal to fifty percent of the total development costs of the project if located outside a high-cost area, or twenty-five percent of the total development costs of the project if located inside a high-cost area, as such areas are determined by the commission. The matching funds requirement in this subdivision shall not apply to any portion of a grant comprised of federal funds. In order to qualify, the project is required to provide broadband Internet service scalable to one hundred megabits per second for downloading and one hundred megabits per second for uploading, or greater. The commission shall establish deadlines for applications and publish notice of the deadlines on the commission's website.

(b) An application from a political subdivision or an Indian tribe shall be made as part of a public-private partnership with a provider.

(2)(a) As part of the application, the applicant shall agree to complete the project within eighteen months after the date the grant is awarded. The commission may permit extensions upon request and for good cause shown.

(b) If a grant recipient fails to complete the project by the agreed or extended deadline, as the case may be, the recipient shall repay the grant as provided in this subdivision. If no extension is permitted, ten percent of the grant shall be repaid for each month that the project is not complete after the eighteen-month period, up to one hundred percent of the grant. If an extension is permitted, twenty percent of the grant shall be repaid for each month that the project is not complete after the extension period, up to one hundred percent of the grant.

(3)(a) As part of the application, the applicant shall agree to submit the broadband network completed as a result of the grant to speed tests as determined by the commission. The grant recipient shall conduct the speed tests and submit the results to the commission. The speed tests shall be conducted for one week using a random sample of locations of consumers who subscribe to the network completed as a result of the grant.

(b) If the broadband network does not provide service at the speeds required pursuant to subdivision (1)(a) of this section according to the speed tests under subdivision (3)(a) of this section, the grant recipient shall be allowed a reasonable time to address the speed deficiencies and conduct a second set of speed tests as described in subdivision (3)(a) of this section. If the broadband network does not provide service at the speeds required pursuant to subdivision (1)(a) of this section according to the second set of speed tests, the grant recipient shall repay the grant.

(4) No applicant shall be eligible to receive a grant if such applicant uses or provides any communications equipment or service deemed to pose a threat to national security identified on the Covered List developed pursuant to 47 C.F.R. 1.50002, as such regulation existed on January 1, 2023, and published by the Public Safety and Homeland Security Bureau of the Federal Communications Commission pursuant to the federal Secure and Trusted Communications Networks Act of 2019, 47 U.S.C. 1601 et seq., as such act existed on January 1, 2023, and the rules adopted pursuant to such act by the Federal Communications Commission on November 11, 2022, in its Report and Order FCC 22-84.

Source: Laws 2021, LB388, § 4; Laws 2022, LB1144, § 6; Laws 2023, LB683, § 26.

86-1305 Grants; priority for distribution.

The commission shall distribute grants based on priority as follows:

(1) The first priority is a project in a project area that is an unserved area which the commission has determined pursuant to section 75-160 or 86-166 needs further support but has not received public assistance for development of a broadband network;

(2) The second priority is a project that is in an unserved area, that has received federal support for development of a broadband network, and that will not be completed within twenty-four months after the grant application deadline if the commission determines that a grant under the program will accelerate the deployment of the broadband network; and

(3) The third priority is a project in a project area that is an underserved area and that the commission determines has a digital inclusion plan.

Source: Laws 2021, LB388, § 5.

86-1306 Grant applications; weighted scoring system.

(1) The commission shall establish a weighted scoring system to evaluate and rank the applications received each fiscal year.

(2) In each fiscal year, at least thirty days prior to the first day that applications may be submitted, the commission shall publish on the commission's website the specific criteria and the quantitative weighted scoring system the commission will use to evaluate and rank applications and award grants

pursuant to the program. Such weighted scoring system shall consider, at a minimum:

(a) The financial, technical, and legal capability of the applicant to deploy and operate broadband Internet service;

(b) Whether the provider is designated as an eligible telecommunications carrier or will be so designated prior to the project completion date;

(c) The ability of an applicant to offer rates in the project area for the applicant's currently offered speed tiers that are comparable to the rates offered by the applicant outside the project area for the same currently offered speed tiers;

(d) The available minimum broadband speeds, with higher scores for faster speeds, except that no grant shall be awarded based on speeds less than those scalable to one hundred megabits per second for downloading and one hundred megabits per second for uploading, or greater;

(e) The ability of the broadband infrastructure to be scalable to higher broadband Internet speeds in the future; and

(f) Whether the applicant has committed to fund more than fifty percent of the total development costs of the project if located outside a high-cost area, or more than twenty-five percent of the total development costs of the project if located inside a high-cost area, as such areas are determined by the commission, from sources other than grants under the program, with higher scores for higher amounts of matching funds.

Source: Laws 2021, LB388, § 6; Laws 2022, LB1144, § 7.

86-1307 Grants; applications; commission publish proposed projects, project areas, and broadband Internet service speeds; challenge; procedure; civil penalty.

(1) Within three business days after the application deadline described in subdivision (1)(a) of section 86-1304, the commission shall publish on its website the proposed projects, project areas, and broadband Internet service speeds for each application submitted.

(2) Any provider may, within thirty days after the publication under subsection (1) of this section, submit to the commission on forms provided by the commission a challenge to an application, except that the commission may, upon good cause shown, allow a provider up to ninety days to submit a challenge to an application. Such challenge shall contain information demonstrating that, at the time of submitting the challenge, (a) the provider provides or has begun construction to provide a broadband network in the proposed project area with access to the Internet at speeds equal to or greater than one hundred megabits per second for downloading and twenty megabits per second for uploading or (b) the provider provides broadband service through a broadband network in or proximate to the proposed project area and the provider commits to complete construction of broadband infrastructure and provide a broadband network to the proposed project area with access to the Internet at speeds equal to or greater than one hundred megabits per second for downloading and twenty megabits per second for uploading, no later than eighteen months after the date grant awards are made under the program.

(3) Within three business days after the submission of a challenge as provided in subsection (2) of this section, the commission shall notify the applicant of

such challenge. The applicant shall have ten business days after receipt of such notification to provide any supplemental information regarding the challenged application to the commission.

(4) The commission shall require a provider submitting a challenge under subsection (2) of this section to provide speed test results in the challenged portion of the proposed project area in which the provider submitting the challenge states that broadband service is currently available at minimum speeds of one hundred megabits per second for downloading and twenty megabits per second for uploading. Such speed test results shall be provided in a manner prescribed by the commission.

(5) The commission shall evaluate the information submitted in a challenge and shall not award a grant if the information submitted under subsection (2) of this section is credible and if the provider submitting the challenge agrees to submit documentation no later than eighteen months after the date grant awards are made for the then-current fiscal year under the program substantiating that the provider submitting the challenge has fulfilled its commitment to deploy broadband Internet service with access to the Internet at the stated speeds in the proposed project area.

(6) If the commission denies an application for a grant based on a challenge and the provider which submitted the challenge does not provide broadband Internet service to the proposed project area within eighteen months, the commission shall impose a civil penalty for each day such provider fails to provide service after the expiration of such eighteen-month period, and such provider shall not challenge any grant application or make any application for a grant under the Nebraska Broadband Bridge Act for the following two fiscal years unless the failure to provide such service is due to factors beyond the provider's control.

Source: Laws 2021, LB388, § 7; Laws 2022, LB1144, § 8.

86-1308 Grants; funding; conditions; limitation; maximum amount.

(1) For each fiscal year, the commission shall approve grant funding for all qualified applicants within the limits of available appropriations.

(2)(a) As conditions for accepting a grant under the program, the applicant and its successors and affiliates shall agree to:

(i) Offer broadband Internet service in the project area for fifteen years after receipt of grant funding; and

(ii) Commit to maintaining minimum speed capability of one hundred megabits per second for downloading and one hundred megabits per second for uploading in all locations for which the applicant will receive support for the period of time prescribed in subdivision (2)(a)(i) of this section.

(b) Any applicant that declines to accept the conditions described in subdivision (2)(a) of this section shall not be eligible to receive a grant. For any grant recipient, the commission shall have the authority to enforce the performance of such agreed-upon conditions, including the authority to impose civil penalties pursuant to section 75-156.

(3) The commission shall not add to the obligations required of a grant recipient except as specifically authorized under the Nebraska Broadband Bridge Act or as required by federal law to access and distribute federal funds appropriated for the purpose of broadband expansion.

(4) The maximum grant amount awarded under the program with respect to any single project shall be five million dollars.

Source: Laws 2021, LB388, § 8; Laws 2022, LB1144, § 9.

86-1309 Nebraska Broadband Bridge Fund; created; use; investment.

(1) The Nebraska Broadband Bridge Fund is created. The fund shall consist of money appropriated by the Legislature and federal funds designated by the Governor for broadband enhancement purposes. The commission shall administer the fund and use the fund to finance grants for qualifying projects under the Nebraska Broadband Bridge Act and for expenses of the commission as appropriated by the Legislature for administering the fund.

(2) Any money in the Nebraska Broadband Bridge 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 2021, LB388, § 9; Laws 2023, LB683, § 27.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

86-1310 Rules and regulations.

The commission may adopt and promulgate rules and regulations to carry out the Nebraska Broadband Bridge Act.

Source: Laws 2021, LB388, § 10.

86-1311 Act; how construed; commission; duties.

(1) Nothing in the Nebraska Broadband Bridge Act shall be construed to authorize the commission to regulate Internet services as prohibited by subdivision (1)(d) of section 86-124.

(2) The commission shall take reasonable steps to ensure that an applicant meets the obligations described in subsections (2) and (3) of section 86-1308. The commission shall not deny an application based on prices or terms and conditions offered, or regulate any term of service. The commission's weighted scoring system under subdivision (2)(c) of section 86-1306 may take into consideration an applicant's terms and conditions of service.

Source: Laws 2022, LB1144, § 10.

86-1312 Federal funds; administration; coordination; allocation.

(1) Any political subdivision of the state that allocates funds received under the federal American Rescue Plan Act of 2021 for eligible broadband infrastructure projects may coordinate with the commission by mutual consent to administer such federal funds in a manner consistent with the Nebraska Broadband Bridge Act.

(2) In administering federal funds pursuant to subsection (1) of this section, the commission may allocate such funds received for eligible projects awarded grants under subdivision (1)(c) of section 81-12,245 to any portion of a local exchange area containing a city of the second class or village.

Source: Laws 2022, LB1144, § 11; Laws 2023, LB683, § 28.

86-1313 Report; contents.

On or before July 30, 2024, and by July 30 each year thereafter, each provider operating in this state shall submit a report to the Nebraska Broadband Office that provides specific information regarding each standard Internet service plan advertised by the provider and the rates associated with each such plan.

Source: Laws 2024, LB1031, § 17.
Operative date July 19, 2024.

ARTICLE 14

PRECISION AGRICULTURE INFRASTRUCTURE GRANT ACT

Section

- 86-1401. Act, how cited.
- 86-1402. Terms, defined.
- 86-1403. Precision Agriculture Infrastructure Grant Program; created; purposes; administration; funding.
- 86-1404. Grant; application; use; how awarded.
- 86-1405. Grant; conditions.
- 86-1406. Rules and regulations.

86-1401 Act, how cited.

Sections 86-1401 to 86-1406 shall be known and may be cited as the Precision Agriculture Infrastructure Grant Act.

Source: Laws 2022, LB1144, § 12.

86-1402 Terms, defined.

For purposes of the Precision Agriculture Infrastructure Grant Act:

- (1) Adequate precision agriculture connectivity means a download speed of at least one hundred megabits per second and an upload speed of at least twenty megabits per second;
- (2) Commission means the Public Service Commission;
- (3) Program means the Precision Agriculture Infrastructure Grant Program created in section 86-1403; and
- (4) Provider means a wireless network provider that provides adequate precision agriculture connectivity.

Source: Laws 2022, LB1144, § 13.

86-1403 Precision Agriculture Infrastructure Grant Program; created; purposes; administration; funding.

- (1) The Precision Agriculture Infrastructure Grant Program is created. The commission shall administer the program. The purposes of the program are to:
 - (a) Propel Nebraska agricultural producers to lead the nation in precision agriculture connectivity, sustainability, traceability, and autonomy to accelerate rural economic development; and
 - (b) Provide high-speed Internet service to farm sites as defined in section 77-1359 in unserved areas of the state as defined in section 86-1302.

(2) For the purpose of carrying out the program, the commission may utilize funds provided to the state through the federal Broadband Equity, Access, and Deployment Program, not to exceed two million dollars per year.

Source: Laws 2022, LB1144, § 14.

86-1404 Grant; application; use; how awarded.

(1) A provider, an agricultural cooperative, an agronomist, or an agricultural producer may apply to the commission for a grant under the program. The application shall be made on forms prescribed by the commission.

(2) Grants shall only be used to provide:

(a) Adequate precision agriculture connectivity to on-farm structures and devices, including, but not limited to, tractors, combines, irrigation systems, livestock facilities, and farm offices;

(b) On-farm traceability solutions that satisfy food supply stakeholder demand, including blockchain;

(c) Products that improve soil health, water management tools and sensors that facilitate judicious use of water resources, and products that promote the use of water efficiency seed technologies that lower agriculture's water, carbon, and nitrate footprint; and

(d) Products that use autonomous solutions in agricultural machinery, including, but not limited to, grain carts, spreaders, precision drone scouting, and scouting robots.

(3) The commission shall award up to one-half of the available grant funds for the purpose described in subdivision (2)(a) of this section and up to one-half of the available grant funds for the purposes described in subdivisions (2)(b), (c), and (d) of this section.

Source: Laws 2022, LB1144, § 15.

86-1405 Grant; conditions.

If the grant application is to provide adequate precision agriculture connectivity as described in subdivision (2)(a) of section 86-1404, the applicant shall agree to:

(1) Complete the project within twelve months after the date on which the grant is awarded. The commission may permit one extension of up to six months upon request and for good cause shown; and

(2) Submit the connectivity to speed tests. If the speed tests show that the connectivity is not adequate precision agriculture connectivity, the applicant shall be allowed a reasonable time to correct the deficiencies. If the applicant fails to provide adequate precision agriculture connectivity after the second set of speed tests, the applicant shall repay the grant.

Source: Laws 2022, LB1144, § 16.

86-1406 Rules and regulations.

The commission may adopt and promulgate rules and regulations to carry out the Precision Agriculture Infrastructure Grant Act.

Source: Laws 2022, LB1144, § 17.

ARTICLE 15

RURAL COMMUNICATIONS SUSTAINABILITY ACT

Section

- 86-1501. Act, how cited.
86-1502. Policy of state.
86-1503. Terms, defined.
86-1504. Deployment project area; determination.
86-1505. Broadband deployment program; compliance; deployment project area; support; transfer.
86-1506. Commission; prohibited acts.
86-1507. Rules and regulations.

86-1501 Act, how cited.

Sections 86-1501 to 86-1507 shall be known and may be cited as the Rural Communications Sustainability Act.

Source: Laws 2023, LB683, § 12.

86-1502 Policy of state.

It is hereby declared to be the policy of this state to ensure that all Nebraskans have access to affordable and reliable communications services in rural high-cost areas, and to ensure the long-term sustainability of infrastructure necessary to preserve such access.

Source: Laws 2023, LB683, § 13.

86-1503 Terms, defined.

For purposes of the Rural Communications Sustainability Act:

- (1) Broadband deployment program means a federal or state program authorizing payment of public funds for the purpose of deployment of communications infrastructure;
- (2) Commission means the Public Service Commission;
- (3) Communications infrastructure means infrastructure, facilities, and equipment capable of providing broadband or telecommunications services;
- (4) Competitive provider means a communications provider as defined in section 86-125, including, but not limited to, lawfully franchised cable providers and competitive local exchange carriers in a local exchange area;
- (5) Deployment project area means a contiguous geographic area consisting of locations serviceable by broadband or telecommunications services determined by the granting agency for a project funded under a broadband deployment program. A deployment project area may consist of geographical areas in more than one local exchange area;
- (6) Eligible telecommunications carrier has the same meaning as in section 86-134;
- (7) Granting agency means any state agency or political subdivision of the state which has authority to award, grant, direct, or redirect public funds under a broadband deployment program;
- (8) Incumbent carrier means an incumbent carrier in a local exchange area as defined by rules and regulations adopted and promulgated by the commission; and

(9) Local exchange area has the same meaning as in section 86-115.

Source: Laws 2023, LB683, § 14.

86-1504 Deployment project area; determination.

When determining a deployment project area, the granting agency shall collaborate with the Nebraska Broadband Office and the commission to ensure compliance with the Rural Communications Sustainability Act.

Source: Laws 2023, LB683, § 15.

86-1505 Broadband deployment program; compliance; deployment project area; support; transfer.

After a granting agency makes final payment of public funds under a broadband deployment program to a competitive provider in a deployment project area that is part of a local exchange area served by an incumbent carrier, upon request by the incumbent carrier the commission shall:

(1) Upon finding that the granting agency has determined the competitive provider is in compliance with all requirements of the broadband deployment program, relieve the incumbent carrier of eligible telecommunications carrier obligations and carrier of last resort obligations in the deployment project area;

(2) Consistent with rules of procedure adopted and promulgated by the commission, make determinations related to allocations and distributions of support from the Nebraska Telecommunications Universal Service Fund for the deployment project area; and

(3) In coordination with the Federal Communications Commission, and in consultation with the incumbent carrier and the competitive provider, determine whether eligible telecommunications carrier and carrier of last resort obligations corresponding with support from the Nebraska Telecommunications Universal Service Fund in the deployment project area should be transferred to the competitive provider.

Source: Laws 2023, LB683, § 16.

86-1506 Commission; prohibited acts.

In carrying out the Rural Communications Sustainability Act, the commission shall not:

(1) Require a competitive provider to accept or receive support from the Nebraska Telecommunications Universal Service Fund;

(2) Impose eligible telecommunications carrier responsibilities or carrier of last resort obligations relating to the Nebraska Telecommunications Universal Service Fund Act on a competitive provider in any deployment project area where the incumbent carrier or competitive provider is not actually receiving support from the Nebraska Telecommunications Universal Service Fund; or

(3) Impose eligible telecommunications carrier responsibilities or carrier of last resort obligations on an incumbent carrier that are not in existence as of the date of final payment made pursuant to section 86-1505.

Source: Laws 2023, LB683, § 17.

Cross References

Nebraska Telecommunications Universal Service Fund Act, see section 86-316.

86-1507 Rules and regulations.

The commission may adopt and promulgate rules and regulations as necessary to carry out the Rural Communications Sustainability Act.

Source: Laws 2023, LB683, § 18.

CHAPTER 87

TRADE PRACTICES

Article.

1. Trademarks. 87-101 to 87-144.
2. Trade Names. 87-201 to 87-220.
3. Deceptive Trade Practices.
 - (a) Uniform Deceptive Trade Practices Act. 87-301 to 87-306.
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 - (a) Franchise Practices Act. 87-401 to 87-410.
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5. Trade Secrets Act. 87-501 to 87-507.
6. Invention Development. 87-601 to 87-610.
7. Equipment Business Regulation. 87-701 to 87-711.
8. Financial Data Protection and Consumer Notification of Data Security Breach Act of 2006. 87-801 to 87-808.
9. Genetic Information Privacy Act. 87-901 to 87-904.
10. Online Age Verification Liability Act. 87-1001 to 87-1005.
11. Data Privacy Act. 87-1101 to 87-1130.

ARTICLE 1

TRADEMARKS

Section

- 87-101. Repealed. Laws 1967, c. 627, § 17, p. 2099.
- 87-102. Repealed. Laws 1967, c. 627, § 17, p. 2099.
- 87-103. Repealed. Laws 1967, c. 627, § 17, p. 2099.
- 87-104. Repealed. Laws 1967, c. 627, § 17, p. 2099.
- 87-105. Repealed. Laws 1967, c. 627, § 17, p. 2099.
- 87-106. Repealed. Laws 1967, c. 627, § 17, p. 2099.
- 87-107. Repealed. Laws 1967, c. 627, § 17, p. 2099.
- 87-108. Repealed. Laws 1967, c. 627, § 17, p. 2099.
- 87-109. Repealed. Laws 1967, c. 627, § 17, p. 2099.
- 87-110. Repealed. Laws 1967, c. 627, § 17, p. 2099.
- 87-111. Repealed. Laws 2000, LB 626, § 22.
- 87-112. Repealed. Laws 2000, LB 626, § 22.
- 87-113. Repealed. Laws 2000, LB 626, § 22.
- 87-114. Repealed. Laws 2000, LB 626, § 22.
- 87-115. Repealed. Laws 2000, LB 626, § 22.
- 87-116. Repealed. Laws 2000, LB 626, § 22.
- 87-117. Repealed. Laws 2000, LB 626, § 22.
- 87-118. Repealed. Laws 2000, LB 626, § 22.
- 87-119. Repealed. Laws 2000, LB 626, § 22.
- 87-120. Repealed. Laws 2000, LB 626, § 22.
- 87-121. Repealed. Laws 2000, LB 626, § 22.
- 87-122. Repealed. Laws 2000, LB 626, § 22.
- 87-123. Repealed. Laws 2000, LB 626, § 22.
- 87-124. Repealed. Laws 2000, LB 626, § 22.
- 87-125. Repealed. Laws 2000, LB 626, § 22.
- 87-126. Act, how cited.
- 87-127. Intent.
- 87-128. Terms, defined.
- 87-129. Mark; not registered; when.
- 87-130. Application for registration; contents.

Section

- 87-131. Application; fee; examination; disclaimer; amendments; reapplication; application priorities.
- 87-132. Certificate of registration; contents; how treated.
- 87-133. Registration; term; renewal; renewal fee; prior registration and proceedings.
- 87-134. Registration; assignment; change of name; other recordings; fees.
- 87-135. Public records.
- 87-136. Cancellation from register.
- 87-137. Classification of goods and services; rules and regulations.
- 87-138. Fraudulent representation; liability.
- 87-139. Unauthorized use; liability.
- 87-140. Famous mark; factors; remedies.
- 87-141. Injunction; damages; attorney's fees.
- 87-142. Cancellation or registration of mark; action; procedure.
- 87-143. Common law; construction of act.
- 87-144. Fees; not refundable.

87-101 Repealed. Laws 1967, c. 627, § 17, p. 2099.

87-102 Repealed. Laws 1967, c. 627, § 17, p. 2099.

87-103 Repealed. Laws 1967, c. 627, § 17, p. 2099.

87-104 Repealed. Laws 1967, c. 627, § 17, p. 2099.

87-105 Repealed. Laws 1967, c. 627, § 17, p. 2099.

87-106 Repealed. Laws 1967, c. 627, § 17, p. 2099.

87-107 Repealed. Laws 1967, c. 627, § 17, p. 2099.

87-108 Repealed. Laws 1967, c. 627, § 17, p. 2099.

87-109 Repealed. Laws 1967, c. 627, § 17, p. 2099.

87-110 Repealed. Laws 1967, c. 627, § 17, p. 2099.

87-111 Repealed. Laws 2000, LB 626, § 22.

87-112 Repealed. Laws 2000, LB 626, § 22.

87-113 Repealed. Laws 2000, LB 626, § 22.

87-114 Repealed. Laws 2000, LB 626, § 22.

87-115 Repealed. Laws 2000, LB 626, § 22.

87-116 Repealed. Laws 2000, LB 626, § 22.

87-117 Repealed. Laws 2000, LB 626, § 22.

87-118 Repealed. Laws 2000, LB 626, § 22.

87-119 Repealed. Laws 2000, LB 626, § 22.

87-120 Repealed. Laws 2000, LB 626, § 22.

87-121 Repealed. Laws 2000, LB 626, § 22.

87-122 Repealed. Laws 2000, LB 626, § 22.

87-123 Repealed. Laws 2000, LB 626, § 22.

87-124 Repealed. Laws 2000, LB 626, § 22.

87-125 Repealed. Laws 2000, LB 626, § 22.

87-126 Act, how cited.

Sections 87-126 to 87-144 shall be known and may be cited as the Trademark Registration Act.

Source: Laws 2000, LB 626, § 1.

87-127 Intent.

It is the intent of the Legislature that the Trademark Registration Act provide a system of state trademark registration and protection substantially consistent with the federal system of trademark registration and protection under the federal Trademark Act of 1946, as amended. To that end, the construction given the federal act should be examined as persuasive authority for interpreting and construing the Trademark Registration Act.

Source: Laws 2000, LB 626, § 2.

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

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

87-128 Terms, defined.

For purposes of the Trademark Registration Act:

(1) Abandoned mark means that either of the following has occurred:

(a) When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for two consecutive years shall constitute prima facie evidence of abandonment; or

(b) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to lose its significance as a mark;

(2) Applicant means the person filing an application for registration of a mark under the act and the legal representatives, successors, or assigns of such person;

(3) Dilution means the lessening of the capacity of a famous mark to identify and distinguish goods or services, regardless of the presence or absence of (a) competition between the owner of the famous mark and other parties or (b) likelihood of confusion, mistake, or deception;

(4) Mark includes any trademark or service mark, entitled to registration under the act, whether registered or not;

(5) Person and any other word or term used to designate the applicant or other party entitled to a benefit or privilege or rendered liable under the act includes an individual, a firm, a partnership, a limited liability company, a corporation, a union, an association, or another organization capable of suing and being sued in a court of law;

(6) Registrant means the person to whom the registration of a mark under the act is issued and the legal representatives, successors, or assigns of such person;

(7) Secretary means the Secretary of State or the designee of the secretary charged with the administration of the act;

(8) Service mark means any word, name, symbol, or device or any combination thereof used by a person, to identify and distinguish the services of one person, including a unique service, from the services of others, and to indicate the source of the services, even if that source is unknown. Titles, character names used by a person, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor;

(9) Trade name means any name used by a person to identify a business or vocation of such person;

(10) Trademark means any word, name, symbol, or device or any combination thereof used by a person to identify and distinguish the goods of such person, including a unique product, from those manufactured or sold by others, and to indicate the source of the goods, even if that source is unknown; and

(11) Use means the bona fide use of a mark in the ordinary course of trade and not made merely to reserve a right in a mark. A mark shall be deemed to be in use:

(a) On goods when it is placed in any manner on the goods or other containers, associated displays, or tags or labels or, if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale and the goods are sold or transported in commerce in this state; and

(b) On services when it is used or displayed in the sale or advertising of services and the services are rendered in this state.

Source: Laws 2000, LB 626, § 3.

Pursuant to subsection (1) of this section, the statutory hallmarks of an abandoned service or trademark are (a) when its use has been discontinued with intent not to resume such use, which may be inferred from the circumstances, or its nonuse for 2 consecutive years shall constitute prima facie evidence of

abandonment or (b) when any course of conduct of the owner, including acts of omission as well as commission, causes the mark to lose its significance as a mark. *ADT Security Servs. v. A/C Security Systems*, 15 Neb. App. 666, 736 N.W.2d 737 (2007).

87-129 Mark; not registered; when.

A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it:

(1) Consists of or comprises immoral, deceptive, or scandalous matter;

(2) Consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols or bring them into contempt or disrepute;

(3) Consists of or comprises the flag or coat of arms or other insignia of the United States, of any state or municipality, or of any foreign nation, or any simulation thereof;

(4) Consists of or comprises the name, signature, or portrait identifying a particular living individual, except by the individual's written consent;

(5) Consists of a mark which:

(a) When used on or in connection with the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them;

(b) When used on or in connection with the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them; or

(c) Is primarily merely a surname, except that nothing in subdivision (5) of this section shall prevent the registration of a mark used by the applicant which has become distinctive of the applicant's goods or services. The secretary may accept as evidence that the mark has become distinctive, as used on or in connection with the applicant's goods or services, proof of continuous use thereof as a mark by the applicant in this state for the five years before the date on which the claim of distinctiveness is made; or

(6) Consists of or comprises a mark which so resembles a mark registered in this state or a mark previously used by another and not abandoned as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion or mistake or to deceive.

Source: Laws 2000, LB 626, § 4.

87-130 Application for registration; contents.

Subject to the limitations set forth in the Trademark Registration Act, any person who uses a mark may file in the office of the secretary, in a manner complying with the requirements of the secretary, an application for registration of that mark including, but not limited to, the following information:

(1) The name and business address of the person applying for such registration and, if a corporation or other type of business entity except a partnership, the state of incorporation or organization, or if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the secretary;

(2) The goods or services on or in connection with which the mark is used and the mode or manner in which the mark is used on or in connection with such goods or services and the class in which such goods or services fall;

(3) The date when the mark was first used anywhere and the date when it was first used in this state by the applicant or a predecessor in interest; and

(4) A statement that the applicant is the owner of the mark, that the mark is in use, and that, to the knowledge of the person verifying the application, no other person has registered, either federally or in this state, or has the right to use such mark either in the identical form or in such near resemblance as to be likely, when applied to the goods or services of such other person, to cause confusion or mistake or to deceive.

The secretary may also require a statement as to whether an application to register the mark, or portions or a composite thereof, has been filed by the applicant or a predecessor in interest in the United States Patent and Trademark Office, and if so, the applicant shall provide full particulars with respect thereto, including the filing date and serial number of each application, the status of each application, and if any application was finally refused registration or has otherwise not resulted in a registration, the reasons for the refusal or rejection. The secretary may also require that a drawing of the mark, complying with such requirements as the secretary may specify, accompany the application. The application shall be signed and verified, by oath, affirmation, or declaration subject to perjury laws, by the applicant or by a member of the firm or an officer of the corporation or association applying. The application shall be submitted in duplicate and shall be accompanied by three specimens showing the mark as actually used and by the application fee of one hundred ten dollars if submitted in writing and one hundred dollars if submitted

electronically pursuant to section 84-511. The fee for filing under this section shall be payable to the Secretary of State. The Secretary of State shall remit all such fees collected to the State Treasurer. The State Treasurer shall credit sixty percent of the fees to the General Fund and forty percent of the fees to the Secretary of State Cash Fund.

Source: Laws 2000, LB 626, § 5; Laws 2012, LB886, § 1; Laws 2020, LB910, § 39.

87-131 Application; fee; examination; disclaimer; amendments; reapplication; application priorities.

(1) Upon the filing of an application for registration and payment of the application fee, the secretary may cause the application to be examined for conformity with the Trademark Registration Act.

(2) The applicant shall provide any additional pertinent information requested by the secretary including a description of a design mark and may make, or authorize the secretary to make, such amendments to the application as may be reasonably requested by the secretary or deemed by the applicant to be advisable to respond to any rejection or objection.

(3) The secretary may require the applicant to disclaim an unregistrable component of a mark otherwise registrable, and an applicant may voluntarily disclaim a component of a mark sought to be registered. No disclaimer shall prejudice or affect the applicant's or registrant's rights then existing or thereafter arising in the disclaimed matter or the applicant's or registrant's rights of registration on another application if the disclaimed matter is or becomes distinctive of the applicant's or registrant's goods or services.

(4) Amendments may be made by the secretary upon the application submitted by the applicant upon the applicant's agreement, or a new application may be required to be submitted.

(5) If the applicant is found not to be entitled to registration, the secretary shall advise the applicant thereof and of the reasons therefor. The applicant shall have a reasonable period of time specified by the secretary in which to reply or to amend the application, in which event the application shall then be reexamined. This procedure may be repeated until:

(a) The secretary finally refuses registration of the mark; or

(b) The applicant fails to reply or amend within the specified period, whereupon the application shall be considered abandoned.

(6) If the secretary finally refuses registration of the mark, the applicant may seek a writ of mandamus to compel such registration. Such writ may be granted, but without costs to the secretary, on proof that all the statements in the application are true and that the mark is otherwise entitled to registration.

(7) In the instance of applications concurrently being processed by the secretary seeking registration of the same or confusingly similar marks for the same or related goods or services, the secretary shall grant priority to the applications in order of filing. If a prior-filed application is granted a registration, the other application or applications shall then be rejected. Any rejected applicant may bring an action for cancellation of the registration upon grounds of prior or superior rights to the mark, in accordance with section 87-136.

Source: Laws 2000, LB 626, § 6.

87-132 Certificate of registration; contents; how treated.

Upon compliance by the applicant with the requirements of the Trademark Registration Act, the secretary shall return the duplicate copy of the application stamped with the filing date to the applicant. The certificate of registration shall be issued under the signature of the secretary and the seal of the state, and it shall show the name and business address and, if a corporation or other type of business entity except a partnership, the state of incorporation or organization, or if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the secretary, of the person claiming ownership of the mark, the date claimed for the first use of the mark anywhere and the date claimed for the first use of the mark in this state, the class of goods or services and a description of the goods or services on or in connection with which the mark is used, a reproduction of the mark, the registration date, and the term of the registration. An original, a duplicate original, or a certified copy of an application for trademark which has the file stamp and date of the secretary shall be admissible in evidence as competent and sufficient proof of the registration of such mark in any actions or judicial proceedings in any court of this state. Registration of a mark with the secretary shall be prima facie evidence of the right to use the mark shown in the registration on or in connection with the class or classes of goods or services designated in the registration.

Source: Laws 2000, LB 626, § 7; Laws 2012, LB886, § 2.

87-133 Registration; term; renewal; renewal fee; prior registration and proceedings.

(1) A registration of a mark under the Trademark Registration Act is effective for ten years after the date of registration and, upon application filed within six months prior to the expiration, in a manner complying with the requirements of the secretary, the registration may be renewed for a like term from the end of the expiring term. A renewal fee shall accompany the application for renewal of the registration. The renewal fee shall be one hundred ten dollars if the filing is submitted in writing and one hundred dollars if the filing is submitted electronically pursuant to section 84-511. A registration may be renewed for successive periods of ten years in like manner.

(2) Any registration in force under sections 87-111 to 87-125 on July 13, 2000, as such sections existed prior to such date, is effective and shall continue in full force and effect for the unexpired term of such registration. Such registration may be renewed by filing an application for renewal with the secretary complying with the requirements of the secretary and paying the renewal fee within six months prior to the expiration of the registration.

(3) Any suit, proceeding, or appeal pending on July 13, 2000, shall be decided according to sections 87-111 to 87-125 as such sections existed prior to July 13, 2000.

(4) All applications for renewal under the act shall include a verified statement that the mark has been and is still in use and include a specimen showing actual use of the mark on or in connection with the goods or services.

(5) The fees imposed under this section shall be payable to the Secretary of State. The Secretary of State shall remit all such fees collected to the State

Treasurer. The State Treasurer shall credit sixty percent of the fees to the General Fund and forty percent of the fees to the Secretary of State Cash Fund.

Source: Laws 2000, LB 626, § 8; Laws 2020, LB910, § 40.

87-134 Registration; assignment; change of name; other recordings; fees.

(1) Any mark and its registration under the Trademark Registration Act is assignable with the goodwill of the business in which the mark is used or with that part of the goodwill of the business connected with the use of and symbolized by the mark. Assignment shall be by instruments in writing duly executed and may be recorded with the secretary upon the payment of a fee payable to the secretary who, upon recording of the assignment, shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal thereof. The fee shall be thirty dollars if the instrument is submitted in writing and twenty-five dollars if the instrument is submitted electronically pursuant to section 84-511. An assignment of any registration under the Trademark Registration Act is void as against any subsequent purchaser for valuable consideration without notice unless it is recorded with the secretary within three months after the date of the assignment or prior to such subsequent purchase.

(2)(a) Any registrant or applicant effecting a change of the name of the person to whom the mark was issued or for whom an application was filed or a change of address or state of incorporation or organization may record a certificate of such change with the secretary upon the payment of a fee of thirty dollars if submitted in writing and twenty-five dollars if submitted electronically pursuant to section 84-511. A registrant or an applicant may be required to submit documented proof of its name change at the discretion of the secretary.

(b) The secretary may issue in the name of the assignee a certificate of registration of an assigned application. The secretary may issue in the name of the assignee a new certificate of registration for the remainder of the term of the registration or last renewal of the registration.

(3) Other instruments which relate to a mark registered or application pending pursuant to the act, such as licenses, security interests, or mortgages, may be recorded in the discretion of the secretary if the instrument is in writing and duly executed.

(4) Acknowledgment shall be prima facie evidence of the execution of an assignment or other instrument and, when recorded by the secretary, the record shall be prima facie evidence of execution.

(5) A photocopy of any instrument referred to in this section shall be accepted for recording if it is certified by any of the parties to the instrument, or their successors, to be a true and correct copy of the original.

(6) In a registration that resulted from an application that was filed before the effective date of a change to the Trademark Registration Act or any rules or regulations adopted and promulgated pursuant to the act, the registrant may be allowed to file an amendment to the registration in order to comply with the current requirements of the act and the rules and regulations. The registrant shall pay a fee for such amendment of thirty dollars if submitted in writing and twenty-five dollars if submitted electronically pursuant to section 84-511.

(7) The fees imposed under this section shall be payable to the Secretary of State. The Secretary of State shall remit all such fees collected to the State

Treasurer. The State Treasurer shall credit sixty percent of the fees to the General Fund and forty percent of the fees to the Secretary of State Cash Fund.

Source: Laws 2000, LB 626, § 9; Laws 2012, LB886, § 3; Laws 2020, LB910, § 41.

87-135 Public records.

The secretary shall keep for public examination a record of all marks registered or renewed under the Trademark Registration Act, as well as a record of all documents recorded pursuant to section 87-134.

Source: Laws 2000, LB 626, § 10.

87-136 Cancellation from register.

The secretary shall cancel from the register, in whole or in part:

(1) Any registration concerning which the secretary receives a voluntary request for cancellation thereof from the registrant or the assignee of record;

(2) All registrations granted under the Trademark Registration Act and not renewed in accordance with the act;

(3) Any registration concerning which a court of competent jurisdiction finds that:

(a) The registered mark has been abandoned;

(b) The registrant is not the owner of the mark;

(c) The registration was granted improperly;

(d) The registration was obtained fraudulently;

(e) The mark is or has become the generic name for the goods or services, or a portion thereof, for which it has been registered; or

(f) The registered mark is so similar, as to be likely to cause confusion or mistake or to deceive, to a mark registered by another person in the United States Patent and Trademark Office prior to the date of filing of the application for registration by the registrant under the act, and not abandoned. If the registrant proves that the registrant is the owner of a concurrent registration of a mark in the United States Patent and Trademark Office covering an area including this state, the registration under the act shall not be canceled for such area of the state; or

(4) A court of competent jurisdiction has ordered the cancellation of a registration on any ground.

Source: Laws 2000, LB 626, § 11.

87-137 Classification of goods and services; rules and regulations.

The secretary shall adopt and promulgate rules and regulations which establish a classification of goods and services for convenience of administration of the Trademark Registration Act, but such rules and regulations shall not limit or extend the applicant's or registrant's rights and a single application for registration of a mark may include any or all goods upon which, or services with which, the mark is actually being used indicating the appropriate class or classes of goods or services. When a single application includes goods or services which fall within multiple classes, the secretary may require payment of a fee for each class. To the extent practicable, the classification of goods and

services should conform to the classification adopted by the United States Patent and Trademark Office.

Source: Laws 2000, LB 626, § 12.

87-138 Fraudulent representation; liability.

Any person who for himself or herself, or on behalf of any other person, procures the filing or registration of any mark in the office of the secretary under the Trademark Registration Act by knowingly making any false or fraudulent representation or declaration, orally or in writing, or by any other fraudulent means, is liable for all damages sustained in consequence of such filing or registration, to be recovered by or on behalf of the party in any court of competent jurisdiction.

Source: Laws 2000, LB 626, § 13.

87-139 Unauthorized use; liability.

Subject to section 87-143, any person who (1) uses, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a mark registered under the Trademark Registration Act in connection with the sale, distribution, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive as to the source of origin of such goods or services or (2) reproduces, counterfeits, copies, or colorably imitates any such mark and applies such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with the sale or other distribution in this state of such goods or services, is liable in a civil action by the registrant for any and all of the remedies provided in section 87-141, except that under subdivision (2) of this section, the registrant is not entitled to recover profits or damages unless the acts have been committed with the intent to cause confusion or mistake or to deceive.

Source: Laws 2000, LB 626, § 14.

87-140 Famous mark; factors; remedies.

(1) The owner of a mark which is famous in this state is entitled, subject to the principles of equity and upon such terms as the court seems reasonable, to an injunction against another person's commercial use of a mark or trade name, if such use begins after the mark has become famous and causes dilution of the distinctive quality of the mark, and to obtain such other relief as is provided in this section. In determining whether a mark is distinctive and famous, a court may consider factors such as, but not limited to:

(a) The degree of inherent or acquired distinctiveness of the mark in this state;

(b) The duration and extent of use of the mark in connection with the goods and services with which the mark is used;

(c) The duration and extent of advertising and publicity of the mark in this state;

(d) The geographical extent of the trading area in which the mark is used;

(e) The channels of trade for the goods or services with which the mark is used;

(f) The degree of recognition of the mark in the trading areas and channels of trade in this state used by the mark's owner and the person against whom the injunction is sought;

(g) The nature and extent of use of the same or similar mark by third parties; and

(h) Whether the mark is the subject of a state registration in this state or a federal registration under the Act of March 3, 1881, or under the Act of February 20, 1905, or on the federal principal register.

(2) In an action brought under this section, the owner of a famous mark is entitled only to injunctive relief in this state, unless the person against whom the injunctive relief is sought willfully intended to trade on the owner's reputation or to cause dilution of the famous mark. If such willful intent is proven, the owner is also entitled to the remedies under the Trademark Registration Act, subject to the discretion of the court and the principles of equity.

(3) The following are not actionable under this section:

(a) Fair use of a famous mark by another person in comparative commercial advertising or promotion to identify the competing goods or services of the owner of the famous mark;

(b) Noncommercial use of the mark; or

(c) All forms of news reporting and news commentary.

Source: Laws 2000, LB 626, § 15.

87-141 Injunction; damages; attorney's fees.

Any owner of a mark registered under the Trademark Registration Act may enjoin the manufacture, use, display, or sale of any counterfeits or imitations of the mark and any court of competent jurisdiction may grant injunctions to restrain such manufacture, use, display, or sale as the court determines to be just and reasonable. A defendant may be required to pay to the owner all profits derived from and all damages suffered by reason of the wrongful manufacture, use, display, or sale. The court may also order that any such counterfeits or imitations in the possession or under the control of any defendant be delivered to an officer of the court, or to the complainant, to be destroyed. The court, in its discretion, may enter judgment for an amount not to exceed such profits and damages and reasonable attorney's fees of the prevailing party in such cases where the court finds the other party committed such wrongful acts with knowledge or in bad faith or otherwise as according to the circumstances of the case. The enumeration of any right or remedy under the act does not affect a registrant's right to prosecute under any penal law of this state.

Source: Laws 2000, LB 626, § 16.

87-142 Cancellation or registration of mark; action; procedure.

(1) Actions to require cancellation of a mark registered pursuant to the Trademark Registration Act or in mandamus to compel registration of a mark pursuant to the act shall be brought in the district court of Lancaster County. In an action in mandamus, the proceeding shall be based solely upon the record before the secretary. In an action for cancellation, the secretary shall not be made a party to the proceeding but shall be notified of the filing of the

complaint by the clerk of the court in which it is filed and shall be given the right to intervene in the action.

(2) In any action brought against a nonresident registrant, service may be effected upon the secretary as agent for service of the registrant in accordance with the procedures established for service upon nonresident corporations and business entities under section 25-509.01.

Source: Laws 2000, LB 626, § 17.

87-143 Common law; construction of act.

Nothing in the Trademark Registration Act shall adversely affect the rights or the enforcement of rights in marks acquired in good faith at any time at common law.

Source: Laws 2000, LB 626, § 18.

87-144 Fees; not refundable.

Unless specified by the secretary, the fees payable under the Trademark Registration Act are not refundable.

Source: Laws 2000, LB 626, § 19.

ARTICLE 2

TRADE NAMES

Cross References

Registration of name of farm, ranch, or home, see section 23-1313.

Section

87-201.	Repealed. Laws 1967, c. 628, § 14, p. 2104.
87-202.	Repealed. Laws 1967, c. 628, § 14, p. 2104.
87-203.	Repealed. Laws 1967, c. 628, § 14, p. 2104.
87-204.	Repealed. Laws 1967, c. 628, § 14, p. 2104.
87-205.	Repealed. Laws 1967, c. 628, § 14, p. 2104.
87-206.	Repealed. Laws 1967, c. 628, § 14, p. 2104.
87-207.	Repealed. Laws 1967, c. 628, § 14, p. 2104.
87-208.	Terms, defined.
87-209.	Trade name; not registered; when.
87-210.	Trade name; application for registration; requirements; Secretary of State.
87-211.	Trade name; registration; term effective; renewal; fee; statement.
87-212.	Trade name; assignment; recordation; fee.
87-213.	Secretary of State; record; public examination.
87-214.	Registration; Secretary of State; cancel; when.
87-215.	False representation or declaration; damages.
87-216.	Action for misuse; when.
87-217.	Injury to business; injunction; remedies; attorney's fees.
87-218.	Trade name; enforcement of rights.
87-219.	Trade name; publication; file; failure; effect.
87-219.01.	Trade name; protest registration; procedure.
87-220.	Repealed. Laws 2011, LB 462, § 20.

87-201 Repealed. Laws 1967, c. 628, § 14, p. 2104.

87-202 Repealed. Laws 1967, c. 628, § 14, p. 2104.

87-203 Repealed. Laws 1967, c. 628, § 14, p. 2104.

87-204 Repealed. Laws 1967, c. 628, § 14, p. 2104.

87-205 Repealed. Laws 1967, c. 628, § 14, p. 2104.

87-206 Repealed. Laws 1967, c. 628, § 14, p. 2104.

87-207 Repealed. Laws 1967, c. 628, § 14, p. 2104.

87-208 Terms, defined.

As used in sections 87-208 to 87-219.01, unless the context otherwise requires:

(1) Applicant means a person filing an application for registration of a trade name under such sections or his or her legal representatives, successors, or assigns;

(2) Person means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, unincorporated association, or two or more of the foregoing having a joint or common interest or any other legal or commercial entity;

(3) Registrant means a person to whom registration of a trade name under such sections is issued or his or her legal representatives, successors, or assigns; and

(4) Trade name means every name under which any person does or transacts any business in this state other than the true name of such person.

Source: Laws 1967, c. 628, § 1, p. 2099; Laws 1971, LB 486, § 1; Laws 1993, LB 121, § 556; Laws 1997, LB 453, § 6; Laws 2011, LB462, § 8.

“Denali Custom Builders” was a trade name of appellant Denali Custom Builders, Inc., because it was used on signs and advertising in transacting business but was not the true name of appellant. *Denali Real Estate v. Denali Custom Builders*, 302 Neb. 984, 926 N.W.2d 610 (2019).

Under this and succeeding sections, right to use trade name and to prevent its use by another may be obtained by registra-

tion or adoption without recording it, but where parties had adequate remedy at law for damages and failed to show irreparable injury, neither was entitled in private antitrust action to injunction against use of certain name for buildings handled by them. *Morton Buildings of Nebraska, Inc. v. Morton Buildings, Inc.*, 333 F.Supp. 187 (D. Neb. 1971).

87-209 Trade name; not registered; when.

A trade name shall not be registered if it:

(1) Consists of or comprises immoral, deceptive, or scandalous matter;

(2) Consists of or comprises matter which may disparage, bring into contempt or disrepute, or falsely suggest a connection with, persons living or dead, institutions, beliefs, or national symbols;

(3) Consists of, comprises, or simulates the flag or coat of arms or other insignia of the United States, any state or municipality, or any foreign nation;

(4) Consists of or comprises the name, signature, or portrait of any living individual without his or her consent;

(5)(a) Is merely descriptive or misdescriptive, or is primarily geographically descriptive or geographically misdescriptive as applied to the business of the applicant, or (b) is primarily merely a surname, but nothing in this subdivision shall prevent the registration of a trade name which has become distinctive of the applicant’s business in this state. The Secretary of State may accept as evidence that a trade name has become distinctive proof of continuous use by the applicant as a trade name in this state or elsewhere for five years preceding the date of the filing of the application for registration;

(6) Consists of or comprises a trade name which so resembles a trade name registered under sections 87-208 to 87-219.01, registered in this state, or the name of a business entity on file or registered with the Secretary of State pursuant to Nebraska law as to be likely to cause confusion, mistake, or deception of purchasers, except that a name, although similar, may be used if the business entity affected consents in writing and such writing is filed with the Secretary of State. The word incorporated, inc., or corporation shall not be a part of the trade name being registered unless the firm is duly incorporated in the State of Nebraska or some other state; or

(7) Consists of the word geologist or any modification or derivative of such word, and the applicant does not meet the requirements of subsection (6) of section 81-3528.

Source: Laws 1967, c. 628, § 2, p. 2100; Laws 1969, c. 856, § 2, p. 3225; Laws 1971, LB 486, § 2; Laws 1997, LB 44, § 12; Laws 1997, LB 453, § 7; Laws 1998, LB 1161, § 91; Laws 2011, LB462, § 9.

87-210 Trade name; application for registration; requirements; Secretary of State.

(1) Subject to the limitations set forth in sections 87-208 to 87-219.01, any person who adopts a trade name for use in this state may file in the office of the Secretary of State on a form furnished by the Secretary of State an application, in duplicate, for registration of the trade name setting forth, but not limited to, the following information:

(a) The name and street address of the applicant for registration and, if a corporation or other type of business entity, the state of incorporation or organization;

(b) The trade name sought to be registered;

(c) The general nature of the business in fact conducted by the applicant;

(d) The length of time during which the trade name has been used in this state;

(e) The signature of the applicant; and

(f) A filing fee of one hundred ten dollars if the application is submitted in writing and one hundred dollars if the application is submitted electronically pursuant to section 84-511.

(2) Upon compliance by the applicant with the requirements of sections 87-208 to 87-219.01, the Secretary of State shall return the duplicate copy stamped with the date of filing to the applicant or the representative submitting the applications for filing.

(3) The fees for filing under this section shall be payable to the Secretary of State. The Secretary of State shall remit all such fees collected to the State Treasurer. The State Treasurer shall credit sixty percent of the fees to the General Fund and forty percent of the fees to the Secretary of State Cash Fund.

Source: Laws 1967, c. 628, § 3, p. 2100; Laws 1971, LB 486, § 3; Laws 1975, LB 95, § 9; Laws 1982, LB 928, § 78; Laws 1997, LB 453, § 8; Laws 2005, LB 450, § 1; Laws 2011, LB462, § 10; Laws 2012, LB886, § 4; Laws 2020, LB910, § 42.

87-211 Trade name; registration; term effective; renewal; fee; statement.

(1) Registration of a trade name under sections 87-208 to 87-219.01 shall be effective for a term of ten years from the date of registration and, upon application filed in duplicate within six months prior to the expiration of such term on a form to be furnished by the Secretary of State, the registration may be renewed for a like term. A renewal fee shall accompany the application for renewal of the registration. The renewal fee shall be one hundred ten dollars if the filing is submitted in writing and one hundred dollars if the filing is submitted electronically pursuant to section 84-511.

(2) A trade name registration may be renewed for successive periods of ten years in like manner.

(3) The Secretary of State shall notify registrants of trade names under sections 87-208 to 87-219.01 of the necessity of renewal within the year next preceding the expiration of the ten years from the date of registration or of last renewal by writing to the last-known street address of the registrants.

(4) Any registration in force on August 27, 1971, shall expire ten years from the date of the registration or of the last renewal thereof, whichever is later, and may be renewed by filing an application with the Secretary of State on a form furnished by him or her and paying the renewal fee as provided in this section within six months prior to the expiration of the registration.

(5) All applications for renewals under sections 87-208 to 87-219.01 whether of registrations made under sections 87-208 to 87-219.01 or of registrations effected under any prior act shall include a statement that the trade name is still in use in this state.

(6) A registrant may change its name, street address, and, if the registrant is a corporation or other type of business entity, its state of incorporation or organization by filing a statement of change with the Secretary of State on a form to be furnished by the Secretary of State and paying a fee of thirty dollars if the filing is submitted in writing and twenty-five dollars if the filing is submitted electronically pursuant to section 84-511. A registrant may be required to submit documented proof of its name change at the discretion of the Secretary of State.

(7) The fees imposed under this section shall be payable to the Secretary of State. The Secretary of State shall remit all such fees to the State Treasurer. The State Treasurer shall credit sixty percent of the fees to the General Fund and forty percent of the fees to the Secretary of State Cash Fund.

Source: Laws 1967, c. 628, § 4, p. 2101; Laws 1971, LB 486, § 4; Laws 1975, LB 95, § 10; Laws 1984, LB 1016, § 1; Laws 1997, LB 453, § 9; Laws 2011, LB462, § 11; Laws 2012, LB886, § 5; Laws 2020, LB910, § 43.

87-212 Trade name; assignment; recordation; fee.

Any trade name registered under sections 87-208 to 87-219.01 shall be assignable with the goodwill of the business in which the trade name is used. Assignment shall be by an instrument in writing duly executed, in duplicate, and may be recorded with the Secretary of State upon the payment of a fee of thirty dollars if the filing is submitted in writing and twenty-five dollars if the filing is submitted electronically pursuant to section 84-511. The street address, city, and state of the assignee must be included in the assignment. Upon recording of the assignment, the Secretary of State shall return the duplicate

copy stamped with the date of filing to the applicant or the representative submitting the applications for filing. An assignment of any registration under sections 87-208 to 87-219.01 shall be void as against any subsequent purchaser for value without notice unless the assignment is recorded with the Secretary of State prior to the subsequent purchase. The fees imposed under this section shall be payable to the Secretary of State. The Secretary of State shall remit all such fees to the State Treasurer. The State Treasurer shall credit sixty percent of the fees to the General Fund and forty percent of the fees to the Secretary of State Cash Fund.

Source: Laws 1967, c. 628, § 5, p. 2101; Laws 1969, c. 856, § 3, p. 3226; Laws 1997, LB 453, § 10; Laws 2011, LB462, § 12; Laws 2020, LB910, § 44.

87-213 Secretary of State; record; public examination.

The Secretary of State shall keep for public examination a record of all trade names registered or renewed under sections 87-208 to 87-219.01.

Source: Laws 1967, c. 628, § 6, p. 2102; Laws 1997, LB 453, § 11; Laws 2011, LB462, § 13.

87-214 Registration; Secretary of State; cancel; when.

The Secretary of State shall cancel from the register:

- (1) Any registration concerning which the Secretary of State shall receive a voluntary request for cancellation from the registrant or the assignee of record;
- (2) Any registration granted under sections 87-208 to 87-219.01 and not renewed in accordance with such sections;
- (3) Any registration concerning which a court of competent jurisdiction shall find:
 - (a) That the registered trade name has been abandoned;
 - (b) That the registrant is not the owner of the trade name;
 - (c) That the registration was granted improperly; or
 - (d) That the registration was obtained fraudulently;
- (4) Any registration that a court of competent jurisdiction shall order canceled on any ground; and
- (5) Any registration where the registrant has failed to publish such trade name within forty-five days from the filing in the office of the Secretary of State and filing proof of publication with the Secretary of State within the forty-five days.

Source: Laws 1967, c. 628, § 7, p. 2102; Laws 1997, LB 453, § 12; Laws 2010, LB690, § 1; Laws 2011, LB462, § 14; Laws 2013, LB209, § 1.

Where one has acquired a common-law right in a trade name by its use, the subsequent registration of the trade name by the Secretary of State upon the application of another is invalid and subject to cancellation. *White v. Board of Regents of Univ. of Neb. at Lincoln*, 260 Neb. 26, 614 N.W.2d 330 (2000).

87-215 False representation or declaration; damages.

Any person who, for himself or herself or on behalf of any other person, procures the registration of any trade name in the office of the Secretary of State under the provisions of sections 87-208 to 87-219.01, by knowingly

making any false or fraudulent representation or declaration, verbally or in writing, or by any other fraudulent means, shall be liable to pay all damages sustained in consequence of this filing or registration, to be recovered by any party injured in any court of competent jurisdiction.

Source: Laws 1967, c. 628, § 8, p. 2102; Laws 1997, LB 453, § 13; Laws 2011, LB462, § 15.

87-216 Action for misuse; when.

Subject to section 87-218, any person shall be liable to a civil action by the registrant of the trade name for any or all of the remedies provided in section 87-217 if that person shall:

(1) Use in connection with his or her business, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a trade name registered under sections 87-208 to 87-219.01 in a manner likely to cause confusion, mistake, or deception of purchasers; or

(2) Reproduce, counterfeit, copy, or colorably imitate any registered trade name and apply the reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be in conjunction with another business in this state; except that the registrant shall not be entitled to recover profits or damages unless the acts were committed with knowledge that the imitation was intended to be used to cause confusion, mistake, or deception of purchasers.

Source: Laws 1967, c. 628, § 9, p. 2103; Laws 1997, LB 453, § 14; Laws 2011, LB462, § 16.

87-217 Injury to business; injunction; remedies; attorney's fees.

Any registrant of a trade name may proceed by suit to enjoin the use, display, or sale of any counterfeits or imitations thereof, and a court of competent jurisdiction may restrain such use, display, or sale on terms which the court deems just and reasonable and may require the defendants to pay to the registrant (1) all profits attributable to the wrongful use, display, or sale, (2) all damages caused by the wrongful use, display, or sale, or (3) both such profits and damages, and reasonable attorney's fees. In lieu of the remedies available in subdivisions (1), (2), and (3) of this section, the court may require the defendants to pay statutory damages of one thousand dollars and reasonable attorney's fees. The court may order that any counterfeits or imitations in the possession or under the control of any defendant be delivered to an officer of the court, or to the complainant, to be destroyed.

Source: Laws 1967, c. 628, § 10, p. 2103; Laws 1997, LB 453, § 15; Laws 2011, LB462, § 17.

87-218 Trade name; enforcement of rights.

Sections 87-208 to 87-219.01 shall not adversely affect rights in trade names, or the enforcement of rights in trade names, acquired at any time in good faith at common law.

Source: Laws 1967, c. 628, § 11, p. 2104; Laws 1997, LB 453, § 16; Laws 2011, LB462, § 18.

87-219 Trade name; publication; file; failure; effect.

Every duplicate of the registration of a trade name shall be published by the applicant once in a newspaper of general circulation published in the city or village where the business is to be located, or, if there is no newspaper in the city or village, in some newspaper of general circulation in the county. Proof of such publication shall be filed in the office of the Secretary of State within forty-five days from the date of registration in the office of the Secretary of State. If proof of publication is not filed with the Secretary of State within the forty-five days, the registration shall be canceled by the Secretary of State.

Source: Laws 1967, c. 628, § 13, p. 2104; Laws 2010, LB690, § 2; Laws 2013, LB209, § 2.

87-219.01 Trade name; protest registration; procedure.

(1) Within sixty days after the publication of a new registered trade name as provided in section 87-219, a person holding a valid registration of a trade name, corporate name, or limited liability company name may protest the registration of the new trade name. The protest shall be submitted in writing to the Secretary of State. The Secretary of State shall forward a copy of the written complaint to the new registrant who shall have thirty days to respond to the complaint in writing. If, upon review of the complaint and the response to the complaint, the Secretary of State finds that the new registered trade name violates any provision of section 87-209, the Secretary of State shall cancel such trade name. Unless the dispute over the registration of the new trade name is otherwise resolved or settled by the parties, the Secretary of State shall make his or her finding within fifteen days after the response by the new registrant.

(2) The Secretary of State's decision may be appealed to the district court of Lancaster County within thirty days after notice of the decision is received by the appealing party. The appeal shall be commenced by petitioning the district court to compel the Secretary of State to cancel or reinstate such trade name, and attached to the petition shall be copies of the original filing for the trade name, proof of publication, the complaint, the response to the complaint, if any, and the Secretary of State's finding. The district court may summarily order the Secretary of State to cancel or reinstate such trade name or take any other action the district court considers appropriate. The district court's final decision may be appealed as in other civil proceedings.

Source: Laws 1997, LB 453, § 17.

87-220 Repealed. Laws 2011, LB 462, § 20.

ARTICLE 3

DECEPTIVE TRADE PRACTICES

Cross References

Charitable Gift Annuity Act, see section 59-1801.
Telemarketing and Prize Promotions Act, see section 86-212.
Telephone Consumer Slamming Prevention Act, see section 86-201.
Unfair Insurance Trade Practices Act, see section 44-1521.

(a) UNIFORM DECEPTIVE TRADE PRACTICES ACT

Section
87-301. Terms, defined.
87-302. Deceptive trade practices; enumerated.
87-303. Deceptive trade practices; damages; injunction; costs; additional remedy.

- Section
- 87-303.01. Unconscionable act or practice; violation; determination.
 - 87-303.02. Deceptive trade practice or unconscionable act; connected accounts or assets; Attorney General; powers.
 - 87-303.03. Attorney General; additional powers.
 - 87-303.04. Attorney General; order; failure or refusal to obey; court; powers.
 - 87-303.05. Attorney General; temporary restraining order; civil action; written assurance of voluntary compliance; deceptive practice; burden of proof.
 - 87-303.06. Claims not barred.
 - 87-303.07. Sale or lease agreement; unenforceable; when.
 - 87-303.08. Violations; penalty.
 - 87-303.09. Injunction, declaratory judgment, written assurance; violation; penalty.
 - 87-303.10. Civil action; statute of limitations.
 - 87-303.11. Violations; civil penalty; recovery; procedure.
 - 87-303.12. Copy of pleadings, orders, judgments, and notices; provided to Attorney General; right to intervene.
 - 87-303.13. Trial by jury.
 - 87-304. Applicability of act.
 - 87-305. Act, how construed.
 - 87-306. Act, how cited.

(b) AUTOMATIC DIALING-ANNOUNCING DEVICE

- 87-307. Repealed. Laws 1993, LB 305, § 37.
- 87-308. Repealed. Laws 1993, LB 305, § 37.
- 87-309. Repealed. Laws 1993, LB 305, § 37.
- 87-309.01. Repealed. Laws 1993, LB 305, § 37.
- 87-310. Repealed. Laws 1993, LB 305, § 37.
- 87-311. Repealed. Laws 1993, LB 305, § 37.
- 87-312. Repealed. Laws 1993, LB 305, § 37.

(a) UNIFORM DECEPTIVE TRADE PRACTICES ACT

87-301 Terms, defined.

For purposes of the Uniform Deceptive Trade Practices Act, unless the context otherwise requires:

(1) Access software provider means a provider of software, including client or server software, or enabling tools that do any one or more of the following: (a) Filter, screen, allow, or disallow content; (b) pick, choose, analyze, or digest content; or (c) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content;

(2) Appropriate inventory repurchase program means a program by which a plan or operation repurchases, upon request and upon commercially reasonable terms, when the salesperson's business relationship with the company ends, current and marketable inventory in the possession of the salesperson that was purchased by the salesperson for resale. Any such plan or operation shall clearly describe the program in its recruiting literature, sales manual, or contract with independent salespersons, including the disclosure of any inventory that is not eligible for repurchase under the program;

(3) Article means a product as distinguished from its trademark, label, or distinctive dress in packaging;

(4) Attorney General means the Attorney General of the State of Nebraska or the county attorney of any county with the consent and advice of the Attorney General;

(5) Cable operator means any person or group of persons (a) who provides cable service over a cable system and directly or through one or more affiliates

owns a significant interest in such cable system or (b) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system;

(6) Certification mark means a mark used in connection with the goods or services of a person other than the certifier to indicate geographic origin, material, mode of manufacture, quality, accuracy, or other characteristics of the goods or services or to indicate that the work or labor on the goods or services was performed by members of a union or other organization;

(7) Collective mark means a mark used by members of a cooperative, association, or other collective group or organization to identify goods or services and distinguish them from those of others, or to indicate membership in the collective group or organization;

(8) Commercially reasonable terms means the repurchase of current and marketable inventory within twelve months from the date of purchase at not less than ninety percent of the original net cost, less appropriate setoffs and legal claims, if any;

(9) Compensation means a payment of any money, thing of value, or financial benefit;

(10) Consideration means anything of value, including the payment of cash or the purchase of goods, services, or intangible property. The term does not include the purchase of goods or services furnished at cost to be used in making sales and not for resale or time and effort spent in pursuit of sales or recruiting activities;

(11) Covered file-sharing program means a computer program, application, or software that enables the computer on which such program, application, or software is installed to designate files as available for searching by and copying to one or more other computers, to transmit such designated files directly to one or more other computers, and to request the transmission of such designated files directly from one or more other computers. Covered file-sharing program does not mean a program, application, or software designed primarily to operate as a server that is accessible over the Internet using the Internet Domain Name System, to transmit or receive email messages, instant messaging, real-time audio or video communications, or real-time voice communications, or to provide network or computer security, network management, hosting and backup services, maintenance, diagnostics, technical support or repair, or to detect or prevent fraudulent activities;

(12) Current and marketable has its plain and ordinary meaning but excludes inventory that is no longer within its commercially reasonable use or shelf-life period, was clearly described to salespersons prior to purchase as seasonal, discontinued, or special promotion products not subject to the plan or operation's inventory repurchase program, or has been used or opened;

(13) Information content provider means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service;

(14) Interactive computer service means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions;

(15) Inventory includes both goods and services, including company-produced promotional materials, sales aids, and sales kits that the plan or operation requires independent salespersons to purchase;

(16) Inventory loading means that the plan or operation requires or encourages its independent salespersons to purchase inventory in an amount which exceeds that which the salesperson can expect to resell for ultimate consumption or to a consumer in a reasonable time period, or both;

(17) Investment means any acquisition, for a consideration other than personal services, of personal property, tangible or intangible, for profit or business purposes, and includes, without limitation, franchises, business opportunities, and services. It does not include real estate, securities registered under the Securities Act of Nebraska, or sales demonstration equipment and materials furnished at cost for use in making sales and not for resale;

(18) Mark means a word, a name, a symbol, a device, or any combination of a word, name, symbol, or device in any form or arrangement;

(19) Person means a natural person, a corporation, a government, a governmental subdivision or agency, a business trust, an estate, a trust, a partnership, a joint venture, a limited liability company, an unincorporated association, a sole proprietorship, or two or more of any of such persons having a joint or common interest or any other legal or commercial entity;

(20) Pyramid promotional scheme means any plan or operation in which a participant gives consideration for the right to receive compensation that is derived primarily from the recruitment of other persons as participants in the plan or operation rather than from the sales of goods, services, or intangible property to participants or by participants to others. A limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility, or upon payment of anything of value by a person whereby the person obtains any other property in addition to the right to receive consideration, does not change the identity of the scheme as a pyramid promotional scheme;

(21) Referral or chain referral sales or leases means any sales technique, plan, arrangement, or agreement whereby the seller or lessor gives or offers to give a rebate or discount or otherwise pays or offers to pay value to the buyer or lessee as an inducement for a sale or lease in consideration of the buyer or lessee giving to the seller or lessor the names of prospective buyers or lessees or otherwise aiding the seller or lessor in making a sale or lease to another person if the earning of the rebate, discount, or other value is contingent upon the occurrence of an event subsequent to the time the buyer or lessee agrees to buy or lease;

(22) Service mark means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others;

(23) Substance means any lookalike substance as defined in section 28-401;

(24) Telecommunications service means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used;

(25) Trademark means a word, a name, a symbol, a device, or any combination of a word, name, symbol, or device adopted and used by a person to

identify goods made or sold by such person and to distinguish such goods from goods made or sold by others;

(26) Trade name means a word, a name, or any combination of a word or name in any form or arrangement used by a person to identify such person's business, vocation, or occupation and distinguish such business, vocation, or occupation from the business, vocation, or occupation of others; and

(27) Use or promote the use of, for purposes of subdivision (a)(13) of section 87-302, means contrive, prepare, establish, plan, operate, advertise, or otherwise induce or attempt to induce another person to participate in a pyramid promotional scheme, including a pyramid promotional scheme run through the Internet, email, or other electronic communications.

Source: Laws 1969, c. 855, § 1, p. 3221; Laws 1974, LB 327, § 1; Laws 1993, LB 121, § 557; Laws 2002, LB 857, § 6; Laws 2010, LB801, § 1; Laws 2016, LB835, § 24; Laws 2016, LB1009, § 8.

Cross References

Securities Act of Nebraska, see section 8-1123.

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

Attorney General and associates immune from suit for libel after initiating deceptive practices suit against plaintiffs. *Ledwith v. Douglas*, 568 F.2d 117 (8th Cir. 1978).

Successor to manufacturer in representing it owned trademark owned by distributor and in using trademark in its corporate name violated this act. *Wrist-Rocket Manuf. Co., Inc. v. Saunders*, 379 F.Supp. 902 (D. Neb. 1974).

87-302 Deceptive trade practices; enumerated.

(a) A person engages in a deceptive trade practice when, in the course of his or her business, vocation, or occupation, he or she:

- (1) Passes off goods or services as those of another;
- (2) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- (3) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another;
- (4) Uses deceptive representations or designations of geographic origin in connection with goods or services;
- (5) Represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he or she does not have;
- (6) Represents that goods or services do not have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they have or that a person does not have a sponsorship, approval, status, affiliation, or connection that he or she has;
- (7) Represents that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand, except that sellers may repair damage to and make adjustments on or replace parts of otherwise new goods in an effort to place such goods in compliance with factory specifications;
- (8) Represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- (9) Disparages the goods, services, or business of another by false or misleading representation of fact;

(10) Advertises goods or services with intent not to sell them as advertised or advertises the price in any manner calculated or tending to mislead or in any way deceive a person;

(11) Advertises goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;

(12) Makes false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

(13) Uses or promotes the use of or establishes, operates, or participates in a pyramid promotional scheme in connection with the solicitation of such scheme to members of the public. This subdivision shall not be construed to prohibit a plan or operation, or to define a plan or operation as a pyramid promotional scheme, based on the fact that participants in the plan or operation give consideration in return for the right to receive compensation based upon purchases of goods, services, or intangible property by participants for personal use, consumption, or resale so long as the plan or operation does not promote or induce inventory loading and the plan or operation implements an appropriate inventory repurchase program;

(14) With respect to a sale or lease to a natural person of goods or services purchased or leased primarily for personal, family, household, or agricultural purposes, uses or employs any referral or chain referral sales technique, plan, arrangement, or agreement;

(15) Knowingly makes a false or misleading statement in a privacy policy, published on the Internet or otherwise distributed or published, regarding the use of personal information submitted by members of the public;

(16) Uses any scheme or device to defraud by means of:

(i) Obtaining money or property by knowingly false or fraudulent pretenses, representations, or promises; or

(ii) Selling, distributing, supplying, furnishing, or procuring any property for the purpose of furthering such scheme;

(17) Offers an unsolicited check, through the mail or by other means, to promote goods or services if the cashing or depositing of the check obligates the endorser or payee identified on the check to pay for goods or services. This subdivision does not apply to an extension of credit or an offer to lend money;

(18) Mails or causes to be sent an unsolicited billing statement, invoice, or other document that appears to obligate the consumer to make a payment for services or merchandise he or she did not order;

(19)(i) Installs, offers to install, or makes available for installation or download a covered file-sharing program on a computer not owned by such person without providing clear and conspicuous notice to the owner or authorized user of the computer that files on that computer will be made available to the public and without requiring intentional and affirmative activation of the file-sharing function of such covered file-sharing program by the owner or authorized user of the computer; or

(ii) Prevents reasonable efforts to block the installation, execution, or disabling of a covered file-sharing program;

(20) Violates any provision of the Nebraska Foreclosure Protection Act;

(21) In connection with the solicitation of funds or other assets for any charitable purpose, or in connection with any solicitation which represents that

funds or assets will be used for any charitable purpose, uses or employs any deception, fraud, false pretense, false promise, misrepresentation, unfair practice, or concealment, suppression, or omission of any material fact;

(22)(i) In the manufacture, production, importation, distribution, promotion, display for sale, offer for sale, attempt to sell, or sale of a substance:

(A) Makes a deceptive or misleading representation or designation, or omits material information, about a substance or fails to identify the contents of the package or the nature of the substance contained inside the package; or

(B) Causes confusion or misunderstanding as to the effects a substance causes when ingested, injected, inhaled, or otherwise introduced into the human body.

(ii) A person shall be deemed to have committed a violation of the Uniform Deceptive Trade Practices Act for each individually packaged product that is either manufactured, produced, imported, distributed, promoted, displayed for sale, offered for sale, attempted to sell, or sold in violation of this section. A violation under this subdivision (a)(22) shall be treated as a separate and distinct violation from any other offense arising out of acts alleged to have been committed while the person was in violation of this section;

(23)(i) Manufactures, produces, publishes, distributes, monetizes, promotes, or otherwise makes publicly available any visual depiction of sexually explicit conduct, any obscene material, or any material that is harmful to minors in which any person depicted as a participant or observer:

(A) Is under eighteen years of age;

(B) Is a trafficking victim;

(C) Has not expressly and voluntarily consented to such person's depiction; or

(D) Participated in any act depicted without consent.

(ii) This subdivision (a)(23) does not apply to any telecommunications service.

(iii) For purposes of this subdivision (a)(23):

(A) Harmful to minors has the same meaning as in 47 U.S.C. 254, as such section existed on January 1, 2024;

(B) Obscene material has the same meaning as in section 28-807;

(C) Promote means to use any mechanism or publication, or take any action, that suggests, highlights, advertises, markets, curates, backlinks, hashtags, or otherwise directs, attempts to direct, or encourages traffic toward specific materials, including acts carried out affirmatively, through automation, algorithmically, and via other technical means both known and unknown at this time;

(D) Publish means to communicate or make information available to another person via an Internet website, regardless of whether the person consuming, viewing, or receiving the material gives any consideration for the published material;

(E) Trafficking victim has the same meaning as in section 28-830;

(F) Visual depiction of sexually explicit conduct has the same meaning as in section 28-1463.02; and

(G) Without consent has the same meaning as in section 28-318; or

(24) Offers or enters into a right-to-list home sale agreement as defined in section 81-885.01.

(b) In order to prevail in an action under the Uniform Deceptive Trade Practices Act, a complainant need not prove competition between the parties.

(c) This section does not affect unfair trade practices otherwise actionable at common law or under other statutes of this state.

Source: Laws 1969, c. 855, § 2, p. 3222; Laws 1974, LB 327, § 2; Laws 1976, LB 820, § 1; Laws 1979, LB 257, § 1; Laws 1988, LB 180, § 1; Laws 1991, LB 408, § 1; Laws 1993, LB 305, § 32; Laws 2003, LB 118, § 1; Laws 2008, LB123, § 29; Laws 2008, LB781, § 1; Laws 2009, LB155, § 18; Laws 2010, LB801, § 2; Laws 2016, LB835, § 25; Laws 2016, LB1009, § 9; Laws 2024, LB934, § 4; Laws 2024, LB1073, § 35.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB934, section 4, with LB1073, section 35, to reflect all amendments.

Note: Changes made by LB934 became effective April 16, 2024. Changes made by LB1073 became operative April 16, 2024.

Cross References

Nebraska Foreclosure Protection Act, see section 76-2701.

Pursuant to subdivision (a)(9) of this section, a product disparagement claim alleging the disparagement of the goods, services, or business "of another" by false or misleading representation of fact requires that the offending statements be "of and concerning" a claimant's goods or services. Determining whether a statement is "of and concerning" a claimant's goods or services requires the consideration of the circumstances surrounding the statement but also requires more than general, industry-wide allegations. *JB & Assocs. v. Nebraska Cancer Coalition*, 303 Neb. 855, 932 N.W.2d 71 (2019).

Denali Custom Builders, Inc., engaged in a deceptive trade practice when its use of "Denali Custom Builders" in the course of its business and the similarity of the fonts and colors used on its signage and its website caused confusion regarding the source of goods or services and its affiliation or association with Denali Real Estate's entities. *Denali Real Estate v. Denali Custom Builders*, 302 Neb. 984, 926 N.W.2d 610 (2019).

To establish a violation of the Uniform Deceptive Trade Practices Act, there must have been a representation regarding the nature of goods or services and the representation must have been for characteristics or benefits that the goods or services did

not have. *State ex rel. Stenberg v. Consumer's Choice Foods*, 276 Neb. 481, 755 N.W.2d 583 (2008).

Pursuant to subsection (a)(12) of this section, criminal prosecutions for chain distribution schemes are not limited to prosecution under the Uniform Deceptive Trade Practices Act. *State v. Irons*, 254 Neb. 18, 574 N.W.2d 144 (1998).

Although use of word "similar" is not deceptive, as a whole a comparative advertisement which misrepresents that the consumer would have to wait for competitor's product, which makes unauthorized use of competitor's sample book, and which makes unsubstantiated comparison as to savings violates this act. *Kirsch Fabric Corp. v. Brookstein Enterprises, Inc.*, 209 Neb. 666, 309 N.W.2d 328 (1981).

Nebraska Deceptive Trade Practices Act prohibits a broad panoply of deceptive trade practices, including passing of goods and services of another as one's own, confusing consumers as to the origin of the goods. *Midway Mfg. Co. v. Dirkschneider*, 571 F.Supp. 282 (D. Neb. 1983).

Successor to manufacturer in representing it owned trademark owned by distributor and in using trademark in its corporate name, violated this act. *Wrist-Rocket Manuf. Co., Inc. v. Saunders*, 379 F.Supp. 902 (D. Neb. 1974).

87-303 Deceptive trade practices; damages; injunction; costs; additional remedy.

(a) A person likely to be damaged by a deceptive trade practice of another may bring an action for, and the court may grant, an injunction under the principles of equity against the person committing the deceptive trade practice. The court may order such additional equitable relief as it deems necessary to protect the public from further violations, including temporary and permanent injunctive relief. Proof of monetary damage, loss of profits, or intent to deceive is not required. Relief granted for the copying of an article shall be limited to the prevention of confusion or misunderstanding as to source.

(b) Costs shall be allowed to the prevailing party unless the court otherwise directs. The court in its discretion may award attorneys' fees to the prevailing party if (1) the party complaining of a deceptive trade practice has brought an action which he or she knew to be groundless or (2) the party charged with a deceptive trade practice has willfully engaged in the trade practice knowing it to be deceptive.

(c) A claim filed for a violation of the Uniform Deceptive Trade Practices Act shall be proved by a preponderance of the evidence.

(d) The relief provided in this section is in addition to remedies otherwise available against the same conduct under the common law or other statutes of this state.

(e) Subdivision (a)(13) of section 87-302 shall not be construed to authorize a civil action against an interactive computer service, provider of telecommunications service, or cable operator for the actions of an information content provider.

Source: Laws 1969, c. 855, § 3, p. 3223; Laws 2010, LB801, § 3; Laws 2016, LB835, § 26.

Requiring Denali Custom Builders, Inc., to remove the name "Denali" from any registration of its corporate name or trade name with the Nebraska Secretary of State was equitable relief necessary to grant complete relief to the prevailing party. Denali Real Estate v. Denali Custom Builders, 302 Neb. 984, 926 N.W.2d 610 (2019).

Ticket seller was not a "prevailing party," as would support award of attorney fees under Nebraska's Consumer Protection Act and Uniform Deceptive Trade Practices Act following dismissal of the State's consumer protection suit where the State chose to voluntarily dismiss its claims before any judicial determination could be made as to their merits. State ex rel. Peterson v. Creative Comm. Promotions, 302 Neb. 606, 924 N.W.2d 664 (2019).

Portion of order enjoining violator from ever disseminating advertising using competitor's name is deprivation of due process. Kirsch Fabric Corp. v. Brookstein Enterprises, Inc., 209 Neb. 666, 309 N.W.2d 328 (1981).

Nebraska's Uniform Deceptive Trade Practices Act does not permit an injunction to prevent the copying of a product.

Gengenbach v. Hawkins Mfg., 18 Neb. App. 488, 785 N.W.2d 853 (2010).

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

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

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

Company found to have committed unfair competition in use of trademark was not liable for attorney's fees in infringement action where activities were not willfully improper with knowledge they were deceptive but acted in colorable theory it had right to use trademark. Wrist-Rocket Manuf. Co., Inc. v. Saunders, 379 F.Supp. 902 (D. Neb. 1974).

87-303.01 Unconscionable act or practice; violation; determination.

(1) An unconscionable act or practice by a supplier in connection with a consumer transaction shall be a violation of the Uniform Deceptive Trade Practices Act.

(2) The unconscionability of an act or practice shall be a question of law for the court. If it is claimed or appears to the court that an act or practice may be unconscionable, the parties shall be given a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making its determination.

Source: Laws 1974, LB 327, § 3; Laws 2008, LB781, § 2.

87-303.02 Deceptive trade practice or unconscionable act; connected accounts or assets; Attorney General; powers.

(a) When the Attorney General has reasonable cause to believe that any person has engaged in or is engaging in any deceptive trade practice or unconscionable act listed in section 87-302 or 87-303.01, the Attorney General may:

(1) Require any person to file a statement or report in writing under oath or otherwise, on such forms as shall be prescribed by the Attorney General, as to all facts and circumstances concerning any deceptive trade practice or unconscionable act listed in section 87-302 or 87-303.01 known by such person, and such other data and information as the Attorney General deems necessary;

(2) Examine under oath any person in connection with any deceptive trade practice or unconscionable act listed in section 87-302 or 87-303.01;

(3) Examine any property or sample thereof, record, book, document, account, or paper as the Attorney General deems necessary;

(4) Pursuant to an order of any district court, impound any record, book, document, account, paper, or sample of property which is material to such practice and retain the same in his or her possession until the completion of all proceedings undertaken under the Uniform Deceptive Trade Practices Act; or

(5) Obtain an order freezing or impounding connected accounts or assets as provided in subsection (b) of this section.

(b)(1) For purposes of this subsection, connected accounts or assets means any bank account, other financial account, money, asset, or property connected with any alleged deceptive trade practice or unconscionable act listed in section 87-302 or 87-303.01.

(2) In order to ensure the availability of resources needed to provide restitution or any other remedy available to a consumer by law, the Attorney General may request an ex parte order from the district court temporarily freezing or impounding connected accounts or assets. If granted, such order shall be effective for a period of fourteen days, and the court shall set the matter for a hearing. The Attorney General shall provide notice of the order and hearing to the owner of the connected account or asset. Such notice may be made by publication.

(3) Following such hearing, the court may extend the temporary order for any period up to the completion of all proceedings undertaken under the Uniform Deceptive Trade Practices Act unless earlier canceled or modified at the request of the Attorney General.

Source: Laws 1974, LB 327, § 4; Laws 2008, LB781, § 3; Laws 2010, LB801, § 5; Laws 2024, LB934, § 5.
Effective date April 16, 2024.

87-303.03 Attorney General; additional powers.

(1) The Attorney General, in addition to other powers conferred upon him or her by the Uniform Deceptive Trade Practices Act:

(a) May issue subpoenas to require the attendance of witnesses or the production of documents, administer oaths, conduct hearings in aid of any investigation or inquiry, and prescribe such forms and adopt and promulgate such rules as may be necessary to administer the act; and

(b) May issue a cease and desist order, with or without prior hearing, against any person engaged in activities in violation of the act, directing such person to cease and desist from such activity.

(2) Service of any notice or subpoena may be made in the manner prescribed by the rules of civil procedure.

Source: Laws 1974, LB 327, § 5; Laws 2008, LB781, § 4; Laws 2010, LB801, § 6.

87-303.04 Attorney General; order; failure or refusal to obey; court; powers.

(1) If any person fails or refuses to obey any order of the Attorney General to file any statement or report, or to obey any subpoena issued by the Attorney

General, pursuant to the Uniform Deceptive Trade Practices Act, the Attorney General may apply to any district court in this state for relief until such person obeys such order or subpoena or files such statement or report.

(2) The court, in its order, may:

(a) Grant injunctive relief restraining the sale or advertisement of any property by such person;

(b) Require the attendance of or the production of documents by such person, or both;

(c) Suspend or revoke any license, permit, or certificate issued pursuant to law to any such person, which may be used to further the alleged unlawful practice; or

(d) Grant such other or further relief as may be necessary to obtain compliance by such person.

Source: Laws 1974, LB 327, § 6; Laws 2008, LB781, § 5.

87-303.05 Attorney General; temporary restraining order; civil action; written assurance of voluntary compliance; deceptive practice; burden of proof.

(1) Whenever the Attorney General has cause to believe that a person has engaged in or is engaging in any deceptive trade practice or unconscionable act listed in section 87-302 or 87-303.01, the Attorney General may apply for and obtain, in an action in any district court of this state, a temporary restraining order, or injunction, or both, pursuant to the rules of civil procedure, prohibiting such person from continuing such practices, or engaging therein, or doing any act in furtherance thereof. The court may make such orders or judgments as may be necessary to prevent the use or employment by such person of any such deceptive trade practice, or which may be necessary to restore to any other person any money or real or personal property which may have been acquired by means of any such practice.

(2) When the Attorney General has authority to institute a civil action or other proceeding pursuant to the Uniform Deceptive Trade Practices Act, in lieu thereof, the Attorney General may accept an assurance of discontinuance of any deceptive trade practice or unconscionable act listed in section 87-302 or 87-303.01. Such assurance may include a stipulation for the voluntary payment by the alleged violator of the costs of investigation by the Attorney General and of any amount or amounts necessary to restore to any person any money or real or personal property which may have been acquired by such alleged violator by means of any such practice. Proof by a preponderance of evidence of a violation of such assurance shall constitute prima facie evidence of a deceptive practice as listed in section 87-302 or 87-303.01 in any civil action or proceeding thereafter commenced by the Attorney General.

Source: Laws 1974, LB 327, § 7; Laws 2008, LB781, § 6.

Proceedings brought by the Attorney General under 87-303.05(1) are civil in nature. State ex rel. Douglas v. Ledwith, 204 Neb. 7, 281 N.W.2d 729 (1979).

The requirement in this section that the Attorney General must have cause to believe deceptive trade practices exist or

have existed before he institutes an action is not an essential element of the action which must be proved at trial. State ex rel. Douglas v. Ledwith, 204 Neb. 7, 281 N.W.2d 729 (1979).

87-303.06 Claims not barred.

The Uniform Deceptive Trade Practices Act shall not bar any claim against any person who has acquired any money or real or personal property by means

of any deceptive trade practice or unconscionable act listed in section 87-302 or 87-303.01.

Source: Laws 1974, LB 327, § 8; Laws 2008, LB781, § 7.

87-303.07 Sale or lease agreement; unenforceable; when.

If a buyer or lessee is induced by a violation of section 87-302 or 87-303.01 to enter into a sale or lease, the agreement is unenforceable by the seller or lessor and the buyer or lessee, at his or her option, may rescind the agreement or retain the merchandise delivered and the benefit of any services performed without any obligation to pay for them.

Source: Laws 1974, LB 327, § 9; Laws 2008, LB781, § 8.

This section, which specifically lists buyers and lessees as those protected by its provisions, does not apply to guarantors. Lindsay Internat. Sales & Serv. v. Wegener, 301 Neb. 1, 917 N.W.2d 133 (2018).

87-303.08 Violations; penalty.

Any person who violates the Uniform Deceptive Trade Practices Act shall be guilty of a Class II misdemeanor except as otherwise provided in the act.

Source: Laws 1974, LB 327, § 10; Laws 1979, LB 257, § 7; Laws 1988, LB 180, § 2; Laws 1990, LB 656, § 22; Laws 1993, LB 305, § 33.

87-303.09 Injunction, declaratory judgment, written assurance; violation; penalty.

Any person who willfully violates the terms of an injunction or declaratory judgment of the court or the terms of a written assurance of voluntary compliance entered into pursuant to the Uniform Deceptive Trade Practices Act shall be guilty of a Class IV felony.

Source: Laws 1974, LB 327, § 11; Laws 1990, LB 656, § 23.

87-303.10 Civil action; statute of limitations.

A civil action arising under the Uniform Deceptive Trade Practices Act may be brought only within four years from the date of the purchase of goods or services.

Source: Laws 1976, LB 820, § 2; Laws 1990, LB 656, § 24.

87-303.11 Violations; civil penalty; recovery; procedure.

(1) Any person who violates section 87-302 or 87-303.01 or who willfully violates the terms of an injunction or declaratory judgment of a district court or the terms of a written assurance of voluntary compliance entered into pursuant to the Uniform Deceptive Trade Practices Act shall be subject to a civil penalty of not more than two thousand dollars for each violation. The Attorney General, acting in the name of the state, may seek recovery of such civil penalties in a civil action.

(2) For purposes of this section, the district court which issues any injunction shall retain jurisdiction and the cause shall be continued while the Attorney General seeks the recovery of such civil penalties.

(3) Any civil penalties collected under 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 1990, LB 656, § 25; Laws 1993, LB 305, § 34; Laws 2024, LB934, § 6.
Effective date April 16, 2024.

87-303.12 Copy of pleadings, orders, judgments, and notices; provided to Attorney General; right to intervene.

(1) A party filing a petition, counterclaim, cross-petition, or pleading in intervention alleging a violation under the Uniform Deceptive Trade Practices Act, within seven days following the date of filing such pleading, shall provide a copy to the Attorney General and, within seven days following entry of any final judgment in the action, shall provide a copy of the judgment to the Attorney General. This subsection does not apply to Small Claims Court actions, except as provided in subsection (2) of this section.

(2) A party appealing a Small Claims Court order or judgment to district court involving an issue raised under the act, within seven days of providing notice of the appeal, shall notify the Attorney General in writing and provide a copy of the pleading raising the issue and a copy of the Small Claims Court order or judgment.

(3) A party appealing an order or judgment involving an issue raised under the act, within seven days following the date such notice of appeal is filed with the court, shall notify the Attorney General in writing and provide a copy of the pleading raising the issue and a copy of the court order or judgment being appealed.

(4) Upon timely application to the court in which an action involving an issue raised under the act is pending, the Attorney General may intervene as a party at any time or may be heard at any time. The Attorney General's failure to intervene shall not preclude the Attorney General from bringing a separate enforcement action.

(5) All copies of pleadings, orders, judgments, and notices required by this section to be sent to the Attorney General shall be sent by certified mail unless the Attorney General has previously been provided such copies of the pleadings, orders, judgments, or notices in the same action by certified mail, in which case subsequent mailings may be made by regular mail. Failure to provide the required mailings to the Attorney General shall not be grounds for dismissal of an action under the act, but may be grounds for a subsequent action by the Attorney General to vacate or modify the judgment.

Source: Laws 2010, LB801, § 4.

87-303.13 Trial by jury.

The Attorney General or defendant may demand that any claim under the Uniform Deceptive Trade Practices Act be tried by a jury.

Source: Laws 2024, LB934, § 7.
Effective date April 16, 2024.

87-304 Applicability of act.

(a) The Uniform Deceptive Trade Practices Act does not apply to:

(1) Conduct in compliance with the orders or rules of, or a statute administered by, a federal, state, or local governmental agency;

(2) Publishers, broadcasters, printers, or other persons engaged in the dissemination of information or reproduction of printed or pictorial matters who publish, broadcast, or reproduce material without knowledge of its deceptive character; or

(3) Actions or appeals pending (a) on December 25, 1969, under the Uniform Deceptive Trade Practices Act as such act existed immediately prior to March 25, 1974, or (b) under such act as amended and sections 87-303.01 to 87-303.09 on March 25, 1974.

(b) Subdivisions (a)(2) and (a)(3) of section 87-302 do not apply to the use of a service mark, trademark, certification mark, collective mark, trade name, or other trade identification that was used and not abandoned before December 25, 1969, if the use was in good faith and is otherwise lawful except for the Uniform Deceptive Trade Practices Act.

(c) The Uniform Deceptive Trade Practices Act shall apply to deceptive trade practices conducted in whole or in part within the State of Nebraska against residents or nonresidents of this state. The act shall also apply to deceptive trade practices conducted outside of Nebraska against residents of this state if there is a direct connection to any deceptive trade practices conducted in whole or in part within this state.

Source: Laws 1969, c. 855, § 4, p. 3224; Laws 1974, LB 327, § 12; Laws 2008, LB781, § 9.

87-305 Act, how construed.

The Uniform Deceptive Trade Practices Act shall be construed to effectuate its general purpose to make uniform the law of those states which enact it.

Source: Laws 1969, c. 855, § 5, p. 3224; Laws 1974, LB 327, § 13; Laws 2008, LB781, § 10.

87-306 Act, how cited.

Sections 87-301 to 87-306 shall be known and may be cited as the Uniform Deceptive Trade Practices Act.

Source: Laws 1969, c. 855, § 6, p. 3224; Laws 1974, LB 327, § 14; Laws 1990, LB 656, § 26; Laws 2010, LB801, § 7; Laws 2024, LB934, § 8.
Effective date April 16, 2024.

(b) AUTOMATIC DIALING-ANNOUNCING DEVICE

87-307 Repealed. Laws 1993, LB 305, § 37.

87-308 Repealed. Laws 1993, LB 305, § 37.

87-309 Repealed. Laws 1993, LB 305, § 37.

87-309.01 Repealed. Laws 1993, LB 305, § 37.

87-310 Repealed. Laws 1993, LB 305, § 37.

87-311 Repealed. Laws 1993, LB 305, § 37.

87-312 Repealed. Laws 1993, LB 305, § 37.

ARTICLE 4
FRANCHISE PRACTICES

Cross References

Beer distribution agreements, see sections 53-201 to 53-223.

Equipment Business Regulation Act, see section 87-701.

Franchise tax, see sections 77-3801 to 77-3807.

Motor vehicle franchises, see sections 60-1420 to 60-1440.

(a) FRANCHISE PRACTICES ACT

Section

- 87-401. Legislative intent.
- 87-402. Terms, defined.
- 87-403. Franchise; sections, applicable; when.
- 87-404. Franchise; termination, cancellation, or failure to renew; notice; when; good cause; noncompete agreement; reform; when; franchisor; duties.
- 87-405. Franchisee; transfer, assign, or sell franchise or interest therein; notice; contents; franchisor; approval required.
- 87-406. Prohibited practices; enumerated.
- 87-407. Sections; applicability.
- 87-408. Action by franchisee; defense.
- 87-409. Franchisee; action to recover damages; injunction; costs.
- 87-410. Act, how cited.

(b) FUEL FRANCHISES

- 87-411. Motor fuel franchises; death of franchisee; effect.
- 87-412. Designation of successor in interest; rights; notice of election to operate franchise.
- 87-413. Successor in interest; trial lease and franchise agreement; procedure.
- 87-414. Applicability of sections.

(a) FRANCHISE PRACTICES ACT

87-401 Legislative intent.

The Legislature finds and declares that distribution and sales through franchise arrangements in the state vitally affect the general economy of the state, the public interest and public welfare. It is therefor necessary in the public interest to define the relationship and responsibilities of franchisors and franchisees in connection with franchise arrangements.

Source: Laws 1978, LB 202, § 1.

Prior to the enactment of this and the following sections constituting the Nebraska Franchise Practices Act, the law of Nebraska generally was that any person might do or refuse to do business with whomsoever he desired; in no event was there a public policy then existing of requiring franchises to be

terminated only upon the existence of good cause shown. *McAr-tor v. Mobil Oil Corp.*, 212 Neb. 592, 324 N.W.2d 399 (1982).

The Nebraska Franchise Practices Act will not be applied retrospectively. *McDonald's Corp. v. Markim, Inc.*, 209 Neb. 49, 306 N.W.2d 158 (1981).

87-402 Terms, defined.

For purposes of the Franchise Practices Act, unless the context otherwise requires:

- (1) Franchise means (a) a written arrangement for a definite or indefinite period, in which a person grants to another person for a franchise fee a license to use a trade name, trademark, service mark, or related characteristics and in which there is a community of interest in the marketing of goods or services at wholesale or retail or by lease, agreement, or otherwise and (b) any arrangement, agreement, or contract, either expressed or implied, for the sale, distribu-

tion, or marketing of nonalcoholic beverages at wholesale, retail, or otherwise. Franchise shall not include any arrangement, agreement, or contract, either expressed or implied, for the sale, distribution, or marketing of petroleum products at wholesale, retail, or otherwise;

(2) Person means every natural person, firm, partnership, limited liability company, association, or corporation;

(3) Franchisor means a person who grants a franchise to another person;

(4) Franchisee means a person to whom a franchise is offered or granted;

(5) Franchise fee includes any payment made by the franchisee to the franchisor other than a payment for the purchase of goods or services, for a surety bond, for a surety deposit, or for security for payment of debts due;

(6) Sale, transfer, or assignment means any disposition of a franchise or any interest therein, with or without consideration, which shall include, but not be limited to, bequest, inheritance, gift, exchange, lease, or license;

(7) Place of business means a fixed geographical location at which the franchisee displays for sale and sells the franchisor's goods or offers for sale and sells the franchisor's services. Place of business shall not mean an office, a warehouse, a place of storage, a residence, or a vehicle;

(8) Good cause for terminating, canceling, or failure to renew a franchise is limited to failure by the franchisee to substantially comply with the requirements imposed upon him or her by the franchise; and

(9) Noncompete agreement means any agreement between a franchisor and a franchisee, a guarantor, or any person with a direct or indirect beneficial interest in the franchise that restricts the business activities in which such persons may engage during or after the term of the franchise. Noncompete agreement includes any stand-alone agreement or any covenant not to compete provision within a franchise agreement or ancillary agreement.

Source: Laws 1978, LB 202, § 2; Laws 1989, LB 371, § 24; Laws 1993, LB 121, § 559; Laws 2016, LB942, § 2.

Franchise agreements are not required to be written. *Regnev, Inc. v. Shasta Beverages*, 215 Neb. 230, 337 N.W.2d 783 (1983).

87-403 Franchise; sections, applicable; when.

Sections 87-401 to 87-410 apply only to a franchise (1) the performance of which contemplates or requires the franchisee to establish or maintain a place of business within the State of Nebraska, (2) when gross sales of products or services between the franchisor and franchisee covered by such franchise shall have exceeded thirty-five thousand dollars for the twelve months next preceding the institution of suit pursuant to sections 87-401 to 87-410, and (3) when more than twenty percent of the franchisee's gross sales are intended to be or are derived from such franchise.

Source: Laws 1978, LB 202, § 3.

87-404 Franchise; termination, cancellation, or failure to renew; notice; when; good cause; noncompete agreement; reform; when; franchisor; duties.

(1) It shall be a violation of the Franchise Practices Act for any franchisor directly or indirectly through any officer, agent, or employee to terminate, cancel, or fail to renew a franchise without having first given written notice setting forth all the reasons for such termination, cancellation, or intent not to

renew to the franchisee at least sixty days in advance of such termination, cancellation, or failure to renew, except (a) when the alleged grounds are voluntary abandonment by the franchisee of the franchise relationship in which event the written notice may be given fifteen days in advance of such termination, cancellation, or failure to renew; and (b) when the alleged grounds are (i) the conviction of the franchisee in a court of competent jurisdiction of an indictable offense directly related to the business conducted pursuant to the franchise, (ii) insolvency, the institution of bankruptcy or receivership proceedings, (iii) default in payment of an obligation or failure to account for the proceeds of a sale of goods by the franchisee to the franchisor or a subsidiary of the franchisor, (iv) falsification of records or reports required by the franchisor, (v) the existence of an imminent danger to public health or safety, or (vi) loss of the right to occupy the premises from which the franchise is operated by either the franchisee or the franchisor, in which event such termination, cancellation, or failure to renew may be effective immediately upon the delivery and receipt of written notice of the same. It shall be a violation of the Franchise Practices Act for a franchisor to terminate, cancel, or fail to renew a franchise without good cause. This subsection shall not prohibit a franchise from providing that the franchise is not renewable or that the franchise is only renewable if the franchisor or franchisee meets certain reasonable conditions.

(2) If restrictions in a noncompete agreement are found by an arbitrator or a court to be unreasonable in restraining competition, the arbitrator or court shall reform the terms of the noncompete agreement to the extent necessary to cause the restrictions contained therein to be reasonable and enforceable. The arbitrator or court shall then enforce the noncompete agreement against the franchisee, the guarantor, or any person with a direct or indirect beneficial interest in the franchise in accordance with the reformed terms of the noncompete agreement. The arbitrator or court may reform and enforce the restrictions in a noncompete agreement as part of an order for preliminary or temporary relief. Notwithstanding section 87-403, this subsection also applies to any noncompete agreement entered into by a franchisor headquartered in the State of Nebraska, unless otherwise agreed to by the franchisor and franchisee. This subsection applies to any noncompete agreement entered into before, on, or after April 8, 2016.

(3) If a franchisor is also a seller of a seller-assisted marketing plan as defined in section 59-1705 and has previously filed a disclosure document pursuant to section 59-1724 with the Department of Banking and Finance, and such franchisor subsequently executes a noncompete agreement in a stand-alone or ancillary agreement with a franchisee, a disclosure of such stand-alone or ancillary agreement shall be included with the annual updated disclosure document required to be filed under section 59-1724.

Source: Laws 1978, LB 202, § 4; Laws 2016, LB942, § 3; Laws 2018, LB742, § 1.

87-405 Franchisee; transfer, assign, or sell franchise or interest therein; notice; contents; franchisor; approval required.

It shall be a violation of sections 87-401 to 87-410 for any franchisee to transfer, assign or sell a franchise or interest therein to another person unless the franchisee shall first notify the franchisor of such intention by written notice by certified mail setting forth in the notice of intent the prospective transferee's

name, address, statement of financial qualification and business experience during the previous five years. The franchisor shall within sixty days after receipt of such notice either approve in writing to the franchisee such sale to the proposed transferee, or by written notice advise the franchisee of the unacceptability of the proposed transferee setting forth material reasons relating to the character, financial ability or business experience of the proposed transferee. If the franchisor does not reply within the specified sixty days, his approval is deemed granted. No such transfer, assignment or sale shall be valid unless the transferee agrees in writing to comply with all the requirements of the franchise then in effect.

Source: Laws 1978, LB 202, § 5.

87-406 Prohibited practices; enumerated.

It shall be a violation of sections 87-401 to 87-410 for any franchisor, directly or indirectly, through any officer, agent or employee, to engage in any of the following practices:

- (1) To require a franchisee at the time of entering into a franchise arrangement to assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability imposed by sections 87-401 to 87-410;
- (2) To prohibit directly or indirectly the right of free association among franchisees for any lawful purpose;
- (3) To require or prohibit any change in management of any franchisee unless such requirement or prohibition of change shall be for good cause, which cause shall be stated in writing by the franchisor;
- (4) To restrict the sale of any equity or debenture issue or the transfer of any securities of any franchisee or in any way prevent or attempt to prevent the transfer, sale, or issuance of shares of stock or debentures to employees, personnel of the franchisee, or heirs of the principal owner, as long as basic financial requirements of the franchisor are complied with and any such sale, transfer, or issuance does not have the effect of accomplishing a sale of the franchise;
- (5) To impose unreasonable standards of performance upon a franchisee; and
- (6) To provide any term or condition in any lease or other agreement ancillary or collateral to a franchise, which term or condition directly or indirectly violates sections 87-401 to 87-410.

Source: Laws 1978, LB 202, § 6.

87-407 Sections; applicability.

Sections 87-401 to 87-410 shall not apply to franchises which are subject to any other statute of this state.

Source: Laws 1978, LB 202, § 7.

87-408 Action by franchisee; defense.

It shall be a defense for a franchisor, to any action brought under sections 87-401 to 87-410 by a franchisee, if it be shown that such franchisee has failed to substantially comply with requirements imposed by the franchise and other agreements ancillary or collateral thereto.

Source: Laws 1978, LB 202, § 8.

87-409 Franchisee; action to recover damages; injunction; costs.

Any franchisee may bring an action against its franchisor for violation of sections 87-401 to 87-410 to recover damages sustained by reason of any violation of sections 87-401 to 87-410 and, when appropriate, shall be entitled to injunctive relief. The prevailing party in any action brought pursuant to this section shall be entitled to the costs of the action including but not limited to reasonable attorney's fees.

Source: Laws 1978, LB 202, § 9.

87-410 Act, how cited.

Sections 87-401 to 87-410 shall be known and may be cited as the Franchise Practices Act.

Source: Laws 1978, LB 202, § 10.

(b) FUEL FRANCHISES

87-411 Motor fuel franchises; death of franchisee; effect.

(1) Any franchise agreement relating to the distribution or retail sale of motor fuels and any agreement for the lease of real or personal property which is part of any such franchise agreement shall terminate upon the death of the franchisee. However, a one-year trial lease and franchise agreement shall be granted by such franchisor to the franchisee's designated and qualified successor in interest if:

(a) The franchisee has provided the franchisor with written notice of the designation of a qualified successor in interest at least six months prior to the death of the franchisee. Such notice shall be on a form prescribed by the franchisor and made available to the franchisee at the franchisee's request; and

(b) The franchisee has been a franchisee of the same franchisor with whom he or she has a valid franchise agreement at the time of his or her death for a period of at least five consecutive years prior to his or her death.

(2) For purposes of sections 87-411 to 87-414, successor in interest shall be restricted to a surviving spouse, adult child, brother, sister, or parent of the franchisee who, at the time of the franchisee's death, meets reasonable qualifications then being required of franchisees by the franchisor.

(3) Unless otherwise specifically provided in this section, actions to be performed by the franchisor or by the successor in interest under sections 87-411 to 87-414 shall be performed within a reasonable time.

Source: Laws 1985, LB 700, § 1; Laws 1994, LB 1160, § 123; Laws 1995, LB 182, § 67.

87-412 Designation of successor in interest; rights; notice of election to operate franchise.

A franchisee may designate one primary and one alternate successor in interest. The alternate, if one is designated, shall have no rights under sections 87-411 to 87-414 if the primary successor in interest exercises his or her rights under sections 87-411 to 87-414. If an alternate desires to assume and operate the franchise in the event the primary successor in interest fails to do so, the

alternate shall give notice of such election within forty-five days after the death of the franchisee and shall comply with sections 87-411 to 87-414.

Source: Laws 1985, LB 700, § 2.

87-413 Successor in interest; trial lease and franchise agreement; procedure.

(1) Upon meeting the reasonable qualifications referred to in section 87-411, the successor in interest shall be entitled to enter into a one-year trial lease and franchise agreement with the franchisor as provided by the Petroleum Marketing Practices Act, 15 U.S.C. 2801.

(2) The primary successor in interest shall have twenty-one days after the death of the franchisee to give written notice of an election to enter into the trial lease and franchise. The notification shall contain such information regarding business experience and credit worthiness as is reasonably required by the franchisor.

(3) If the successor in interest assumes the franchise, the successor in interest shall account to the heirs or estate of the deceased franchisee for the value of personal property of the franchisee located at or related to the franchise.

Source: Laws 1985, LB 700, § 3.

87-414 Applicability of sections.

Sections 87-411 to 87-414 shall apply to franchise agreements existing on and those executed or renewed on or after September 6, 1985.

Source: Laws 1985, LB 700, § 4.

ARTICLE 5

TRADE SECRETS ACT

Cross References

Records withheld from the public, see section 84-712.05.

Rules of evidence, see section 27-508.

Section

87-501. Act, how cited.

87-502. Terms, defined.

87-503. Misappropriation; injunction; royalty; affirmative acts.

87-504. Misappropriation; damages.

87-505. Court proceedings; preserve secrecy.

87-506. Statute of limitation.

87-507. Applicability of act.

87-501 Act, how cited.

Sections 87-501 to 87-507 shall be known and may be cited as the Trade Secrets Act.

Source: Laws 1988, LB 337A, § 1.

87-502 Terms, defined.

As used in the Trade Secrets Act, unless the context otherwise requires:

(1) Improper means shall mean theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means;

(2) Misappropriation shall mean:

(a) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(b) Disclosure or use of a trade secret of another without express or implied consent by a person who:

(i) Used improper means to acquire knowledge of the trade secret;

(ii) At the time of the disclosure or use, knew or had reason to know that his or her knowledge of the trade secret was:

(A) Derived from or through a person who had utilized improper means to acquire it;

(B) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(C) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(iii) Before a material change of his or her position, knew or had reason to know that the information was a trade secret and that knowledge of it had been acquired by accident or mistake;

(3) Person shall mean a natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity; and

(4) Trade secret shall mean information, including, but not limited to, a drawing, formula, pattern, compilation, program, device, method, technique, code, or process that:

(a) Derives independent economic value, actual or potential, from not being known to, and not being ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Source: Laws 1988, LB 337A, § 2; Laws 1993, LB 121, § 560.

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

Under this section, a recipe can be considered a trade secret. *Magistro v. J. Lou, Inc.*, 270 Neb. 438, 703 N.W.2d 887 (2005).

A customer list can be included in the definition of a trade secret under this section. *Home Pride Foods v. Johnson*, 262 Neb. 701, 634 N.W.2d 774 (2001).

87-503 Misappropriation; injunction; royalty; affirmative acts.

(1) Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(2) In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances shall include, but are not limited to, a material and prejudicial change of position prior to acquiring knowledge or having reason to know of the misappropriation that renders a prohibitive injunction inequitable.

(3) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

Source: Laws 1988, LB 337A, § 3.

87-504 Misappropriation; damages.

Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or having reason to know of the misappropriation renders a monetary recovery inequitable, a complainant shall be entitled to recover damages for misappropriation. Damages may include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

Source: Laws 1988, LB 337A, § 4.

87-505 Court proceedings; preserve secrecy.

In an action under the Trade Secrets Act, the court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include, but not be limited to, granting protective orders in connection with discovery proceedings and ordering nondisclosure of the alleged trade secret by the parties' attorneys, witnesses, or experts. The disclosure or publication of a trade secret in a court proceeding or as a result thereof shall not constitute an abandonment of the secret.

Source: Laws 1988, LB 337A, § 5.

87-506 Statute of limitation.

An action for misappropriation shall be brought within four years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For purposes of this section, a continuing misappropriation shall constitute a single claim.

Source: Laws 1988, LB 337A, § 6.

87-507 Applicability of act.

The Trade Secrets Act shall not apply to any misappropriation occurring prior to July 9, 1988. With respect to a continuing misappropriation that began prior to July 9, 1988, such act also shall not apply to the continuing misappropriation that occurs after such date.

Source: Laws 1988, LB 337A, § 7.

ARTICLE 6

INVENTION DEVELOPMENT

Cross References

Negotiable instruments relating to patent rights, see section 62-302.

Section

87-601. Act, how cited.

87-602. Terms, defined.

87-603. Contract for invention development services; requirements; option to terminate.

Section

- 87-604. Contract for invention development services; cover sheet; contents; invention developer; duties.
- 87-605. Contract for invention development services; written report; contents.
- 87-606. Contract for invention development services; contents.
- 87-607. Contract for invention development services; voidable; when; civil action authorized; additional amount distributed to common schools; when; rebuttable presumption.
- 87-608. Attorney General; enforcement duties; civil penalty.
- 87-609. Invention developer; bond; filings required; fees.
- 87-610. Remedies; not exclusive.

87-601 Act, how cited.

Sections 87-601 to 87-610 shall be known and may be cited as the Invention Development Services Disclosure Act.

Source: Laws 1991, LB 96, § 1.

87-602 Terms, defined.

For purposes of the Invention Development Services Disclosure Act:

(1) Contract for invention development services shall mean a contract by which an invention developer undertakes invention development services for a customer;

(2) Customer shall mean any person, firm, partnership, limited liability company, corporation, or other entity that enters into a contract for invention development services, except any firm, limited liability company, corporation, or other entity, other than a natural person, purchasing invention development services as an adjunct to the traditional commercial enterprises in which it engages as a livelihood;

(3) Invention shall mean a discovery, process, machine, design, formulation, product, concept, or idea, or any combination thereof, whether patentable or not;

(4) Invention developer shall mean any person, firm, partnership, limited liability company, or corporation and any agent, employee, officer, partner, member, or independent contractor thereof who offers to perform or performs for a customer any invention development services. Invention developer shall not include:

(a) Any department or agency of the federal, state, or local government;

(b) Any nonprofit, charitable, scientific, or educational organization described in section 170(b)(1)(A) of the Internal Revenue Code;

(c) Any attorney acting within the scope of the attorney's professional license;

(d) Any person duly registered before the United States Patent and Trademark Office acting within the scope of that person's professional license; or

(e) Any person, firm, limited liability company, corporation, association, or other entity that does not charge a fee for invention development services other than any payment made from a portion of the income received by a customer by virtue of such acts performed by such entity. For purposes of this subdivision, fee shall include any payment made by the customer to such entity including reimbursement for expenditures made or costs incurred by such entity; and

(5) Invention development services shall mean any act involved in the evaluation of an invention for commercial potential and the marketing, brokering, or promoting of such an invention done by or for an invention developer for the purpose of procuring a licensee or buyer for an intellectual property right in the invention.

Source: Laws 1991, LB 96, § 2; Laws 1993, LB 121, § 561; Laws 1995, LB 574, § 92.

87-603 Contract for invention development services; requirements; option to terminate.

(1) Every contract for invention development services shall be in writing and shall be subject to the Invention Development Services Disclosure Act. A copy of the written contract shall be given to the customer at the time he or she signs the contract.

(2) If it is the invention developer's normal practice to seek more than one contract in connection with an invention or if the invention developer normally seeks to perform services in connection with an invention in more than one phase with the performance of each phase covered in one or more subsequent contracts, the invention developer shall so state in writing at the time the customer signs the first contract and shall supply to the customer such writing together with a written summary of the developer's normal terms, if any, of such subsequent contracts, including the approximate amount of the developer's normal fees or other consideration, if any, that may be required from the customer.

(3) Notwithstanding any contractual provision to the contrary, no payment for invention development services shall be required, made, or received until three business days after the date on which the customer receives a copy of the contract for invention development services signed by the invention developer and the customer. Delivery of a promissory note, check, bill of exchange, or negotiable instrument of any kind to the invention developer or to a third party for the benefit of the invention developer, irrespective of the date or dates appearing in such instrument, shall be deemed payment for the purpose of this section.

(4) The parties to a contract for invention development services shall have the option to terminate the contract until payment is made. The customer may exercise the option by refraining from making payment to the invention developer. The invention developer may exercise the option to terminate by giving to the customer a written notice of its exercise of the option, which written notice shall become effective upon receipt by the customer.

Source: Laws 1991, LB 96, § 3.

87-604 Contract for invention development services; cover sheet; contents; invention developer; duties.

(1) Every contract for invention development services shall have a conspicuous and legible cover sheet attached with the following notice printed thereon in boldface of at least ten-point type:

THIS CONTRACT BETWEEN YOU AND AN INVENTION DEVELOPER IS REGULATED BY THE INVENTION DEVELOPMENT SERVICES DISCLOSURE ACT. YOU ARE NOT PERMITTED OR REQUIRED TO MAKE ANY

PAYMENTS UNDER THIS CONTRACT UNTIL THREE BUSINESS DAYS AFTER YOU SIGN THIS CONTRACT AND RECEIVE A COMPLETED COPY OF IT.

IF YOU ASSIGN EVEN A PARTIAL INTEREST IN THE IDEA OR INVENTION TO THE INVENTION DEVELOPER, THE INVENTION DEVELOPER MAY HAVE THE RIGHT TO SELL OR DISPOSE OF THE IDEA OR INVENTION WITHOUT YOUR CONSENT AND MAY NOT HAVE TO SHARE THE PROFITS WITH YOU.

THE TOTAL NUMBER OF CUSTOMERS WHO HAVE CONTRACTED WITH THE INVENTION DEVELOPER SINCE __ (date) __ IS _____. THE TOTAL NUMBER OF CUSTOMERS KNOWN BY THIS INVENTION DEVELOPER TO HAVE RECEIVED, BY VIRTUE OF THIS INVENTION DEVELOPER'S PERFORMANCE, AN AMOUNT OF MONEY IN EXCESS OF THE AMOUNT PAID BY THE CUSTOMER TO THIS INVENTION DEVELOPER IS _____.

THIS CONTRACT DOES NOT PROVIDE ANY PATENT, COPYRIGHT, OR TRADEMARK PROTECTION FOR YOUR IDEA OR INVENTION. YOU ARE ENCOURAGED TO CONSULT WITH A QUALIFIED ATTORNEY BEFORE SIGNING THIS CONTRACT. BY PROCEEDING WITHOUT THE ADVICE OF A QUALIFIED ATTORNEY, YOU COULD LOSE ANY RIGHTS YOU MIGHT HAVE IN YOUR IDEA OR INVENTION.

(2) The invention developer shall complete the cover sheet with the proper information to be provided in the blanks. The invention developer shall insert in the first blank the date the invention developer began business or September 6, 1991, whichever is later. The numbers to be inserted in the last two blanks may be rounded to the nearest one hundred and do not need to include those who have contracted within the three immediately preceding calendar months or parts thereof. If the number to be inserted in the third blank is zero, it shall be so stated.

(3) The cover sheet shall only contain the information required by this section and the name, primary office address, and local office address of the invention developer.

Source: Laws 1991, LB 96, § 4.

87-605 Contract for invention development services; written report; contents.

With respect to every contract for invention development services, the invention developer shall deliver to the customer at the address specified in the contract, at least at quarterly intervals throughout the term of the contract, a written report which identifies the contract and which includes:

(1) A full, clear, and concise description of the services performed up to the date of the report and of the services yet to be performed; and

(2) The name and address of each and every person, firm, or corporation to whom the subject matter of the contract has been disclosed, the reason for each and every disclosure, the nature of the disclosure, and copies of all responses received as a result of those disclosures.

Source: Laws 1991, LB 96, § 5.

87-606 Contract for invention development services; contents.

Every contract for invention development services shall set forth in boldface of at least ten-point type the following:

(1) The terms and conditions of payment and contract termination rights required by section 87-603;

(2) A full, clear, and concise description of the specific acts or services that the invention developer undertakes to perform for the customer. To the extent that the description of the specific acts or services affords discretion in the invention developer as to what specific acts or services will be performed, the invention developer shall be deemed a fiduciary;

(3) A statement as to whether the invention developer undertakes to construct, sell, or distribute one or more prototypes, models, or devices embodying the customer's invention;

(4) The name and principal place of business of the invention developer and the name and principal place of business of any parent, subsidiary, or affiliated company that may engage in performing any of the invention development services;

(5) If any oral or written representation of estimated or projected customer earnings is given by the invention developer, a statement of that estimation or projection and a description of the data upon which it is based;

(6) The name and address of the custodian of all records and correspondence pertaining to the invention development services and a statement that the invention developer is required to maintain all records and correspondence relating to performance of the invention development services for that customer for a period of not less than two years after expiration of the term of the contract for invention development services, which records and correspondence shall be made available to the customer or his or her representative for review and copying at the customer's reasonable expense on the invention developer's premises during normal business hours upon seven days' written notice; and

(7) A statement setting forth a time schedule for performance of the invention development services, including an estimated date by which performance of the invention development services is expected to be completed.

Source: Laws 1991, LB 96, § 6.

87-607 Contract for invention development services; voidable; when; civil action authorized; additional amount distributed to common schools; when; rebuttable presumption.

(1) Any contract for invention development services which does not substantially comply with the Invention Development Services Disclosure Act shall be voidable at the option of the customer. Any contract for invention development services entered into in reliance upon any false, fraudulent, or misleading information, representation, notice, or advertisement of the invention developer shall be voidable at the option of the customer. Any waiver by the customer of any of the provisions of the act shall be deemed contrary to public policy and shall be void and unenforceable.

(2) Any customer who has been injured by a violation of the act by an invention developer, by any false or fraudulent statement, representation, or omission of material fact by an invention developer, or by failure of an invention developer to make all the disclosures required by the act may recover

in a civil action against the invention developer, in addition to reasonable costs and attorney's fees, the amount of actual damages sustained by the customer.

(3) If a customer establishes a claim and secures judgment on such claim under subsection (2) of this section, an amount up to two times the judgment may be recovered from the invention developer, if ordered by the court. Any amount recovered pursuant to this subsection shall be placed in a fund to be distributed to the common schools of this state.

(4) A substantial violation of any provision of the act by an invention developer or the execution by the customer of a contract for invention development services in reliance on any such false or fraudulent statements, representations, or material omissions shall establish a rebuttable presumption of injury.

Source: Laws 1991, LB 96, § 7.

87-608 Attorney General; enforcement duties; civil penalty.

(1) For purposes of enforcing the Invention Development Services Disclosure Act, the Attorney General may conduct investigations, hold hearings, and compel the attendance of witnesses and the production of accounts, books, and documents by the issuance of subpoenas.

(2) The Attorney General shall enforce the act and may recover a civil penalty not to exceed three thousand dollars for each violation of the act and seek equitable relief to restrain any violation.

Source: Laws 1991, LB 96, § 8.

87-609 Invention developer; bond; filings required; fees.

(1) Every invention developer rendering or offering to render invention development services in this state shall maintain a bond issued by a surety company holding a certificate of authority to transact business in this state, the principal sum of which shall not be less than twenty-five thousand dollars in the first or any subsequent year of operation. The invention developer shall file a copy of the bond with the Secretary of State prior to the time the invention developer first commences business in this state or within ninety days after September 6, 1991, whichever is later, and shall pay an initial filing fee of one hundred dollars. The invention developer shall file an annual statement that the bond is current and shall pay a filing fee of twenty-five dollars on or before July 1 of each year after the initial filing.

(2) The bond shall be in favor of the State of Nebraska for the benefit of any person who, after entering into a contract for invention development services with an invention developer, is injured by fraud, dishonesty, or failure to provide the services of the invention developer in performance of the contract. Any person claiming against the bond may maintain an action at law against the invention developer and the surety. The aggregate liability of the surety to all persons for all breaches of conditions of the bond shall not exceed the amount of the bond.

Source: Laws 1991, LB 96, § 9.

87-610 Remedies; not exclusive.

Nothing in the Invention Development Services Disclosure Act shall limit any obligations, rights, or remedies that might otherwise be applicable or available under the law of this state.

Source: Laws 1991, LB 96, § 10.

ARTICLE 7

EQUIPMENT BUSINESS REGULATION

Section

- 87-701. Act, how cited.
- 87-702. Legislative findings.
- 87-703. Terms, defined.
- 87-704. Prohibited acts.
- 87-705. Dealer agreement; terminate, cancel, or not renew; notice; sale or transfer; duties of supplier.
- 87-706. Repair parts; returns; duties of supplier.
- 87-707. Termination of dealer agreement; supplier and dealer; rights and duties; liability.
- 87-708. Death or incapacity of dealer; heirs or personal representative; rights and remedies.
- 87-709. Dealer agreement; void and unenforceable; when; violations; remedies.
- 87-710. Obligations; applicability to successors.
- 87-711. Act; applicability.

87-701 Act, how cited.

Sections 87-701 to 87-711 shall be known and may be cited as the Equipment Business Regulation Act.

Source: Laws 1991, LB 123, § 1.

87-702 Legislative findings.

The Legislature finds that the retail distribution and sales of agricultural and industrial equipment utilizing independent retail businesses operating under agreements with manufacturers, wholesalers, and distributors of such equipment vitally affect the general economy, public interests, and public welfare of the state and that it is necessary to regulate the business relationships between the independent dealers and the equipment manufacturers, wholesalers, and distributors.

Source: Laws 1991, LB 123, § 2.

87-703 Terms, defined.

For purposes of the Equipment Business Regulation Act:

- (1) Continuing commercial relationship shall mean a relationship in which a dealer has been granted the right to sell and service equipment manufactured by a supplier;
- (2) Controlling interest shall mean a combination of ownership or management interests which legally or in practical effect has the power to determine the policies under which a dealership is operated;
- (3) Dealer or dealership shall mean an individual, partnership, limited liability company, corporation, association, or other form of business enterprise primarily engaged in the retail sale and service of equipment in this state pursuant to any oral or written agreement for a definite or indefinite period of

time in which there is a continuing commercial relationship in the marketing of equipment and related services;

(4) Dealer agreement shall mean a contract or agreement, whether oral or written, between a supplier and dealer by which the dealer is granted the right to sell, distribute, and service the supplier's equipment and by which there is a continuing commercial relationship between the supplier and the dealer;

(5) Equipment shall mean any machine designed for or adapted and used for agricultural, horticultural, livestock, grazing, forestry, or industrial purposes; and

(6) Supplier shall mean the manufacturer, wholesaler, or distributor of the equipment to be sold by a dealer.

Source: Laws 1991, LB 123, § 3; Laws 1993, LB 121, § 562.

Pursuant to subsection (5) of this section, the Legislature did not intend for the Equipment Business Regulation Act to apply to business agreements between retail dealers of lawn and garden equipment and their suppliers. Fontenelle Equip. v. Pattlen Enters., 262 Neb. 129, 629 N.W.2d 534 (2001).

87-704 Prohibited acts.

It shall be a violation of the Equipment Business Regulation Act for a supplier:

(1) To require a dealer to accept delivery of equipment, repair parts, or attachments that the dealer has not voluntarily ordered;

(2) To require a dealer to order or accept delivery of equipment with special features or attachments not included in the base list price of such equipment as publicly advertised by the supplier;

(3) To require a dealer to enter into any agreement, whether written or oral, amendatory or supplementary to an existing dealer agreement with the supplier unless such amendatory or supplementary agreement is imposed on similarly situated dealers;

(4) To take action terminating, canceling, failing to renew, or substantially changing the competitive circumstances intended by the dealer agreement due to the results of conditions beyond the dealer's control, including drought, flood, labor disputes, or economic recession. This subdivision shall not apply if the dealer is in default of a security agreement in effect with the supplier; and

(5) To condition the renewal or extension of a dealer agreement on (a) the dealer's substantial renovation of its place of business or the construction, purchase, acquisition, or rental of a new place of business by the dealer unless the supplier advises the dealer in writing of its demand for such renovation, construction, purchase, acquisition, or rental within a reasonable time prior to the effective date of the proposed renewal or extension, but in no case less than one year prior to such date, or (b) capital construction exceeding the terms of the dealer agreement in force and effect on May 2, 1991.

Source: Laws 1991, LB 123, § 4.

87-705 Dealer agreement; terminate, cancel, or not renew; notice; sale or transfer; duties of supplier.

(1) A supplier shall be deemed to have good cause to terminate, cancel, or not renew a dealer agreement when a dealer:

(a) Has transferred a controlling interest in the dealership without the supplier's consent;

- (b) Has made a material misrepresentation to the supplier;
 - (c) Has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against it which has not been discharged within sixty days after the filing, is in default under a security agreement in effect with the supplier, or is insolvent or in receivership;
 - (d) Has been convicted of a crime punishable by a term of imprisonment for one year or more;
 - (e) Has failed to operate in the normal course of business for seven consecutive business days or has terminated business;
 - (f) Has relocated its place of business without the supplier's consent;
 - (g) Has consistently engaged in business practices which are detrimental to the consumer or supplier by way of excessive pricing, misleading advertising, or failure to provide service and replacement parts or perform warranty obligations;
 - (h) Has inadequately represented the supplier over a measured period causing lack of performance in sales or service or warranty areas and has failed to achieve market penetration at levels consistent with similarly situated dealerships based on available record information;
 - (i) Has consistently failed to meet building and housekeeping requirements or has failed to provide adequate sales, service, or parts personnel commensurate with the dealer agreement;
 - (j) Has consistently failed to comply with the applicable licensing laws pertaining to the products and services being represented for the supplier and on the supplier's behalf; or
 - (k) Has consistently failed to substantially comply with essential and reasonable requirements imposed by the dealer agreement, but only if that requirement is also generally imposed upon similarly situated dealers in Nebraska.
- (2) Except when good cause exists as provided in subdivisions (1)(a) through (f) of this section, a supplier shall give a dealer ninety days' written notice of the supplier's intent to terminate, cancel, or not renew a dealer agreement. The notice shall state all reasons constituting good cause for termination, cancellation, or nonrenewal and shall provide that the dealer has sixty days from receipt of the notice in which to cure any claimed deficiency, except that the dealer shall have one year from receipt of the notice to cure a deficiency described in subdivision (1)(h) of this section.
- (3) If a supplier has contractual authority to approve or deny a request for a sale or transfer of a dealership or an equity ownership interest in a dealership, the supplier shall not unreasonably deny such request. The dealer's request shall be sent by certified mail and shall include reasonable financial information, personal background information, character references, and work histories for each acquiring person. The approval or denial of a request made pursuant to this subsection shall be made in writing and sent by certified mail within sixty days after receipt of the request. If the supplier has not approved or denied the request within the sixty-day period, the request is deemed approved. If a supplier denies a request made pursuant to this subsection, the supplier shall provide the dealer with a written notice of such denial that states the reasons for denial.

Source: Laws 1991, LB 123, § 5; Laws 2005, LB 118, § 1.

87-706 Repair parts; returns; duties of supplier.

(1) A supplier shall provide for the availability of repair parts throughout the reasonable useful life of any equipment sold.

(2) A supplier shall at least annually provide dealers an opportunity to return surplus repair parts for credit without restrictions as follows:

(a)(i) The supplier may notify the dealers of a surplus parts return program for a time period of at least sixty days in duration during which dealers may submit a list of their surplus parts and return the parts to the supplier; or

(ii) If twelve months have elapsed and the supplier has not notified a dealer of a surplus parts return program, the dealer may submit to the supplier a request to return surplus parts and the supplier shall allow the dealer to return the parts within thirty days after receipt of the request;

(b) Subject to the other provisions of this section, a supplier shall allow a dealer to return parts with a dollar value equal to at least six percent of the total dollar value of parts purchased by the dealer from the supplier or the supplier's predecessor in interest during the twelve-month period immediately preceding either the notification to the dealer of the supplier's surplus parts return program or the month the dealer's return request is made, whichever is applicable. A dealer may elect to return a dollar value of parts equal to less than six percent of such total dollar value of parts purchased;

(c) An obsolete or superseded part may not be returned, except that any part listed in the supplier's current list of returnable parts and any superseded part that has not been the subject of a surplus parts return program as of the date of notification to the dealer by the supplier of the current surplus parts return program or the date of the dealer's request to return surplus parts, whichever is applicable, shall be eligible for return;

(d) To be eligible for return, parts must be in new and unused condition and must have been purchased by the dealer from the supplier to whom they are returned or the supplier's predecessor in interest;

(e) The supplier shall allow credit for a returned part of at least eighty-five percent of the current price of the part as listed in the supplier's effective price list or catalog at the date of the notification to the dealer by the supplier of the surplus parts return program or the date of the dealer's request to return surplus parts, whichever is applicable, or, if there is no effective price list or catalog, in the supplier's invoices;

(f) The supplier shall issue credit to the dealer within ninety days after receipt of the parts returned by the dealer;

(g) The dealer shall be presumed to have purchased the returned parts from the supplier or the supplier's predecessor in interest, and the burden shall be on the supplier to prove otherwise;

(h) The provisions of this section shall be supplemental to any agreement between the dealer and the supplier covering the return of parts which provides the dealer with greater protection;

(i) Nothing in this section shall be construed to affect the existence or enforcement of a security interest which any person may have in the parts of the dealer; and

(j) Nothing in this section shall preclude a credit for returned parts which is greater than the total amount authorized by this section.

(3) The annual parts return provided for in subsection (2) of this section may be waived by a dealer. If a majority of dealers from a single supplier choose to waive the provisions of such subsection, the supplier shall be exempt from such subsection.

Source: Laws 1991, LB 123, § 6.

87-707 Termination of dealer agreement; supplier and dealer; rights and duties; liability.

(1) Whenever any dealer enters into a dealer agreement with a supplier in which the dealer agrees to maintain an inventory of equipment, attachments, or repair parts and the dealer agreement is subsequently terminated, the supplier shall:

(a) Repurchase the inventory by:

(i) Paying one hundred percent of the net cost of all new, undamaged, and complete equipment which was purchased from the supplier no more than twenty-four months prior to the date of termination and which is resalable;

(ii) Paying eighty-five percent of the current price of all new, unused, and undamaged attachments and repair parts, including superseded repair parts, which are listed in the price lists or catalogs in use by the supplier on the date of termination; and

(iii) Either (A) paying five percent of the current price on all new, unused, and undamaged attachments and repair parts returned to cover the cost of handling, packing, and loading the attachments and repair parts or (B) performing the handling, packing, and loading; and

(b) Repurchase at fair market value specialized repair tools purchased by the dealer pursuant to requirements of the supplier from the supplier or an approved vendor of the supplier within three years prior to the date of termination and held by the dealer on the date of termination.

(2) For purposes of this section:

(a) Current price shall mean the price for the attachments, repair parts, or tools listed in the supplier's effective price list or catalog or, if there is no effective price list or catalog, in the supplier's invoices; and

(b) Net cost shall mean the price the dealer paid to the supplier for the equipment less all discounts previously allowed by the supplier to the dealer.

(3) Upon payment of the repurchase amount to the dealer, the title and right to possession of the inventory or tools shall transfer to the supplier. Notwithstanding the requirements of article 9, Uniform Commercial Code, on filing notice of a security interest, the dealer shall have a continuing security interest in the inventory or tools until payment by the supplier and shall be treated the same as if the dealer still had possession of the inventory or tools.

(4) This section shall not require the supplier to repurchase from the dealer:

(a) Any repair part or attachment which has a limited storage life or is otherwise subject to deterioration;

(b) Any repair part or attachment which is priced as a set of two or more items if the set is incomplete;

(c) Any repair part or attachment which because of its condition is not resalable as a new part or attachment without repairing or reconditioning;

(d) Any repair part or attachment which is not in new, unused, and undamaged condition;

(e) Any equipment which is not in new, unused, undamaged, and complete condition;

(f) Any inventory for which the dealer is unable to furnish evidence, reasonably satisfactory to the supplier, of good title free and clear of all claims, liens, and encumbrances;

(g) Any inventory which was ordered by the dealer on or after the date of receipt of the notification of termination of the dealer agreement; or

(h) Any inventory which was acquired by the dealer from any source other than the supplier or the supplier's predecessor in interest.

(5) If any supplier fails or refuses to repurchase any inventory or specialized repair tools subject to this section within ninety days after the date the supplier takes possession, the supplier shall be civilly liable for (a) one hundred percent of the net cost of the equipment and of the current price of the attachments, repair parts, and tools, (b) any freight charges paid by the dealer, and (c) all costs of financing such repurchase, including court costs and reasonable attorney's fees.

(6) Nothing in this section shall be construed to affect the existence or enforcement of a security interest which any person may have in the inventory or tools of the dealer.

Source: Laws 1991, LB 123, § 7; Laws 1999, LB 550, § 50.

87-708 Death or incapacity of dealer; heirs or personal representative; rights and remedies.

(1) In the event of the death or incapacity of a dealer or the majority stockholder of a corporation operating as a dealer, the supplier shall, at the option of the heirs at law if the dealer or majority stockholder died intestate or the personal representative under the terms of the deceased dealer's or majority stockholder's last will and testament if the dealer or majority stockholder died testate, repurchase the inventory and specialized repair tools from the estate as provided in section 87-707 as if the supplier had terminated the dealer agreement. The heirs or personal representative shall have twelve months from the date of the death of the dealer or majority stockholder to exercise the option. Nothing in this section shall require the repurchase if the heirs or personal representative and the supplier enter into a new dealer agreement. Nothing in this section shall prevent the application of any provisions of the dealer agreement pertaining to death of the dealer or succession to the extent such provisions are not inconsistent with this section. Nothing in this section shall entitle an heir, devisee, or personal representative of a deceased dealer or majority stockholder to continue to operate the dealership without the consent of the supplier.

(2) This section shall be supplemental to any provisions of the dealer agreement covering the return of inventory or specialized repair tools which provide the dealer with greater protection. The heirs or personal representative may pursue either the contract remedy or the remedy provided in this section, and an election to pursue the contract remedy shall not bar pursuit of the remedy provided in this section as to inventory or tools not affected by the

contract remedy. Nothing in this section shall preclude a price for the inventory or tools which is greater than the total provided for in section 87-707.

Source: Laws 1991, LB 123, § 8.

87-709 Dealer agreement; void and unenforceable; when; violations; remedies.

(1) A term of a dealer agreement which is inconsistent with the terms of the Equipment Business Regulation Act shall be void and unenforceable and shall not waive any rights which are provided to a person by the act.

(2) A dealer may bring an action against a supplier in any court of competent jurisdiction for damages sustained by the dealer as a consequence of the supplier's violation of the act together with the actual costs of the action, including reasonable attorney's fees. The dealer may also be granted injunctive relief against unlawful termination, cancellation, nonrenewal, or change in competitive circumstances. The remedies authorized by this section shall not be exclusive and shall be in addition to any other remedies provided by law.

Source: Laws 1991, LB 123, § 9.

87-710 Obligations; applicability to successors.

The obligations of any supplier pursuant to the Equipment Business Regulation Act shall apply to any successor in interest of a supplier, including any purchaser of assets or stock, any surviving corporation resulting from merger, liquidation, or reorganization, any assignee, any receiver, or any trustee of the original supplier.

Source: Laws 1991, LB 123, § 10.

87-711 Act; applicability.

The Equipment Business Regulation Act shall apply to all dealer agreements in effect on May 2, 1991, which have no expiration date and are continuing agreements and to all dealer agreements entered into or renewed on or after May 2, 1991. Any dealer agreement in effect on May 2, 1991, which will terminate on a subsequent date shall be governed by the law as it existed prior to May 2, 1991.

Source: Laws 1991, LB 123, § 11.

ARTICLE 8

**FINANCIAL DATA PROTECTION AND CONSUMER NOTIFICATION
OF DATA SECURITY BREACH ACT OF 2006**

Section

87-801. Act, how cited.

87-802. Terms, defined.

87-803. Breach of security; investigation; notice to resident; notice to Attorney General.

87-804. Compliance with notice requirements; manner.

87-805. Waiver; void and unenforceable.

87-806. Attorney General; powers; violation; how treated.

87-807. Act; applicability.

87-808. Security procedures and practices; disclosure of computerized data; contract provisions; compliance.

87-801 Act, how cited.

Sections 87-801 to 87-808 shall be known and may be cited as the Financial Data Protection and Consumer Notification of Data Security Breach Act of 2006.

Source: Laws 2006, LB 876, § 1; Laws 2018, LB757, § 6.

87-802 Terms, defined.

For purposes of the Financial Data Protection and Consumer Notification of Data Security Breach Act of 2006:

(1) Breach of the security of the system means the unauthorized acquisition of unencrypted computerized data that compromises the security, confidentiality, or integrity of personal information maintained by an individual or a commercial entity. Good faith acquisition of personal information by an employee or agent of an individual or a commercial entity for the purposes of the individual or the commercial entity is not a breach of the security of the system if the personal information is not used or subject to further unauthorized disclosure. Acquisition of personal information pursuant to a search warrant, subpoena, or other court order or pursuant to a subpoena or order of a state agency is not a breach of the security of the system;

(2) Commercial entity includes a corporation, business trust, estate, trust, partnership, limited partnership, limited liability partnership, limited liability company, association, organization, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal entity, whether for profit or not for profit;

(3) Encrypted means converted by use of an algorithmic process to transform data into a form in which the data is rendered unreadable or unusable without use of a confidential process or key. Data shall not be considered encrypted if the confidential process or key was or is reasonably believed to have been acquired as a result of the breach of the security of the system;

(4) Notice means:

(a) Written notice;

(b) Telephonic notice;

(c) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in 15 U.S.C. 7001, as such section existed on January 1, 2006;

(d) Substitute notice, if the individual or commercial entity required to provide notice demonstrates that the cost of providing notice will exceed seventy-five thousand dollars, that the affected class of Nebraska residents to be notified exceeds one hundred thousand residents, or that the individual or commercial entity does not have sufficient contact information to provide notice. Substitute notice under this subdivision requires all of the following:

(i) Electronic mail notice if the individual or commercial entity has electronic mail addresses for the members of the affected class of Nebraska residents;

(ii) Conspicuous posting of the notice on the website of the individual or commercial entity if the individual or commercial entity maintains a website; and

(iii) Notice to major statewide media outlets; or

(e) Substitute notice, if the individual or commercial entity required to provide notice has ten employees or fewer and demonstrates that the cost of

providing notice will exceed ten thousand dollars. Substitute notice under this subdivision requires all of the following:

(i) Electronic mail notice if the individual or commercial entity has electronic mail addresses for the members of the affected class of Nebraska residents;

(ii) Notification by a paid advertisement in a local newspaper that is distributed in the geographic area in which the individual or commercial entity is located, which advertisement shall be of sufficient size that it covers at least one-quarter of a page in the newspaper and shall be published in the newspaper at least once a week for three consecutive weeks;

(iii) Conspicuous posting of the notice on the website of the individual or commercial entity if the individual or commercial entity maintains a website; and

(iv) Notification to major media outlets in the geographic area in which the individual or commercial entity is located;

(5) Personal information means either of the following:

(a) A Nebraska resident's first name or first initial and last name in combination with any one or more of the following data elements that relate to the resident if either the name or the data elements are not encrypted, redacted, or otherwise altered by any method or technology in such a manner that the name or data elements are unreadable:

(i) Social security number;

(ii) Motor vehicle operator's license number or state identification card number;

(iii) Account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to a resident's financial account;

(iv) Unique electronic identification number or routing code, in combination with any required security code, access code, or password; or

(v) Unique biometric data, such as a fingerprint, voice print, or retina or iris image, or other unique physical representation; or

(b) A user name or email address, in combination with a password or security question and answer, that would permit access to an online account.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records; and

(6) Redact means to alter or truncate data such that no more than the last four digits of a social security number, motor vehicle operator's license number, state identification card number, or account number is accessible as part of the personal information.

Source: Laws 2006, LB 876, § 2; Laws 2016, LB835, § 27.

87-803 Breach of security; investigation; notice to resident; notice to Attorney General.

(1) An individual or a commercial entity that conducts business in Nebraska and that owns or licenses computerized data that includes personal information about a resident of Nebraska shall, when it becomes aware of a breach of the security of the system, conduct in good faith a reasonable and prompt investiga-

tion to determine the likelihood that personal information has been or will be used for an unauthorized purpose. If the investigation determines that the use of information about a Nebraska resident for an unauthorized purpose has occurred or is reasonably likely to occur, the individual or commercial entity shall give notice to the affected Nebraska resident. Notice shall be made as soon as possible and without unreasonable delay, consistent with the legitimate needs of law enforcement and consistent with any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the computerized data system.

(2) If notice of a breach of security of the system is required by subsection (1) of this section, the individual or commercial entity shall also, not later than the time when notice is provided to the Nebraska resident, provide notice of the breach of security of the system to the Attorney General.

(3) An individual or a commercial entity that maintains computerized data that includes personal information that the individual or commercial entity does not own or license shall give notice to and cooperate with the owner or licensee of the information of any breach of the security of the system when it becomes aware of a breach if use of personal information about a Nebraska resident for an unauthorized purpose occurred or is reasonably likely to occur. Cooperation includes, but is not limited to, sharing with the owner or licensee information relevant to the breach, not including information proprietary to the individual or commercial entity.

(4) Notice required by this section may be delayed if a law enforcement agency determines that the notice will impede a criminal investigation. Notice shall be made in good faith, without unreasonable delay, and as soon as possible after the law enforcement agency determines that notification will no longer impede the investigation.

Source: Laws 2006, LB 876, § 3; Laws 2016, LB835, § 28.

87-804 Compliance with notice requirements; manner.

(1) An individual or a commercial entity that maintains its own notice procedures which are part of an information security policy for the treatment of personal information and which are otherwise consistent with the timing requirements of section 87-803, is deemed to be in compliance with the notice requirements of section 87-803 if the individual or the commercial entity notifies affected Nebraska residents and the Attorney General in accordance with its notice procedures in the event of a breach of the security of the system.

(2) An individual or a commercial entity that is regulated by state or federal law and that maintains procedures for a breach of the security of the system pursuant to the laws, rules, regulations, guidances, or guidelines established by its primary or functional state or federal regulator is deemed to be in compliance with section 87-803 if the individual or commercial entity notifies affected Nebraska residents and the Attorney General in accordance with the maintained procedures in the event of a breach of the security of the system.

Source: Laws 2006, LB 876, § 4; Laws 2016, LB835, § 29.

87-805 Waiver; void and unenforceable.

Any waiver of the provisions of the Financial Data Protection and Consumer Notification of Data Security Breach Act of 2006 is contrary to public policy and is void and unenforceable.

Source: Laws 2006, LB 876, § 5.

87-806 Attorney General; powers; violation; how treated.

(1) For purposes of the Financial Data Protection and Consumer Notification of Data Security Breach Act of 2006, the Attorney General may issue subpoenas and seek and recover direct economic damages for each affected Nebraska resident injured by a violation of section 87-803.

(2) A violation of section 87-808 shall be considered a violation of section 59-1602 and be subject to the Consumer Protection Act and any other law which provides for the implementation and enforcement of section 59-1602. A violation of section 87-808 does not give rise to a private cause of action.

Source: Laws 2006, LB 876, § 6; Laws 2018, LB757, § 8.

Cross References

Consumer Protection Act, see section 59-1623.

87-807 Act; applicability.

The Financial Data Protection and Consumer Notification of Data Security Breach Act of 2006 applies to the discovery of or notification pertaining to a breach of the security of the system that occurs on or after July 14, 2006.

Source: Laws 2006, LB 876, § 7.

87-808 Security procedures and practices; disclosure of computerized data; contract provisions; compliance.

(1) To protect personal information from unauthorized access, acquisition, destruction, use, modification, or disclosure, an individual or a commercial entity that conducts business in Nebraska and owns, licenses, or maintains computerized data that includes personal information about a resident of Nebraska shall implement and maintain reasonable security procedures and practices that are appropriate to the nature and sensitivity of the personal information owned, licensed, or maintained and the nature and size of, and the resources available to, the business and its operations, including safeguards that protect the personal information when the individual or commercial entity disposes of the personal information.

(2)(a) An individual or commercial entity that discloses computerized data that includes personal information about a Nebraska resident to a nonaffiliated, third-party service provider shall require by contract that the service provider implement and maintain reasonable security procedures and practices that:

(i) Are appropriate to the nature of the personal information disclosed to the service provider; and

(ii) Are reasonably designed to help protect the personal information from unauthorized access, acquisition, destruction, use, modification, or disclosure.

(b) This subsection does not apply to any contract entered into before July 19, 2018. Any such contract renewed on or after July 19, 2018, shall comply with the requirements of this subsection.

(3) An individual or a commercial entity complies with subsections (1) and (2) of this section if the individual or commercial entity:

(a) Complies with a state or federal law that provides greater protection to personal information than the protections that this section provides; or

(b) Complies with the regulations promulgated under Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 et seq., or the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d to 1320d-9, as such acts and sections existed on January 1, 2018, if the individual or commercial entity is subject to either or both of such acts or sections.

Source: Laws 2018, LB757, § 7.

ARTICLE 9

GENETIC INFORMATION PRIVACY ACT

Section

87-901. Act, how cited.

87-902. Terms, defined.

87-903. Direct-to-consumer genetic testing company; duties; prohibited acts; Attorney General; powers; civil penalty.

87-904. Act; not applicable; when.

87-901 Act, how cited.

Sections 87-901 to 87-904 shall be known and may be cited as the Genetic Information Privacy Act.

Source: Laws 2024, LB308, § 1.

Effective date July 19, 2024.

87-902 Terms, defined.

For purposes of the Genetic Information Privacy Act:

(1) Biological sample means any material part of a human being, discharge therefrom, or derivative thereof, such as tissue, blood, urine, or saliva, known to contain DNA;

(2) Consumer means an individual who is a resident of Nebraska;

(3) Direct-to-consumer genetic testing company or company means an entity that (a) offers consumer genetic testing products or services directly to a consumer, or (b) collects, uses, or analyzes genetic data that resulted from a direct-to-consumer genetic testing product or service and was provided to the company by a consumer. Direct-to-consumer genetic testing company does not include any entity that is solely engaged in collecting, using, or analyzing genetic data or biological samples in the context of research, as defined in 45 C.F.R. 164.501, conducted in accordance with the Federal Policy for the Protection of Human Subjects, 45 C.F.R. part 46, the Good Clinical Practice Guideline issued by the International Council for Harmonisation, or the United States Food and Drug Administration Policy for the Protection of Human Subjects under 21 C.F.R. parts 50 and 56;

(4) DNA means deoxyribonucleic acid;

(5) Express consent means a consumer's affirmative response to a clear, meaningful, and prominent notice regarding the collection, use, or disclosure of genetic data for a specific purpose;

(6)(a) Genetic data means any data, regardless of its format, that concerns a consumer's genetic characteristics. Genetic data includes, but is not limited to: (i) Raw sequence data that results from sequencing of a consumer's complete extracted DNA or a portion of the extracted DNA; (ii) genotypic and phenotypic information that results from analyzing the raw sequence data; and (iii) self-reported health information that a consumer submits to a company regarding the consumer's health conditions and that is used for scientific research or product development and analyzed in connection with the consumer's raw sequence data.

(b) Genetic data does not include de-identified data. For purposes of this subdivision, de-identified data means data that cannot reasonably be used to infer information about, or otherwise be linked to, an identifiable consumer, and that is subject to: (i) Administrative and technical measures to ensure that the data cannot be associated with an identifiable consumer; (ii) public commitment by the company to maintain and use data in de-identified form and not attempt to reidentify data; and (iii) legally enforceable contractual obligations that prohibit any recipients of the data from attempting to reidentify the data;

(7) Genetic testing means any laboratory test of a consumer's complete DNA, regions of DNA, chromosomes, genes, or gene products to determine the presence of genetic characteristics of a consumer; and

(8) Person means an individual, partnership, corporation, association, business, business trust, or legal representative of an organization.

Source: Laws 2024, LB308, § 2.

Effective date July 19, 2024.

87-903 Direct-to-consumer genetic testing company; duties; prohibited acts; Attorney General; powers; civil penalty.

(1) In order to safeguard the privacy, confidentiality, security, and integrity of a consumer's genetic data, a direct-to-consumer genetic testing company shall:

(a) Provide clear and complete information regarding the company's policies and procedures for collection, use, or disclosure of genetic data by making available to a consumer: (i) A high-level privacy policy overview that includes basic information about the company's collection, use, or disclosure of genetic data; and (ii) a prominent, publicly available privacy notice that includes, at a minimum, information about the company's data collection, consent, use, access, disclosure, transfer, security, and retention and deletion practices;

(b) Obtain a consumer's consent for collection, use, or disclosure of the consumer's genetic data, including:

(i) Initial express consent that clearly states the uses for which the genetic data collected through the genetic testing product or service is intended, specifies the parties who have access to test results, and the means by which such genetic data may be shared;

(ii) Separate express consent for transferring or disclosing the consumer's genetic data to any person other than the company's vendors and service providers, or for using genetic data for purposes not stated in subdivision (1)(b)(i) of this section and inherent contextual uses;

(iii) Separate express consent for the retention of any biological sample provided by the consumer following completion of the initial testing service requested by the consumer;

(iv) Informed consent in compliance with the Federal Policy for the Protection of Human Research Subjects, as described in 45 C.F.R. part 46, for transfer or disclosure of the consumer's genetic data to third-party persons for research purposes or research conducted under the control of the company for the purpose of publication or generalizable knowledge; and

(v) Express consent for marketing to a consumer based on the consumer's genetic data or for marketing by a third-party person to a consumer based on the order or purchase by a consumer of a genetic testing product or service. For purposes of this subdivision, marketing does not include the provision of customized content or offers on websites or through applications or services provided by the direct-to-consumer genetic testing company having the first-party relationship to the consumer;

(c) Require a court order before disclosing genetic data to any government agency, including law enforcement, without the consumer's express written consent;

(d) Develop, implement, and maintain a comprehensive security program to protect a consumer's genetic data from unauthorized access, use, or disclosure; and

(e) Provide a process for a consumer to (i) access the consumer's genetic data, (ii) delete the consumer's account and genetic data, and (iii) request and obtain written documentation verifying the destruction of the consumer's biological sample.

(2) A direct-to-consumer genetic testing company shall not disclose a consumer's genetic data to any entity offering health insurance, life insurance, or long-term care insurance or to any employer of the consumer without the consumer's written consent.

(3) The Attorney General may bring an action to enforce the provisions of the Genetic Information Privacy Act. A violation of the act is subject to a civil penalty of two thousand five hundred dollars for each violation, in addition to actual damages incurred by the consumer, and costs and reasonable attorney's fees incurred by the Attorney General. Within thirty days after receipt of any civil penalty amount, the Attorney General shall remit such amount to the State Treasurer to be distributed in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2024, LB308, § 3.
Effective date July 19, 2024.

87-904 Act; not applicable; when.

(1) The Genetic Information Privacy Act does not apply to protected health information collected by a covered entity or business associate as those terms are defined in 45 C.F.R. parts 160 and 164.

(2) The disclosure of genetic data pursuant to the Genetic Information Privacy Act shall comply with all state and federal laws for the protection of privacy and security. The act shall not apply to protected health information collected by a covered entity or business associate governed by the privacy, security, and breach notification rules issued by the federal Department of Health and Human Services, 45 C.F.R. parts 160 and 164, established pursuant to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and the Health Information Technology for Economic and Clinical

Health Act, enacted as part of the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

Source: Laws 2024, LB308, § 4.
Effective date July 19, 2024.

ARTICLE 10

ONLINE AGE VERIFICATION LIABILITY ACT

Section

- 87-1001. Act, how cited.
87-1002. Terms, defined.
87-1003. Commercial entity; reasonable age verification method; required; when.
87-1004. Civil action; authorized.
87-1005. Applicability of act.

87-1001 Act, how cited.

Sections 87-1001 to 87-1005 shall be known and may be cited as the Online Age Verification Liability Act.

Source: Laws 2024, LB1092, § 1.
Effective date July 19, 2024.

87-1002 Terms, defined.

For purposes of the Online Age Verification Liability Act:

(1) Commercial entity includes a corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legally recognized entity;

(2) Digitized identification card means a data file that contains all of the data elements visible on the face and back of a government-issued operator's license or identification card and displays the current status of the license or card;

(3) Distribute means to issue, sell, give, provide, deliver, transfer, transmute, circulate, or disseminate by any means;

(4) Internet utility means an Internet service provider, a search engine, or a cloud service provider or an affiliate or subsidiary of any such provider or search engine;

(5) Material harmful to minors means any material to which all of the following apply:

(a) The average person, applying contemporary community standards, would find, taking the material as a whole and with respect to its consumption by minors, that such material is designed to appeal to or pander to the prurient interest;

(b) The material is patently offensive to prevailing standards in the adult community as a whole with respect to its consumption by minors; and

(c) The material taken as a whole lacks serious literary, artistic, political, or scientific value for minors;

(6) Minor means any person under eighteen years of age;

(7) News-gathering organization means any of the following:

(a) A newspaper, news publication, or news source, printed or on an online or mobile platform, of current news and public interest, or any employee of

such organization while acting within the scope of employment for such organization; or

(b) A radio broadcast station, television broadcast station, cable television operator, or wire service operator, or any employee of such organization while acting within the scope of employment for such organization;

(8) Publish means to communicate or make information available to another person or entity on a publicly available Internet website;

(9) Reasonable age verification method means a process to verify that the person attempting to access the material is at least eighteen years of age or older through the use of (i) a digitized identification card, including a digital copy of a driver's license, (ii) a government-issued identification, (iii) a financial document or other document that is a reliable proxy for age, or (iv) any commercially reasonable method that relies on public or private transactional data to verify the age of the person attempting to access the material;

(10) Substantial portion means an amount which is more than one-third of the total material on a website; and

(11) Transactional data means a sequence of information that documents an exchange, agreement, or transfer between an individual, commercial entity, or third-party used for the purpose of satisfying a request or event and includes records from mortgage, education, and employment entities.

Source: Laws 2024, LB1092, § 2.
Effective date July 19, 2024.

87-1003 Commercial entity; reasonable age verification method; required; when.

(1) A commercial entity shall not knowingly and intentionally publish or distribute material harmful to minors on the Internet on a website that contains a substantial portion of such material unless the entity uses a reasonable age verification method to verify the age of an individual attempting to access the material.

(2) A commercial entity or third party that performs an age verification required by this section shall not retain any identifying information of the individual after access has been granted to the material.

Source: Laws 2024, LB1092, § 3.
Effective date July 19, 2024.

87-1004 Civil action; authorized.

(1) A person aggrieved by a violation of section 87-1003 may bring a civil action against the commercial entity or third party which engaged in that violation to recover such relief as may be appropriate.

(2) In an action under this section, appropriate relief includes:

(a) Such preliminary and other equitable or declaratory relief as may be appropriate;

(b) Damages under subsection (3) of this section; and

(c) At the discretion of the court, reasonable attorney's fees and other litigation costs reasonably incurred.

(3)(a) A minor or a parent or guardian of such minor aggrieved by a violation of subsection (1) of section 87-1003 may recover actual damages caused by such violation.

(b) An individual whose information was retained in violation of subsection (2) of section 87-1003 may recover actual damages caused by such violation.

Source: Laws 2024, LB1092, § 4.
Effective date July 19, 2024.

87-1005 Applicability of act.

(1) The Online Age Verification Liability Act shall not apply to any news-gathering organization or any bona fide news or public interest broadcast, website video, or report.

(2) An Internet utility does not violate the Online Age Verification Liability Act solely by providing access or connection to or from a website or other information or content on the Internet or a facility, system, or network not under the Internet utility’s control, including transmitting, downloading, or storing data or providing access, to the extent that such Internet utility is not responsible for the creation of the content that constitutes material harmful to minors.

Source: Laws 2024, LB1092, § 5.
Effective date July 19, 2024.

ARTICLE 11

DATA PRIVACY ACT

- Section
- 87-1101. Act, how cited.
- 87-1102. Terms, defined.
- 87-1103. Applicability of act to persons or entities.
- 87-1104. Information and records to which act is not applicable.
- 87-1105. Personal or household activity.
- 87-1106. Federal Children’s Online Privacy Protection Act of 1998; compliance; effect.
- 87-1107. Consumer rights; request to exercise.
- 87-1108. Controller; compliance; procedure.
- 87-1109. Appeal process.
- 87-1110. Consumer right; waiver or limitation; unenforceable.
- 87-1111. Consumer right; method to submit request.
- 87-1112. Controller; personal data; requirements on collection and use.
- 87-1113. Privacy notice; required; contents.
- 87-1114. Personal data; sale; process for advertising; disclosure; consumer action.
- 87-1115. Processor; duties; controller and processor, contract; requirements; liability.
- 87-1116. Data protection assessment; requirements; confidentiality.
- 87-1117. Deidentified data.
- 87-1118. Sensitive data; sale; consent required.
- 87-1119. Attorney General; enforcement.
- 87-1120. Attorney General; duties.
- 87-1121. Attorney General; powers.
- 87-1122. Controller or processor; notification of violations; response.
- 87-1123. Civil investigative demand; procedure.
- 87-1124. Violation; penalty; actions authorized.
- 87-1125. Private right of action.
- 87-1126. Act, how construed.
- 87-1127. Controller or processor; requirements of act; applicability.
- 87-1128. Third-party controller or processor; affect on violation.
- 87-1129. Personal data; processing; restrictions.
- 87-1130. Preemption of local law.

87-1101 Act, how cited.

Sections 87-1101 to 87-1130 shall be known and may be cited as the Data Privacy Act.

Source: Laws 2024, LB1074, § 1.
Operative date January 1, 2025.

87-1102 Terms, defined.

For purposes of the Data Privacy Act:

(1) Affiliate means a legal entity that controls, is controlled by, or is under common control with another legal entity or shares common branding with another legal entity. For purposes of this subdivision, control or controlled means:

(a) The ownership of, or power to vote, more than fifty percent of the outstanding shares of any class of voting security of a company;

(b) The control in any manner over the election of a majority of the directors or of individuals exercising similar functions; or

(c) The power to exercise controlling influence over the management of a company;

(2) Authenticate means to verify through reasonable means that the consumer who is entitled to exercise the consumer's rights under sections 87-1107 to 87-1111, or a person on behalf of such consumer, is the same consumer exercising those consumer rights with respect to the personal data at issue;

(3)(a) Biometric data means data that is generated to identify a specific individual through an automatic measurement of a biological characteristic of such individual and includes any:

(i) Fingerprint;

(ii) Voice print;

(iii) Retina image;

(iv) Iris image; or

(v) Unique biological pattern or characteristic.

(b) Biometric data does not include:

(i) Except when generated to identify a specific individual, any physical or digital photograph, video or audio recording, or data generated from a physical or digital photograph; or

(ii) Information collected, used, or stored for health care treatment, payment, or operations under the Health Insurance Portability and Accountability Act;

(4) Business associate has the meaning assigned to the term by the Health Insurance Portability and Accountability Act;

(5) Child means an individual younger than thirteen years of age;

(6)(a) Consent means, when referring to a consumer, a clear and affirmative act signifying a consumer's freely given, specific, informed, and unambiguous agreement to process personal data relating to the consumer, including a statement written by electronic means or any other unambiguous affirmative action by the consumer.

(b) Consent, when referring to a consumer, does not include:

(i) Acceptance of a general or broad term of use or similar document that contains a description of personal data processing along with other, unrelated information;

(ii) Hovering over, muting, pausing, or closing a given piece of content; or

(iii) Agreement obtained through the use of a dark pattern;

(7)(a) Consumer means an individual who is a resident of this state acting only in an individual or household context.

(b) Consumer does not include an individual acting in a commercial or employment context;

(8) Controller means an individual or other person that, alone or jointly with others, determines the purpose and means of processing personal data;

(9) Covered entity has the same meaning as defined in 45 C.F.R. 160.103, as such regulation existed on January 1, 2024;

(10) Dark pattern means a user interface designed or manipulated with the effect of substantially subverting or impairing user autonomy, decision-making, or choice, and includes any practice determined by the Federal Trade Commission to be a dark pattern as of January 1, 2024;

(11) Decision that produces a legal or similarly significant effect concerning a consumer means a decision made by the controller that results in the provision or denial by the controller of:

(a) Financial and lending services;

(b) Housing, insurance, or health care services;

(c) Education enrollment;

(d) Employment opportunities;

(e) Criminal justice; or

(f) Access to basic necessities, such as food and water;

(12) Deidentified data means data that cannot reasonably be linked to an identified or identifiable individual, or a device linked to that individual;

(13) Health care provider has the same meaning as in the Health Insurance Portability and Accountability Act;

(14) Health Insurance Portability and Accountability Act means the federal Health Insurance Portability and Accountability Act of 1996, as such act existed on January 1, 2024;

(15) Health record means any written, printed, or electronically recorded material maintained by a health care provider in the course of providing health care services to an individual that concerns the individual and the services provided to such individual, and includes:

(a) The substance of any communication made by an individual to a health care provider in confidence during or in connection with the provision of health care services; or

(b) Information otherwise acquired by the health care provider about an individual in confidence and in connection with health care services provided to the individual;

(16) Identified or identifiable individual means a consumer who can be directly or indirectly readily identified;

(17) Institution of higher education means any postsecondary institution or private postsecondary institution as such terms are defined in section 85-2403;

(18) Known child means a child under circumstances where a controller has actual knowledge of, or willfully disregards, the child's age;

(19) Nonprofit organization means any corporation organized under the Nebraska Nonprofit Corporation Act, any organization exempt from taxation under section 501(c)(3), 501(c)(6), or 501(c)(12) of the Internal Revenue Code, any organization exempt from taxation under section 501(c)(4) of the Internal Revenue Code that is established to detect or prevent insurance-related crime or fraud, and any subsidiary or affiliate of a cooperative corporation organized in this state;

(20)(a) Personal data means any information, including sensitive data, that is linked or reasonably linkable to an identified or identifiable individual, and includes pseudonymous data when the data is used by a controller or processor in conjunction with additional information that reasonably links the data to an identified or identifiable individual.

(b) Personal data does not include deidentified data or publicly available information;

(21) Political organization means a party, committee, association, fund, or other organization, regardless of whether incorporated, that is organized and operated primarily for the purpose of influencing or attempting to influence:

(a) The selection, nomination, election, or appointment of an individual to a federal, state, or local public office or an office in a political organization, regardless of whether the individual is selected, nominated, elected, or appointed; or

(b) The election of a presidential or vice-presidential elector, regardless of whether the elector is selected, nominated, elected, or appointed;

(22)(a) Precise geolocation data means information derived from technology, including global positioning system level latitude and longitude coordinates or other mechanisms, that directly identifies the specific location of an individual with precision and accuracy within a radius of one thousand seven hundred fifty feet.

(b) Precise geolocation data does not include the content of communications or any data generated by or connected to an advanced utility metering infrastructure system or to equipment for use by a utility;

(23) Process or processing means an operation or set of operations performed, whether by manual or automated means, on personal data or on sets of personal data, such as the collection, use, storage, disclosure, analysis, deletion, or modification of personal data;

(24) Processor means a person that processes personal data on behalf of a controller;

(25) Profiling means any form of solely automated processing performed on personal data to evaluate, analyze, or predict personal aspects related to an identified or identifiable individual's economic situation, health, personal preferences, interests, reliability, behavior, location, or movements;

(26) Protected health information has the same meaning as in the Health Insurance Portability and Accountability Act;

(27) Pseudonymous data means any personal information that cannot be attributed to a specific individual without the use of additional information, provided that the additional information is kept separately and is subject to appropriate technical and organizational measures to ensure that the personal data is not attributed to an identified or identifiable individual;

(28) Publicly available information means information that is lawfully made available through government records, or information that a business has a reasonable basis to believe is lawfully made available to the general public through widely distributed media, by a consumer, or by a person to whom a consumer has disclosed the information, unless the consumer has restricted the information to a specific audience;

(29)(a) Sale of personal data means the exchange of personal data for monetary or other valuable consideration by the controller to a third party.

(b) Sale of personal data does not include:

(i) The disclosure of personal data to a processor that processes the personal data on the controller's behalf;

(ii) The disclosure of personal data to a third party for purposes of providing a product or service requested by the consumer;

(iii) The disclosure or transfer of personal data to an affiliate of the controller;

(iv) The disclosure of information that the consumer:

(A) Intentionally made available to the general public through a mass media channel; and

(B) Did not restrict to a specific audience; or

(v) The disclosure or transfer of personal data to a third party as an asset in which the third party assumes control of all or part of the controller's assets that is part of a proposed or actual:

(A) Merger;

(B) Acquisition;

(C) Bankruptcy; or

(D) Other transaction;

(30) Sensitive data means a category of personal data, and includes:

(a) Personal data revealing racial or ethnic origin, religious beliefs, mental or physical health diagnosis, sexual orientation, or citizenship or immigration status;

(b) Genetic or biometric data that is processed for the purpose of uniquely identifying an individual;

(c) Personal data collected from a known child; or

(d) Precise geolocation data;

(31) State agency means a department, commission, board, office, council, authority, or other agency in any branch of state government that is created by the constitution or a statute of this state, including any university system or any postsecondary institution as defined in section 85-2403;

(32)(a) Targeted advertising means displaying to a consumer an advertisement that is selected based on personal data obtained from that consumer's

activities over time and across nonaffiliated websites or online applications to predict the consumer's preferences or interests.

(b) Targeted advertising does not include:

(i) An advertisement that:

(A) Is based on activities within a controller's own websites or online applications;

(B) Is based on the context of a consumer's current search query, visit to a website, or online application; or

(C) Is directed to a consumer in response to the consumer's request for information or feedback; or

(ii) The processing of personal data solely for measuring or reporting advertising performance, reach, or frequency;

(33) Third party means a person, other than the consumer, the controller, the processor, or an affiliate of the controller or processor; and

(34) Trade secret has the same meaning as in section 87-502.

Source: Laws 2024, LB1074, § 2.

Operative date January 1, 2025.

Cross References

Nebraska Nonprofit Corporation Act, see section 21-1901.

87-1103 Applicability of act to persons or entities.

(1) The Data Privacy Act applies only to a person that:

(a) Conducts business in this state or produces a product or service consumed by residents of this state;

(b) Processes or engages in the sale of personal data; and

(c) Is not a small business as determined under the federal Small Business Act, as such act existed on January 1, 2024, except to the extent that section 87-1118 applies to a person described by this subdivision.

(2) The Data Privacy Act does not apply to any:

(a) State agency or political subdivision of this state;

(b) Financial institution, affiliate of a financial institution, or data subject to Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 et seq., as such title existed on January 1, 2024;

(c) Covered entity or business associate governed by the privacy, security, and breach notification rules issued by the United States Department of Health and Human Services, 45 C.F.R. parts 160 and 164, as such parts existed on January 1, 2024, and Division A, Title XIII, and Division B, Title IV, of the federal Health Information Technology for Economic and Clinical Health Act, Public Law No. 111-5, as such act existed on January 1, 2024;

(d) Nonprofit organization;

(e) Institution of higher education;

(f) Electric supplier or supplier of electricity as defined in section 70-1001.01;

(g) Natural gas public utility as defined in section 66-1802; or

(h) Natural gas utility owned or operated by a city or a metropolitan utilities district.

Source: Laws 2024, LB1074, § 3.
Operative date January 1, 2025.

87-1104 Information and records to which act is not applicable.

The Data Privacy Act does not apply to the following:

- (1) Protected health information under the Health Insurance Portability and Accountability Act;
- (2) Health records;
- (3) Patient identifying information for purposes of 42 U.S.C. 290dd-2, as such section existed on January 1, 2024;
- (4) Identifiable private information:
 - (a) For purposes of the federal policy for the protection of human subjects under 45 C.F.R. part 46, as such part existed on January 1, 2024;
 - (b) Collected as part of human subjects research under the good clinical practice guidelines issued by the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use, as such guidelines existed on January 1, 2024, or of the protection of human subjects under 21 C.F.R. parts 50 and 56, as such parts existed on January 1, 2024; or
 - (c) That is personal data used or shared in research conducted pursuant to the Data Privacy Act or other research conducted in accordance with applicable Nebraska law;
- (5) Information and documents created for purposes of the federal Health Care Quality Improvement Act of 1986, 42 U.S.C. 11101 et seq., as such act existed on January 1, 2024;
- (6) Patient safety work product for purposes of the federal Patient Safety and Quality Improvement Act of 2005, 42 U.S.C. 299b-21 et seq., as such act existed on January 1, 2024;
- (7) Information derived from any of the health care-related information listed in this section that is deidentified in accordance with the requirements for deidentification under the Health Insurance Portability and Accountability Act;
- (8) Information originating from, and intermingled to be indistinguishable with, or information treated in the same manner as, information exempt under this section that is maintained by a covered entity or business associate as defined by the Health Insurance Portability and Accountability Act or by a program or a qualified service organization as defined by 42 U.S.C. 290dd-2, as such section existed on January 1, 2024;
- (9) Information that is included in a limited data set as described by 45 C.F.R. 164.514(e), to the extent that the information is used, disclosed, and maintained in the manner specified by 45 C.F.R. 164.514(e), as such regulation existed on January 1, 2024;
- (10) Information collected or used only for public health activities and purposes as authorized by the Health Insurance Portability and Accountability Act;
- (11) The collection, maintenance, disclosure, sale, communication, or use of any personal information bearing on a consumer's creditworthiness, credit

standing, credit capacity, character, general reputation, personal characteristics, or mode of living by a consumer reporting agency or furnisher that provides information for use in a consumer report, and by a user of a consumer report, but only to the extent that the activity is regulated by and authorized under the federal Fair Credit Reporting Act, 15 U.S.C. 1681 et seq., as such act existed on January 1, 2024;

(12) Personal data collected, processed, sold, or disclosed in compliance with the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. 2721 et seq., as such act existed on January 1, 2024;

(13) Personal data regulated by the federal Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, as such act existed on January 1, 2024;

(14) Personal data collected, processed, sold, or disclosed in compliance with the federal Farm Credit Act of 1971, 12 U.S.C. 2001 et seq., as such act existed on January 1, 2024;

(15) Data processed or maintained in the course of an individual applying to, being employed by, or acting as an agent or independent contractor of a controller, processor, or third party, to the extent that the data is collected and used within the context of that role;

(16) Data processed or maintained as the emergency contact information of an individual under the Data Privacy Act that is used for emergency contact purposes; or

(17) Data that is processed or maintained and is necessary to retain to administer benefits for another individual that relates to an individual described by subdivision (15) of this section and used for the purposes of administering such benefits.

Source: Laws 2024, LB1074, § 4.
Operative date January 1, 2025.

87-1105 Personal or household activity.

The Data Privacy Act does not apply to the processing of personal data by a person in the course of a purely personal or household activity.

Source: Laws 2024, LB1074, § 5.
Operative date January 1, 2025.

87-1106 Federal Children's Online Privacy Protection Act of 1998; compliance; effect.

A controller or processor that complies with the verifiable parental consent requirements of the federal Children's Online Privacy Protection Act of 1998, 15 U.S.C. 6501 et seq., and the rules, regulations, and guidance adopted and promulgated under such act as such act, rules, regulations, and guidance existed on January 1, 2024, with respect to data collected online is considered to be in compliance with any requirement to obtain parental consent under the Data Privacy Act.

Source: Laws 2024, LB1074, § 6.
Operative date January 1, 2025.

87-1107 Consumer rights; request to exercise.

(1) A consumer may at any time submit a request to a controller specifying the consumer rights the consumer wishes to exercise. With respect to the processing of personal data belonging to a known child, a parent or legal guardian of the child may exercise the consumer rights on behalf of the known child.

(2) A controller shall comply with an authenticated consumer request to exercise the right to:

(a) Confirm whether a controller is processing the consumer's personal data and to access the personal data;

(b) Correct inaccuracies in the consumer's personal data, taking into account the nature of the personal data and the purposes of the processing of the consumer's personal data;

(c) Delete personal data provided by or obtained about the consumer;

(d) If the data is available in a digital format and the processing is completed by automated means, obtain a copy of the consumer's personal data that the consumer previously provided to the controller in a portable and, to the extent technically feasible, readily usable format that allows the consumer to transmit the data to another controller without hindrance; or

(e) Opt out of the processing of the personal data for purposes of:

(i) Targeted advertising;

(ii) The sale of personal data; or

(iii) Profiling in furtherance of a decision that produces a legal or similarly significant effect concerning the consumer.

Source: Laws 2024, LB1074, § 7.

Operative date January 1, 2025.

87-1108 Controller; compliance; procedure.

(1) Except as otherwise provided in the Data Privacy Act, a controller shall comply with a request submitted by a consumer to exercise the consumer's rights pursuant to section 87-1107.

(2) A controller shall respond to the consumer request without undue delay within forty-five days after the date of receipt of the request. The controller may extend the response period once by an additional forty-five days when reasonably necessary, taking into account the complexity and number of the consumer's requests, so long as the controller informs the consumer of the extension within the initial forty-five-day response period, together with the reason for the extension.

(3) If a controller declines to comply with a consumer's request, the controller shall inform the consumer within forty-five days after the date of receipt of the request of the justification for declining to comply and provide instructions on how to appeal the decision to the Attorney General in accordance with section 87-1109.

(4) A controller shall provide information in response to a consumer request free of charge, up to twice annually per consumer. If a request from a consumer is manifestly unfounded, excessive, or repetitive, the controller may charge the consumer a reasonable fee to cover the administrative costs of complying with the request or may decline to act on the request. The controller

bears the burden of demonstrating that a request is manifestly unfounded, excessive, or repetitive.

(5) If a controller is unable to authenticate the request using commercially reasonable efforts, the controller is not required to comply with a consumer request submitted under section 87-1107 and may request that the consumer provide additional information reasonably necessary to authenticate the consumer's identity and the consumer's request.

(6) A controller that has obtained personal data about a consumer from a source other than the consumer is in compliance with a consumer's request to delete such personal data pursuant to subdivision (2)(c) of section 87-1107 by:

(a) Retaining a record of the deletion request and the minimum data necessary for the purpose of ensuring the consumer's personal data remains deleted from the business's records and not using the retained data for any other purpose under the Data Privacy Act; or

(b) Opting the consumer out of the processing of that personal data for any purpose other than a purpose that is exempt under the Data Privacy Act.

Source: Laws 2024, LB1074, § 8.

Operative date January 1, 2025.

87-1109 Appeal process.

(1) A controller shall establish a process for a consumer to appeal the controller's refusal to take action on a request within a reasonable period of time after the consumer's receipt of the decision under subsection (3) of section 87-1108.

(2) The appeal process must be conspicuously available and similar to the process for initiating an action to exercise consumer rights by submitting a request under section 87-1107.

(3) A controller shall inform the consumer in writing of any action taken or not taken in response to an appeal under this section not later than the sixtieth day after the date of receipt of the appeal, including a written explanation of the reason or reasons for the decision.

(4) If the controller denies an appeal, the controller shall provide the consumer with the online mechanism described in section 87-1108 through which the consumer may contact the Attorney General to submit a complaint.

Source: Laws 2024, LB1074, § 9.

Operative date January 1, 2025.

87-1110 Consumer right; waiver or limitation; unenforceable.

Any provision of a contract or agreement that waives or limits in any way a consumer right described in sections 87-1107 to 87-1109 is contrary to public policy and is void and unenforceable.

Source: Laws 2024, LB1074, § 10.

Operative date January 1, 2025.

87-1111 Consumer right; method to submit request.

(1) A controller shall establish two or more secure and reliable methods to enable a consumer to submit a request to exercise consumer rights under the Data Privacy Act. The methods shall take into account:

(a) The ways in which consumers normally interact with the controller;
(b) The necessity for secure and reliable communications of those requests;
and

(c) The ability of the controller to authenticate the identity of the consumer making the request.

(2) A controller shall not require a consumer to create a new account to exercise a consumer right under the Data Privacy Act, but may require a consumer to use an existing account.

(3) Except as provided by subsection (4) of this section, if the controller maintains an Internet website, the controller shall provide a mechanism on the website for a consumer to submit a request for information required to be disclosed under the Data Privacy Act.

(4) A controller that operates exclusively online and has a direct relationship with a consumer from whom the controller collects personal information is only required to provide an email address for the submission of a request described by subsection (3) of this section.

(5) A consumer may designate another person to serve as the consumer's authorized agent and act on the consumer's behalf to opt out of the processing of the consumer's personal data under subdivisions (2)(e)(i) and (ii) of section 87-1107. A consumer may designate an authorized agent using a technology, including a link to an Internet website, an Internet browser setting or extension, or a global setting on an electronic device, that allows the consumer to indicate the consumer's intent to opt out of the processing of the consumer's personal data under subdivisions (2)(e)(i) and (ii) of section 87-1107. A controller shall comply with an opt-out request received from an authorized agent under this subsection if the controller is able to verify, with commercially reasonable effort, the identity of the consumer and the authorized agent's authority to act on the consumer's behalf. A controller is not required to comply with an opt-out request received from an authorized agent under this subsection if:

(a) The authorized agent does not communicate the request to the controller in a clear and unambiguous manner;

(b) The controller is not able to verify, with commercially reasonable effort, that the consumer is a resident of this state;

(c) The controller does not possess the ability to process the request; or

(d) The controller does not process similar or identical requests the controller receives from consumers for the purpose of complying with similar or identical laws or regulations of another state.

(6) A technology described by subsection (5) of this section:

(a) Shall not unfairly disadvantage another controller;

(b) Shall not make use of a default setting, but shall require the consumer to make an affirmative, freely given, and unambiguous choice to indicate the consumer's intent to opt out of any processing of a consumer's personal data; and

(c) Shall be consumer-friendly and easy to use by the average consumer.

Source: Laws 2024, LB1074, § 11.

Operative date January 1, 2025.

87-1112 Controller; personal data; requirements on collection and use.

(1) A controller:

(a) Shall limit the collection of personal data to what is adequate, relevant, and reasonably necessary in relation to the purposes for which that personal data is processed, as disclosed to the consumer; and

(b) For purposes of protecting the confidentiality, integrity, and accessibility of personal data, shall establish, implement, and maintain reasonable administrative, technical, and physical data security practices that are appropriate to the volume and nature of the personal data at issue.

(2) A controller shall not:

(a) Except as otherwise provided in the Data Privacy Act, process personal data for a purpose that is neither reasonably necessary to nor compatible with the disclosed purpose for which the personal data is processed, as disclosed to the consumer, unless the controller obtains the consumer's consent;

(b) Process personal data in violation of state and federal laws that prohibit unlawful discrimination against consumers;

(c) Discriminate against a consumer for exercising any of the consumer rights contained in the Data Privacy Act, including by denying a good or service, charging a different price or rate for a good or service, or providing a different level of quality of a good or service to the consumer; or

(d) Process the sensitive data of a consumer without obtaining the consumer's consent, or, in the case of processing the sensitive data of a known child, without processing that data in accordance with the federal Children's Online Privacy Protection Act of 1998, 15 U.S.C. 6501 et seq., as such act existed on January 1, 2024.

(3) Subdivision (2)(c) of this section shall not be construed to require a controller to provide a product or service that requires the personal data of a consumer that the controller does not collect or maintain or to prohibit a controller from offering a different price, rate, level, quality, or selection of a good or service to a consumer, including offering a good or service for no fee, if the consumer has exercised the consumer's right to opt out under section 87-1107 or the offer is related to a consumer's voluntary participation in a bona fide loyalty, reward, premium feature, discount, or club card program.

Source: Laws 2024, LB1074, § 12.

Operative date January 1, 2025.

87-1113 Privacy notice; required; contents.

A controller shall provide each consumer with a reasonably accessible and clear privacy notice that includes:

(1) The categories of personal data processed by the controller, including, if applicable, any sensitive data processed by the controller;

(2) The purpose for processing personal data;

(3) How a consumer may exercise a consumer right under sections 87-1107 to 87-1111, including the process by which a consumer may appeal a controller's decision with regard to the consumer's request;

(4) If applicable, any category of personal data that the controller shares with any third party;

(5) If applicable, any category of third party with whom the controller shares personal data; and

(6) A description of each method required under section 87-1111 through which a consumer may submit a request to exercise a consumer right under the Data Privacy Act.

Source: Laws 2024, LB1074, § 13.

Operative date January 1, 2025.

87-1114 Personal data; sale; process for advertising; disclosure; consumer action.

If a controller sells personal data to any third party or processes personal data for targeted advertising, the controller shall clearly and conspicuously disclose that process and the manner in which a consumer may exercise the right to opt out of that process.

Source: Laws 2024, LB1074, § 14.

Operative date January 1, 2025.

87-1115 Processor; duties; controller and processor, contract; requirements; liability.

(1) A processor shall adhere to the instructions of a controller and shall assist the controller in meeting or complying with the controller's duties or requirements under the Data Privacy Act, including:

(a) Assisting the controller in responding to consumer rights requests submitted under section 87-1107 by using appropriate technical and organizational measures, as reasonably practicable, taking into account the nature of processing and the information available to the processor;

(b) Assisting the controller with regard to complying with the requirement relating to the security of processing personal data and to the notification of a breach of security of the processor's system relating to an operator's or driver's license, taking into account the nature of processing and the information available to the processor; and

(c) Providing necessary information to enable the controller to conduct and document data protection assessments under section 87-1116.

(2) A contract between a controller and a processor shall govern the processor's data processing procedures with respect to processing performed on behalf of the controller. The contract shall include:

(a) Clear instructions for processing data;

(b) The nature and purpose of processing;

(c) The type of data subject to processing;

(d) The duration of processing;

(e) The rights and obligations of both parties; and

(f) A requirement that the processor shall:

(i) Ensure that each person processing personal data is subject to a duty of confidentiality with respect to the data;

(ii) At the controller's direction, delete or return all personal data to the controller as requested after the provision of the service is completed, unless retention of the personal data is required by law;

(iii) Make available to the controller, on reasonable request, all information in the processor's possession necessary to demonstrate the processor's compliance with the requirements of the Data Privacy Act;

(iv) Allow, and cooperate with, reasonable assessments by the controller or the controller's designated assessor; and

(v) Engage any subcontractor pursuant to a written contract that requires the subcontractor to meet the requirements of the processor with respect to the personal data.

(3) Notwithstanding the requirement described by subdivision (2)(f)(iv) of this section, a processor, in the alternative, may arrange for a qualified and independent assessor to conduct an assessment of the processor's policies and technical and organizational measures in support of the requirements under the Data Privacy Act using an appropriate and accepted control standard or framework and assessment procedure. The processor shall provide a report of the assessment to the controller on request.

(4) This section shall not be construed to relieve a controller or a processor from the liabilities imposed on the controller or processor by virtue of the role of the controller or processor in the processing relationship as described in the Data Privacy Act.

(5) A determination of whether a person is acting as a controller or processor with respect to a specific processing of data is a fact-based determination that depends on the context in which personal data is to be processed. A processor that continues to adhere to a controller's instructions with respect to a specific processing of personal data remains in the role of a processor.

Source: Laws 2024, LB1074, § 15.

Operative date January 1, 2025.

87-1116 Data protection assessment; requirements; confidentiality.

(1) A controller shall conduct and document a data protection assessment of each of the following processing activities involving personal data:

(a) The processing of personal data for purposes of targeted advertising;

(b) The sale of personal data;

(c) The processing of personal data for purposes of profiling, if the profiling presents a reasonably foreseeable risk of:

(i) Unfair or deceptive treatment of or unlawful disparate impact on any consumer;

(ii) Financial, physical, or reputational injury to any consumer;

(iii) A physical or other intrusion on the solitude or seclusion, or the private affairs or concerns, of any consumer, if the intrusion would be offensive to a reasonable person; or

(iv) Other substantial injury to any consumer;

(d) The processing of sensitive data; and

(e) Any processing activity that involves personal data that presents a heightened risk of harm to any consumer.

(2) A data protection assessment conducted under subsection (1) of this section shall:

(a) Identify and weigh the direct or indirect benefits that may flow from the processing to the controller, the consumer, other stakeholders, and the public, against the potential risks to the rights of the consumer associated with that processing, as mitigated by safeguards that can be employed by the controller to reduce the risks; and

(b) Factor into the assessment:

(i) The use of deidentified data;

(ii) The reasonable expectations of consumers;

(iii) The context of the processing; and

(iv) The relationship between the controller and the consumer whose personal data will be processed.

(3) A controller shall make a data protection assessment requested under subsection (2) of section 87-1121 available to the Attorney General pursuant to a civil investigative demand under section 87-1121.

(4) A data protection assessment is confidential and exempt from disclosure as a public record pursuant to sections 84-712 to 84-712.09. Disclosure of a data protection assessment in compliance with a request from the Attorney General does not constitute a waiver of attorney-client privilege or work-product protection with respect to the assessment and any information contained in the assessment.

(5) A single data protection assessment may address a comparable set of processing operations that include similar activities.

(6) A data protection assessment conducted by a controller for the purpose of compliance with other laws or regulations may constitute compliance with the requirements of this section if the assessment has a reasonably comparable scope and effect.

Source: Laws 2024, LB1074, § 16.

Operative date January 1, 2025.

87-1117 Deidentified data.

(1) A controller in possession of deidentified data shall:

(a) Take reasonable measures to ensure that the data cannot be associated with an individual;

(b) Publicly commit to maintaining and using deidentified data without attempting to reidentify the data; and

(c) Contractually obligate any recipient of the deidentified data to comply with the Data Privacy Act.

(2) The Data Privacy Act shall not be construed to require a controller or processor to:

(a) Reidentify deidentified data or pseudonymous data;

(b) Maintain data in identifiable form or obtain, retain, or access any data or technology for the purpose of allowing the controller or processor to associate a consumer request with personal data; or

(c) Comply with an authenticated consumer rights request under section 87-1107, if the controller:

(i) Is not reasonably capable of associating the request with the personal data or it would be unreasonably burdensome for the controller to associate the request with the personal data;

(ii) Does not use the personal data to recognize or respond to the specific consumer who is the subject of the personal data or associate the personal data with other personal data about the same specific consumer; and

(iii) Does not sell the personal data to any third party or otherwise voluntarily disclose the personal data to any third party other than a processor, except as otherwise permitted by this section.

(3) The consumer rights under subdivisions (2)(a) through (d) of section 87-1107 and controller duties under section 87-1112 do not apply to pseudonymous data in any case in which the controller is able to demonstrate any information necessary to identify the consumer is kept separately and is subject to effective technical and organizational controls that prevent the controller from accessing the information.

(4) A controller that discloses pseudonymous data or deidentified data shall exercise reasonable oversight to monitor compliance with any contractual commitments to which the pseudonymous data or deidentified data is subject and shall take appropriate steps to address any breach of the contractual commitments.

Source: Laws 2024, LB1074, § 17.

Operative date January 1, 2025.

87-1118 Sensitive data; sale; consent required.

(1) A person described by subdivision (1)(c) of section 87-1103 shall not engage in the sale of personal data that is sensitive data without receiving prior consent from the consumer.

(2) A person who violates this section is subject to the penalty under section 87-1124.

Source: Laws 2024, LB1074, § 18.

Operative date January 1, 2025.

87-1119 Attorney General; enforcement.

The Attorney General has exclusive authority to enforce the Data Privacy Act.

Source: Laws 2024, LB1074, § 19.

Operative date January 1, 2025.

87-1120 Attorney General; duties.

The Attorney General shall post on the Attorney General's website:

(1) Information relating to:

(a) The responsibilities of a controller under the Data Privacy Act;

(b) The responsibilities of a processor under the Data Privacy Act; and

(c) A consumer's rights under the Data Privacy Act; and

(2) An online mechanism through which a consumer may submit a complaint under the Data Privacy Act to the Attorney General.

Source: Laws 2024, LB1074, § 20.

Operative date January 1, 2025.

87-1121 Attorney General; powers.

(1) If the Attorney General has reasonable cause to believe that a controller or processor has engaged in or is engaging in a violation of the Data Privacy Act, the Attorney General may issue a civil investigative demand pursuant to section 87-1123.

(2) The Attorney General may request, pursuant to a civil investigative demand, that a controller disclose any data protection assessment that is relevant to an investigation conducted by the Attorney General. The Attorney General may evaluate the data protection assessment for compliance with sections 87-1112 to 87-1114.

Source: Laws 2024, LB1074, § 21.

Operative date January 1, 2025.

87-1122 Controller or processor; notification of violations; response.

Before bringing an action under section 87-1124, the Attorney General shall notify a controller or processor in writing, not later than the thirtieth day before bringing the action, identifying the specific provisions of the Data Privacy Act the Attorney General alleges have been or are being violated. The Attorney General may not bring an action against the controller or processor if:

(1) Within the thirty-day period, the controller or processor cures the identified violation; and

(2) The controller or processor provides the Attorney General:

(a) A written statement that the controller or processor cured the alleged violation and supportive documentation to show how such violation was cured; and

(b) An express written statement that the controller or processor shall not commit any such violation after the alleged violation has been cured.

Source: Laws 2024, LB1074, § 22.

Operative date January 1, 2025.

87-1123 Civil investigative demand; procedure.

(1) Whenever the Attorney General believes that any person may be in possession, custody, or control of any original or copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situated, which he or she believes to be relevant to the subject matter of an investigation of a possible violation of the Data Privacy Act, the Attorney General may, prior to the institution of a civil proceeding under such act, execute in writing and cause to be served upon such a person a civil investigative demand requiring such person to produce such documentary material and permit inspection and copying thereof. This section shall not be applicable to criminal prosecutions.

(2) Each such demand shall:

(a) State the statute and section or sections thereof the alleged violation of which is under investigation, and the general subject matter of the investigation;

(b) Describe the class or classes of documentary material to be produced thereunder with reasonable specificity so as fairly to indicate the material demanded;

(c) Prescribe a return date within which the documentary material shall be produced; and

(d) Identify the members of the Attorney General's staff to whom such documentary material shall be made available for inspection and copying.

(3) No such demand shall:

(a) Contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of this state; or

(b) Require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of this state.

(4) Service of any such demand may be made by:

(a) Delivering a duly executed copy thereof to the person to be served, or, if such person is not a natural person, to any officer of the person to be served;

(b) Delivering a duly executed copy thereof to the principal place of business in this state of the person to be served; or

(c) Mailing by certified mail a duly executed copy thereof addressed to the person to be served at the principal place of business in this state, or, if such person has no place of business in this state, to his or her principal office or place of business.

(5) Documentary material demanded pursuant to this section shall be produced for inspection and copying during normal business hours at the principal office or place of business of the person served, or at such other times and places as may be agreed upon by the person served and the Attorney General.

(6) No documentary material produced pursuant to a demand, or copies thereof, shall, unless otherwise ordered by a district court for good cause shown, be produced for inspection or copying by, nor shall the contents thereof be disclosed to, other than an authorized employee of the Attorney General, without the consent of the person who produced such material, except that:

(a) Under such reasonable terms and conditions as the Attorney General shall prescribe, the copies of such documentary material shall be available for inspection and copying by the person who produced such material or any duly authorized representative of such person;

(b) The Attorney General may provide copies of such documentary material to an official of this or any other state, or an official of the federal government, who is charged with the enforcement of federal or state antitrust or consumer protection laws, if such official agrees in writing to not disclose such documentary material to any person other than the official's authorized employees, except as such disclosure is permitted under subdivision (c) of this subsection; and

(c) The Attorney General or any assistant attorney general or an official authorized to receive copies of documentary material under subdivision (b) of this subsection may use such copies of documentary material as he or she determines necessary in the enforcement of the Data Privacy Act, including presentation before any court, except that any such material that contains trade

secrets shall not be presented except with the approval of the court in which action is pending after adequate notice to the person furnishing such material.

(7) At any time before the return date specified in the demand, or within twenty days after the demand has been served, whichever period is shorter, a petition to extend the return date for or to modify or set aside a demand issued pursuant to subsection (1) of this section, stating good cause, may be filed in the district court for Lancaster County, or in such other county where the parties reside. A petition by the person on whom the demand is served, stating good cause, to require the Attorney General or any person to perform any duty imposed by this section, and all other petitions in connection with a demand, may be filed in the district court for Lancaster County or in the county where the parties reside.

(8) Whenever any person fails to comply with any civil investigative demand for documentary material duly served upon him or her under this section, or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the county in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one county, such petition shall be filed in the county in which such person maintains his or her principal place of business or in such other county as may be agreed upon by the parties to such petition. Whenever any petition is filed in the district court of any county under this section, such court shall have jurisdiction to hear and determine the matter so presented and to enter such order as may be required to carry this section into effect. Disobedience of any order entered under this section by any court shall be punished as a contempt thereof.

Source: Laws 2024, LB1074, § 23.

Operative date January 1, 2025.

87-1124 Violation; penalty; actions authorized.

(1) A person who violates the Data Privacy Act following the cure period described by section 87-1122 or who breaches a written statement provided to the Attorney General under such section is liable for a civil penalty in an amount not to exceed seven thousand five hundred dollars for each violation.

(2) The Attorney General may bring an action in the name of the State of Nebraska to:

- (a) Recover a civil penalty under this section;
- (b) Restrain or enjoin the person from violating the Data Privacy Act; or
- (c) Recover the civil penalty and seek injunctive relief.

(3) The Attorney General may recover reasonable attorney's fees and other reasonable expenses incurred in investigating and bringing an action under this section.

(4) All money collected under 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 2024, LB1074, § 24.

Operative date January 1, 2025.

87-1125 Private right of action.

The Data Privacy Act shall not be construed as providing a basis for, or being subject to, a private right of action for a violation of the Data Privacy Act or any other law.

Source: Laws 2024, LB1074, § 25.

Operative date January 1, 2025.

87-1126 Act, how construed.

The Data Privacy Act shall not be construed to:

- (1) Restrict a controller's or processor's ability to:
 - (a) Comply with federal, state, or local laws, rules, or regulations;
 - (b) Comply with a civil, criminal, or regulatory inquiry, investigation, subpoena, or summons by federal, state, local, or other governmental authorities;
 - (c) Cooperate with any law enforcement agency concerning conduct or activity that the controller or processor reasonably and in good faith believes may violate any federal, state, or local law, rule, or regulation;
 - (d) Investigate, establish, exercise, prepare for, or defend legal claims;
 - (e) Provide a product or service specifically requested by a consumer or the parent or guardian of a child, perform a contract to which the consumer is a party, including fulfilling the terms of a written warranty, or take action at the request of the consumer before entering into a contract;
 - (f) Take immediate action to protect an interest that is essential for the life or physical safety of the consumer or of another individual and in which the processing cannot be manifestly based on another legal basis;
 - (g) Prevent, detect, protect against, or respond to security incidents, identity theft, fraud, harassment, malicious or deceptive activities, or any illegal activity;
 - (h) Preserve the integrity or security of systems or investigate, report, or prosecute those responsible for breaches of system security;
 - (i) Engage in public or peer-reviewed scientific or statistical research in the public interest that adheres to all other applicable ethics and privacy laws and is approved, monitored, and governed by an institutional review board or similar independent oversight entity that determines:
 - (i) If the deletion of the information is likely to provide substantial benefits that do not exclusively accrue to the controller;
 - (ii) Whether the expected benefits of the research outweigh the privacy risks; and
 - (iii) If the controller has implemented reasonable safeguards to mitigate privacy risks associated with research, including any risks associated with reidentification; or
 - (j) Assist another controller, processor, or third party with any of the requirements under subdivision (1) of this section;
- (2) Prevent a controller or processor from providing personal data concerning a consumer to a person covered by an evidentiary privilege under the laws of this state as part of a privileged communication;
- (3) Impose a requirement on any controller or processor that adversely affects any right or freedom of any person, including the right of free speech pursuant to the First Amendment to the Constitution of the United States;

- (4) Require a controller, processor, third party, or consumer to disclose a trade secret;
- (5) Apply to the processing of personal data by any individual in the course of a purely personal or household activity; or
- (6) Prevent a controller or processor from providing personal data concerning a consumer to a person covered by an evidentiary privilege as part of a privileged communication.

Source: Laws 2024, LB1074, § 26.

Operative date January 1, 2025.

87-1127 Controller or processor; requirements of act; applicability.

(1) The requirements imposed on any controller or processor under the Data Privacy Act shall not restrict a controller's or processor's ability to collect, use, or retain data to:

- (a) Conduct internal research to develop, improve, or repair products, services, or technology;
- (b) Effect a product recall;
- (c) Identify and repair technical errors that impair existing or intended functionality; or
- (d) Perform internal operations that:
 - (i) Are reasonably aligned with the expectations of the consumer;
 - (ii) Are reasonably anticipated based on the consumer's existing relationship with the controller; or
 - (iii) Are otherwise compatible with processing data in furtherance of the provision of a product or service specifically requested by a consumer or the performance of a contract to which the consumer is a party.

(2) A requirement imposed on a controller or processor under the Data Privacy Act shall not apply if compliance with the requirement by the controller or processor, as applicable, would violate an evidentiary privilege under any law of this state.

Source: Laws 2024, LB1074, § 27.

Operative date January 1, 2025.

87-1128 Third-party controller or processor; affect on violation.

(1) A controller or processor that discloses personal data to a third-party controller or processor, in compliance with any requirement of the Data Privacy Act, does not violate the Data Privacy Act if the third-party controller or processor that receives and processes that personal data is in violation of the Data Privacy Act, if at the time of the data's disclosure the disclosing controller or processor did not have actual knowledge that the recipient intended to commit a violation.

(2) A third-party controller or processor that receives personal data from a controller or processor in compliance with the requirements of the Data Privacy Act does not violate the Data Privacy Act for the transgressions of the

controller or processor from which the third-party controller or processor received the personal data.

Source: Laws 2024, LB1074, § 28.

Operative date January 1, 2025.

87-1129 Personal data; processing; restrictions.

(1) Personal data processed by a controller under sections 87-1126 to 87-1129 may not be processed for any purpose other than a purpose listed in sections 87-1126 to 87-1129 unless otherwise allowed by the Data Privacy Act. Personal data processed by a controller under sections 87-1126 to 87-1129 may be processed to the extent that the processing of the data is:

(a) Reasonably necessary and proportionate to the purposes listed in sections 87-1126 to 87-1129; and

(b) Adequate, relevant, and limited to what is necessary in relation to the specific purposes listed in sections 87-1126 to 87-1129.

(2) Personal data collected, used, or retained under subsection (1) of section 87-1127 shall, where applicable, take into account the nature and purpose of such collection, use, or retention. The personal data described by this subsection is subject to reasonable administrative, technical, and physical measures to protect the confidentiality, integrity, and accessibility of the personal data and to reduce reasonably foreseeable risks of harm to consumers relating to the collection, use, or retention of personal data.

(3) A controller that processes personal data under an exemption in sections 87-1126 to 87-1129 bears the burden of demonstrating that the processing of the personal data qualifies for the exemption and complies with the requirements of subsections (1) and (2) of this section.

(4) The processing of personal data by an entity for the purposes described by section 87-1126 does not solely make the entity a controller with respect to the processing of the data.

Source: Laws 2024, LB1074, § 29.

Operative date January 1, 2025.

87-1130 Preemption of local law.

The Data Privacy Act supersedes and preempts any ordinance, resolution, rule, or other regulation adopted by a political subdivision regarding the processing of personal data by a controller or processor.

Source: Laws 2024, LB1074, § 30.

Operative date January 1, 2025.

CHAPTER 88

WAREHOUSES

Article.

1. Uniform Warehouse Receipts Act. Repealed.
2. Public Grain Warehouses. Repealed.
3. Warehousing Grain on Farms. Repealed.
4. Warehouses. Repealed.
5. Grain Warehouses. 88-501 to 88-552.
6. Warehousing Grain on Farms. Repealed.

Cross References

Constitutional provisions:

Tax exemption of goods in licensed warehouses, see Article VIII, section 2A, Constitution of Nebraska.

Grain Dealer Act, see section 75-901 et seq.

Political subdivisions, powers over warehouses, see sections 13-1407, 14-102, 15-209, 15-237, 16-240, and 23-174.10.

Public grain warehouse, provisions under Nebraska Right to Farm Act, see section 2-4402 et seq.

Warehouse receipts, see sections 8-141, 8-1719, and 12-1102 and Article 7, Uniform Commercial Code.

Weights and Measures Act, see section 89-182.01.

ARTICLE 1

UNIFORM WAREHOUSE RECEIPTS ACT

Section

88-101.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-102.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-103.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-104.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-105.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-106.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-107.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-108.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-109.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-110.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-111.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-112.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-113.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-114.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-115.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-116.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-117.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-118.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-119.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-120.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-121.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-122.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-123.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-124.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-125.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-126.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-127.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-128.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-129.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-130.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-131.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-132.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-133.	Repealed. Laws 1963, c. 544, art. 10, § 1.

Section

88-134.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-135.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-136.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-137.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-138.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-139.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-140.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-141.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-142.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-143.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-144.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-145.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-146.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-147.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-148.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-149.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-150.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-151.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-152.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-153.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-154.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-155.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-156.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-157.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-158.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-159.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-160.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-161.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-162.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-162.01.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-163.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-164.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-165.	Repealed. Laws 1963, c. 544, art. 10, § 1.

88-101 Repealed. Laws 1963, c. 544, art. 10, § 1.

88-102 Repealed. Laws 1963, c. 544, art. 10, § 1.

88-103 Repealed. Laws 1963, c. 544, art. 10, § 1.

88-104 Repealed. Laws 1963, c. 544, art. 10, § 1.

88-105 Repealed. Laws 1963, c. 544, art. 10, § 1.

88-106 Repealed. Laws 1963, c. 544, art. 10, § 1.

88-107 Repealed. Laws 1963, c. 544, art. 10, § 1.

88-108 Repealed. Laws 1963, c. 544, art. 10, § 1.

88-109 Repealed. Laws 1963, c. 544, art. 10, § 1.

88-110 Repealed. Laws 1963, c. 544, art. 10, § 1.

88-111 Repealed. Laws 1963, c. 544, art. 10, § 1.

88-112 Repealed. Laws 1963, c. 544, art. 10, § 1.

88-113 Repealed. Laws 1963, c. 544, art. 10, § 1.

88-114 Repealed. Laws 1963, c. 544, art. 10, § 1.

- 88-115 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-116 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-117 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-118 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-119 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-120 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-121 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-122 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-123 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-124 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-125 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-126 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-127 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-128 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-129 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-130 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-131 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-132 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-133 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-134 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-135 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-136 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-137 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-138 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-139 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-140 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-141 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-142 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-143 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-144 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-145 Repealed. Laws 1963, c. 544, art. 10, § 1.

- 88-146 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-147 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-148 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-149 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-150 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-151 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-152 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-153 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-154 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-155 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-156 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-157 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-158 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-159 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-160 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-161 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-162 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-162.01 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-163 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-164 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-165 Repealed. Laws 1963, c. 544, art. 10, § 1.

ARTICLE 2

PUBLIC GRAIN WAREHOUSES

Section

- 88-201. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-202. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-203. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-204. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-205. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-206. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-206.01. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-206.02. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-207. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-208. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-209. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-210. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-211. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-212. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-213. Repealed. Laws 1963, c. 544, art. 10, § 1.

Section	
88-214.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-215.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-216.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-217.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-218.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-219.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-220.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-221.	Repealed. Laws 1963, c. 544, art. 10, § 1.

- 88-201 Repealed. Laws 1963, c. 544, art. 10, § 1.**
- 88-202 Repealed. Laws 1963, c. 544, art. 10, § 1.**
- 88-203 Repealed. Laws 1963, c. 544, art. 10, § 1.**
- 88-204 Repealed. Laws 1963, c. 544, art. 10, § 1.**
- 88-205 Repealed. Laws 1963, c. 544, art. 10, § 1.**
- 88-206 Repealed. Laws 1963, c. 544, art. 10, § 1.**
- 88-206.01 Repealed. Laws 1963, c. 544, art. 10, § 1.**
- 88-206.02 Repealed. Laws 1963, c. 544, art. 10, § 1.**
- 88-207 Repealed. Laws 1963, c. 544, art. 10, § 1.**
- 88-208 Repealed. Laws 1963, c. 544, art. 10, § 1.**
- 88-209 Repealed. Laws 1963, c. 544, art. 10, § 1.**
- 88-210 Repealed. Laws 1963, c. 544, art. 10, § 1.**
- 88-211 Repealed. Laws 1963, c. 544, art. 10, § 1.**
- 88-212 Repealed. Laws 1963, c. 544, art. 10, § 1.**
- 88-213 Repealed. Laws 1963, c. 544, art. 10, § 1.**
- 88-214 Repealed. Laws 1963, c. 544, art. 10, § 1.**
- 88-215 Repealed. Laws 1963, c. 544, art. 10, § 1.**
- 88-216 Repealed. Laws 1963, c. 544, art. 10, § 1.**
- 88-217 Repealed. Laws 1963, c. 544, art. 10, § 1.**
- 88-218 Repealed. Laws 1963, c. 544, art. 10, § 1.**
- 88-219 Repealed. Laws 1963, c. 544, art. 10, § 1.**
- 88-220 Repealed. Laws 1963, c. 544, art. 10, § 1.**
- 88-221 Repealed. Laws 1963, c. 544, art. 10, § 1.**

ARTICLE 3

WAREHOUSING GRAIN ON FARMS

Section	
88-301.	Repealed. Laws 1963, c. 544, art. 10, § 1.

Section

- 88-302. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-303. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-304. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-305. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-306. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-307. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-308. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-309. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-310. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-311. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-312. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-313. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-314. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-315. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-316. Repealed. Laws 1963, c. 544, art. 10, § 1.

88-301 Repealed. Laws 1963, c. 544, art. 10, § 1.

88-302 Repealed. Laws 1963, c. 544, art. 10, § 1.

88-303 Repealed. Laws 1963, c. 544, art. 10, § 1.

88-304 Repealed. Laws 1963, c. 544, art. 10, § 1.

88-305 Repealed. Laws 1963, c. 544, art. 10, § 1.

88-306 Repealed. Laws 1963, c. 544, art. 10, § 1.

88-307 Repealed. Laws 1963, c. 544, art. 10, § 1.

88-308 Repealed. Laws 1963, c. 544, art. 10, § 1.

88-309 Repealed. Laws 1963, c. 544, art. 10, § 1.

88-310 Repealed. Laws 1963, c. 544, art. 10, § 1.

88-311 Repealed. Laws 1963, c. 544, art. 10, § 1.

88-312 Repealed. Laws 1963, c. 544, art. 10, § 1.

88-313 Repealed. Laws 1963, c. 544, art. 10, § 1.

88-314 Repealed. Laws 1963, c. 544, art. 10, § 1.

88-315 Repealed. Laws 1963, c. 544, art. 10, § 1.

88-316 Repealed. Laws 1963, c. 544, art. 10, § 1.

ARTICLE 4**WAREHOUSES**

Section

- 88-401. Repealed. Laws 1987, LB 291, § 11.
- 88-402. Repealed. Laws 1987, LB 291, § 11.
- 88-403. Repealed. Laws 1987, LB 291, § 11.
- 88-404. Repealed. Laws 1987, LB 291, § 11.
- 88-405. Repealed. Laws 1987, LB 291, § 11.
- 88-406. Repealed. Laws 1987, LB 291, § 11.
- 88-407. Repealed. Laws 1987, LB 291, § 11.

Section

- 88-408. Repealed. Laws 1987, LB 291, § 11.
- 88-409. Repealed. Laws 1988, LB 980, § 1.
- 88-410. Repealed. Laws 1988, LB 980, § 1.
- 88-411. Repealed. Laws 1988, LB 980, § 1.
- 88-412. Repealed. Laws 1988, LB 980, § 1.
- 88-413. Repealed. Laws 1988, LB 980, § 1.
- 88-414. Repealed. Laws 1988, LB 980, § 1.
- 88-415. Repealed. Laws 1988, LB 980, § 1.
- 88-416. Repealed. Laws 1988, LB 980, § 1.
- 88-417. Repealed. Laws 1988, LB 980, § 1.
- 88-418. Repealed. Laws 1988, LB 980, § 1.

88-401 Repealed. Laws 1987, LB 291, § 11.

88-402 Repealed. Laws 1987, LB 291, § 11.

88-403 Repealed. Laws 1987, LB 291, § 11.

88-404 Repealed. Laws 1987, LB 291, § 11.

88-405 Repealed. Laws 1987, LB 291, § 11.

88-406 Repealed. Laws 1987, LB 291, § 11.

88-407 Repealed. Laws 1987, LB 291, § 11.

88-408 Repealed. Laws 1987, LB 291, § 11.

88-409 Repealed. Laws 1988, LB 980, § 1.

88-410 Repealed. Laws 1988, LB 980, § 1.

88-411 Repealed. Laws 1988, LB 980, § 1.

88-412 Repealed. Laws 1988, LB 980, § 1.

88-413 Repealed. Laws 1988, LB 980, § 1.

88-414 Repealed. Laws 1988, LB 980, § 1.

88-415 Repealed. Laws 1988, LB 980, § 1.

88-416 Repealed. Laws 1988, LB 980, § 1.

88-417 Repealed. Laws 1988, LB 980, § 1.

88-418 Repealed. Laws 1988, LB 980, § 1.

ARTICLE 5

GRAIN WAREHOUSES

Cross References

Agricultural Suppliers Lease Protection Act, see section 2-5501.
Grain Dealer Act, see section 75-901.

Section

- 88-501. Repealed. Laws 1987, LB 164, § 29.
- 88-502. Repealed. Laws 1987, LB 164, § 29.
- 88-502.01. Repealed. Laws 1987, LB 164, § 29.
- 88-502.02. Transferred to section 88-552.

WAREHOUSES

Section	
88-503.	Repealed. Laws 1987, LB 164, § 29.
88-504.	Repealed. Laws 1987, LB 164, § 29.
88-505.	Repealed. Laws 1987, LB 164, § 29.
88-505.01.	Repealed. Laws 1987, LB 164, § 29.
88-506.	Repealed. Laws 1987, LB 164, § 29.
88-507.	Repealed. Laws 1987, LB 164, § 29.
88-508.	Repealed. Laws 1987, LB 164, § 29.
88-509.	Repealed. Laws 1987, LB 164, § 29.
88-510.	Repealed. Laws 1987, LB 164, § 29.
88-511.	Repealed. Laws 1987, LB 164, § 29.
88-512.	Repealed. Laws 1987, LB 164, § 29.
88-513.	Repealed. Laws 1987, LB 164, § 29.
88-514.	Repealed. Laws 1987, LB 164, § 29.
88-515.	Repealed. Laws 1987, LB 164, § 29.
88-516.	Repealed. Laws 1987, LB 164, § 29.
88-517.	Repealed. Laws 1987, LB 164, § 29.
88-518.	Repealed. Laws 1985, LB 389, § 12.
88-519.	Repealed. Laws 1987, LB 14, § 4.
88-520.	Repealed. Laws 2000, LB 960, § 1.
88-521.	Repealed. Laws 2000, LB 960, § 1.
88-522.	Repealed. Laws 2000, LB 960, § 1.
88-523.	Repealed. Laws 1987, LB 164, § 29.
88-524.	Repealed. Laws 1987, LB 164, § 29.
88-525.	Act, how cited.
88-526.	Terms, defined.
88-527.	Warehouse operator; warehouses; warehouseman; license required; inspection; commission; powers and duties; fees; agreements with bordering states.
88-528.	License; application; criminal background check; financial statement.
88-528.01.	Criminal history record information check; fingerprinting; when.
88-529.	License fees.
88-530.	Financial requirements; security; requirements; liability of surety.
88-530.01.	Commission; additional financial documents required; when.
88-531.	License; multiple warehouses; license fee; how computed.
88-532.	License; issuance; expiration; renewal; posting requirements.
88-533.	Increase in storage capacity; requirements; fees.
88-534.	Payment for grain; when.
88-535.	Scale ticket; issuance; prima facie evidence.
88-536.	Receipts; issuance; requirements; commission; powers and duties; registration.
88-537.	Duplicate receipt; issuance; requirements; liability.
88-538.	Duplicate receipt; issuance; effect.
88-539.	Supervisor of warehouses; appointment; powers and duties.
88-540.	Delivery of grain; damages; surrender receipt.
88-541.	Schedule of storage rates and charges; requirements.
88-542.	Inspections authorized.
88-543.	Prohibited acts; penalty.
88-543.01.	Civil penalty.
88-544.	Storage; termination.
88-545.	Commission; enforce act; rules and regulations; violation; penalty; damages; prosecution.
88-545.01.	Commission; contracts for audit or examination work authorized; Grain Warehouse Auditing Fund; created; use; investment.
88-546.	License; suspension or revocation; procedure.
88-547.	Warehouse; closure; when; commission; powers.
88-547.01.	Deposit of grain; how treated; priority of liens; effect.
88-547.02.	Judicial proceeding; notice required.
88-548.	Federal licensee; exemption from act; duties; commission; grain probe; duties; violation; penalty.
88-549.	Warehouse; notice to person storing grain; restriction on storage rates and charges; violation; penalty.

Section	
88-550.	Grain dust inspections; Department of Environment and Energy; commission; duties.
88-551.	Fees; where credited.
88-552.	Nebraska Grain Warehouse Surveillance Cash Fund; created; use; investment.

88-501 Repealed. Laws 1987, LB 164, § 29.

88-502 Repealed. Laws 1987, LB 164, § 29.

88-502.01 Repealed. Laws 1987, LB 164, § 29.

88-502.02 Transferred to section 88-552.

88-503 Repealed. Laws 1987, LB 164, § 29.

88-504 Repealed. Laws 1987, LB 164, § 29.

88-505 Repealed. Laws 1987, LB 164, § 29.

88-505.01 Repealed. Laws 1987, LB 164, § 29.

88-506 Repealed. Laws 1987, LB 164, § 29.

88-507 Repealed. Laws 1987, LB 164, § 29.

88-508 Repealed. Laws 1987, LB 164, § 29.

88-509 Repealed. Laws 1987, LB 164, § 29.

88-510 Repealed. Laws 1987, LB 164, § 29.

88-511 Repealed. Laws 1987, LB 164, § 29.

88-512 Repealed. Laws 1987, LB 164, § 29.

88-513 Repealed. Laws 1987, LB 164, § 29.

88-514 Repealed. Laws 1987, LB 164, § 29.

88-515 Repealed. Laws 1987, LB 164, § 29.

88-516 Repealed. Laws 1987, LB 164, § 29.

88-517 Repealed. Laws 1987, LB 164, § 29.

88-518 Repealed. Laws 1985, LB 389, § 12.

88-519 Repealed. Laws 1987, LB 14, § 4.

88-520 Repealed. Laws 2000, LB 960, § 1.

88-521 Repealed. Laws 2000, LB 960, § 1.

88-522 Repealed. Laws 2000, LB 960, § 1.

88-523 Repealed. Laws 1987, LB 164, § 29.

88-524 Repealed. Laws 1987, LB 164, § 29.

88-525 Act, how cited.

Sections 88-525 to 88-552 shall be known and may be cited as the Grain Warehouse Act.

Source: Laws 1987, LB 164, § 1; Laws 1996, LB 1123, § 4; Laws 2003, LB 735, § 7; Laws 2005, LB 492, § 2.

88-526 Terms, defined.

As used in the Grain Warehouse Act, unless the context otherwise requires:

- (1) Commission means the Public Service Commission;
- (2) Direct delivery grain means all grain that is bought, sold, or transported in the name of a warehouse licensee, other than grain that is received at the licensed warehouse facilities;
- (3) Direct delivery obligation means the obligation of a warehouse licensee or grain dealer to transfer title to warehouse-owned grain to a producer by an in-store transfer upon the delivery of direct delivery grain. A direct delivery obligation is treated as a grain dealer obligation until such time as it is satisfied by an in-store transfer;
- (4)(a) Grain means wheat, corn, oats, soybeans, barley, rye, flax, or sorghum which has not been processed or packaged for the purpose of distribution as seed, including, but not limited to, edible beans, whole corn plant pellets, alfalfa pellets, millet, sunflower seed, safflower seed, and any other bulk pelleted agricultural storable commodity.
- (b) Grain includes all commodities described in subdivision (4)(a) of this section whether grown and marketed as fungible commodities or grown and marketed within segregated marketing channels, including, but not limited to, certified organic commodities;
- (5) Grain dealer has the same meaning as in section 75-902;
- (6) Grain in storage means any grain which has been received at any warehouse and to which title has not been transferred to the warehouse operator by signed contract or priced scale ticket;
- (7) In-store transfer means a method by which a warehouse licensee transfers title to warehouse-owned grain to any person in satisfaction of a direct delivery obligation between the warehouse licensee or grain dealer and the producer, and the grain remains in the warehouse;
- (8) Post-direct delivery storage position means a storage position acquired through an in-store transfer in satisfaction of a direct delivery obligation;
- (9) Warehouse means any grain elevator, mill, grist mill, building, or receptacle in which grain is held in storage for more than ten consecutive days;
- (10) Warehouse licensee means any warehouse operator who is licensed pursuant to the Grain Warehouse Act; and
- (11) Warehouse operator means any person, partnership, limited liability company, corporation, or association who (a) receives grain for storage or stores or offers to store grain for legal consideration for another person, partnership, limited liability company, corporation, or association in a warehouse where delivered or (b) receives grain for shipment to other points for storage, consignment, or resale either in or out of this state.

Source: Laws 1987, LB 164, § 2; Laws 1993, LB 121, § 563; Laws 2003, LB 735, § 8; Laws 2005, LB 439, § 4; Laws 2024, LB262, § 42.
Operative date July 19, 2024.

Notice of an in-store transfer is considered prima facie evidence that an in-store transfer occurred, but it is not the only evidence that can establish the occurrence of an in-store trans-

fer. In re Claims Against Pierce Elevator, 291 Neb. 798, 868 N.W.2d 781 (2015).

88-527 Warehouse operator; warehouses; warehouseman; license required; inspection; commission; powers and duties; fees; agreements with bordering states.

(1) No person shall act as a warehouse operator without a license issued pursuant to the Grain Warehouse Act. Warehouses, except warehouses which are licensed under the United States Warehouse Act, shall be licensed and regulated by the commission. If the applicant is an individual, the application shall include the applicant's social security number. Such warehouses shall be inspected by the commission at least once every twelve months.

(2) If the commission determines that additional examinations are necessary after a regular examination is completed at a warehouse, the commission may charge such warehouse for the cost of the additional examinations according to the commission's fee schedule. Warehouses shall only be charged if such examinations are for reasons of irregularities from the previous examination or if financial conditions warrant additional examinations.

(3) The commission may make available to the United States Government or any of its agencies, including the Commodity Credit Corporation, the results of inspections made and inspection reports submitted by employees of the commission upon payment of such fees as may be determined by the commission. The fees shall cover the actual cost of the services rendered in regard to providing the information.

(4) The commission may charge for inspections conducted at the request of a warehouse licensee.

(5) The commission may assess a surveillance fee against the assets of a warehouse licensee for actual expenses incurred by the commission in suspending a license or terminating the operations of a warehouse licensee. The commission may enter into contracts for such purpose and shall keep a record of all surveillance fees collected. All surveillance fees collected by the commission shall be remitted to the State Treasurer for credit to the Nebraska Grain Warehouse Surveillance Cash Fund.

(6) The commission may enter into agreements and contracts with regulators in states which border Nebraska for the purpose of licensing or examining any public grain warehouse operator which operates facilities in such states. The commission shall assume all jurisdiction over any warehouse operator headquartered in Nebraska regarding his or her warehouse activity. A warehouse operator headquartered and licensed in another state which acquires facilities in Nebraska is under the jurisdiction of the headquarter state under the terms of such agreement or contract.

Source: Laws 1987, LB 164, § 3; Laws 1988, LB 872, § 1; Laws 1996, LB 1123, § 5; Laws 1997, LB 752, § 232; Laws 1999, LB 172, § 1; Laws 2003, LB 735, § 9; Laws 2005, LB 492, § 5; Laws 2024, LB262, § 43.

Operative date July 19, 2024.

88-528 License; application; criminal background check; financial statement.

Each applicant for a license and each warehouse licensee shall annually file an application with the commission and shall submit to a criminal background check as set forth in section 88-528.01. The application shall be in the form prescribed by the commission to do business under the Grain Warehouse Act and shall include an audited or reviewed fiscal year-end financial statement prepared in accordance with accounting principles generally accepted by a person or firm which holds a permit granted by the Nebraska State Board of Public Accountancy. If the applicant files a reviewed fiscal year-end financial statement, the applicant shall also provide additional security pursuant to section 88-530 in such amount as the commission requires. If licensing as an individual, the financial statement shall be prepared in accordance with Other Comprehensive Basis of Accountancy, as filed with the board, for a personal financial statement, using historical cost and accrual basis of accounting. The financial statement shall include: (1) A balance sheet; (2) a statement of income showing profit or loss; (3) a statement of retained earnings; (4) a statement of changes in the financial position; and (5) the accountant's certifications, assurances, opinions, comments, and notes with regard to such financial statement. An applicant may also submit a valuation of assets by competent appraisal acceptable to the commission for inclusion in computing net worth for the purpose of meeting any net worth requirements imposed by the act or rules and regulations of the commission. If a valuation of assets is submitted, no more than seventy percent of appraised value shall be used in determining compliance with net worth requirements. Such application shall set forth the location of the warehouse to be used by the applicant, its relation to railroad trackage, its capacity, its general plan and equipment, and its ownership.

If an applicant for a license is a wholly owned subsidiary of a parent company and such a financial statement is not prepared for the subsidiary, the parent company shall submit its audited or reviewed fiscal year-end financial statement and shall execute an unconditional guarantee agreement as prescribed by the commission. A parent company may also submit a valuation of assets on behalf of an applicant that is a wholly owned subsidiary of the parent company.

Source: Laws 1987, LB 164, § 4; Laws 2003, LB 735, § 10; Laws 2005, LB 52, § 4; Laws 2005, LB 439, § 5.

Cross References

Public accountant permit, see section 1-136.

88-528.01 Criminal history record information check; fingerprinting; when.

For each application filed under section 88-528, one of the following primary parties shall be subject to fingerprinting and a check of his or her criminal history record information maintained by the Federal Bureau of Investigation through the Nebraska State Patrol: (1) If the applicant is not an individual, the chief executive officer, president, or general manager; or (2) if the applicant is an individual, the individual. If a primary party has been subject to a check of his or her criminal history record information pursuant to another law, the commission may waive such requirement under this section. A primary party shall furnish to the Nebraska State Patrol a full set of fingerprints to enable a criminal background investigation to be conducted. The primary party shall request that the Nebraska State Patrol submit the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The

primary party shall pay the actual cost, if any, of the fingerprinting and check of his or her criminal history record information. The primary party shall authorize release of the national criminal history record check to the commission. The criminal history record information check shall be completed within ninety days after the date the application for a license is received in the commission’s office, and if not, the application shall be returned to the applicant. The commission shall deny a warehouse license to any applicant whose primary party has been convicted of a felony financial crime.

Source: Laws 2003, LB 735, § 11; Laws 2005, LB 52, § 5; Laws 2024, LB262, § 44.

Operative date July 19, 2024.

88-529 License fees.

The commission shall charge an annual license fee for each warehouse to be operated, except as provided in section 88-531. The fee for any license issued for less than twelve months shall be prorated based on its duration. The annual license fee shall be as provided in this section.

Capacity in Bushels	Fee
0 - 10,000	\$ 45
10,001 - 25,000	57
25,001 - 50,000	68
50,001 - 75,000	78
75,001 - 100,000	90
100,001 - 150,000	102
150,001 - 200,000	113
200,001 - 250,000	125
250,001 - 300,000	135
300,001 - 350,000	147
350,001 - 400,000	156
400,001 - 450,000	170
450,001 - 500,000	180
500,001 - 600,000	192
600,001 - 700,000	203
700,001 - 800,000	215
800,001 - 900,000	225
900,001 - 1,000,000	237
1,000,001 - 2,000,000	338
2,000,001 - 3,000,000	395
3,000,001 - 4,000,000	450
4,000,001 - 5,000,000	507
5,000,001 - 6,000,000	563
6,000,001 - 7,000,000	620
7,000,001 - 8,000,000	675
8,000,001 - 9,000,000	732
9,000,001 - 10,000,000	788
10,000,001 - 11,000,000	845
11,000,001 - 15,000,000	1,070
15,000,001 - 20,000,000	1,350
20,000,001 - 25,000,000	1,632
25,000,001 - 30,000,000	1,913
30,000,001 - 40,000,000	2,475
40,000,001 or more	3,375

Source: Laws 1987, LB 164, § 5; Laws 2003, LB 187, § 33.

88-530 Financial requirements; security; requirements; liability of surety.

Each applicant shall show sufficient net worth or stockholders' equity to conform with the financial requirements which the commission shall establish by the adoption and promulgation of rules and regulations. Applicants shall file with the commission security in the form of a bond, a certificate of deposit, an irrevocable letter of credit, United States bonds or treasury notes, or other public debt obligations of the United States which are unconditionally guaranteed as to both principal and interest by the United States in such sum as the commission may require and in the form and of the kind prescribed by the commission. The security shall be in an amount set by the commission pursuant to rules and regulations, but shall not be less than twenty-five thousand dollars. The security shall run to the State of Nebraska for the benefit of each person who stores grain in such warehouse and of each person who, not more than five business days prior to the cutoff date of operation of the warehouse, owned and sold grain stored in the warehouse and had not received payment from the warehouse licensee for such grain, but shall not include grain sold by signed contract or priced scale ticket. The cutoff date of operation of the warehouse shall be the date the commission officially closes the warehouse. The security shall be conditioned upon (1) the warehouse licensee carrying combustion, fire, lightning, and tornado insurance sufficient to cover loss upon all stored grain in such warehouse, (2) the delivery of the grain upon surrender of the warehouse receipt, and (3) the faithful performance by the warehouse licensee of all provisions of law relating to the storage of grain by such warehouse licensee and rules and regulations adopted and promulgated by the commission. The commission may require increases in the amount of the security from time to time as it may deem necessary for the protection of the storers. For an applicant who has filed a reviewed fiscal year-end financial statement pursuant to section 88-528, the commission shall require additional security in an amount set by the commission pursuant to rules and regulations, which shall not be less than twenty-five thousand dollars and not more than one million dollars. The surety on a bond shall be a surety company licensed by the Department of Insurance. An irrevocable letter of credit or certificate of deposit shall be issued by a federally insured depository institution.

The security shall particularly describe the warehouse intended to be covered by the security. The liability of the surety on a bond shall not accumulate for each successive license period which the bond covers. The liability of the surety shall be limited to the amount stated on the bond or on an appropriate rider or endorsement to the bond.

Source: Laws 1987, LB 164, § 6; Laws 1989, LB 78, § 29; Laws 2003, LB 735, § 12; Laws 2016, LB730, § 1; Laws 2024, LB262, § 45.
Operative date July 19, 2024.

Issuance of a check does not occur when the sale of grain occurs or the date the check was written. Instead, issuance is the date that a check is first delivered by the maker or drawer. In re Claims Against Pierce Elevator, 291 Neb. 798, 868 N.W.2d 781 (2015).

The operative date for check holder claims is the date the check was issued. In re Claims Against Pierce Elevator, 291 Neb. 798, 868 N.W.2d 781 (2015).

The warehouse bond and the dealer bond cannot be combined, because the activity covered by each bond is unique and the requirements for bond protection under each bond are different. In re Claims Against Pierce Elevator, 291 Neb. 798, 868 N.W.2d 781 (2015).

88-530.01 Commission; additional financial documents required; when.

In addition to the reviewed fiscal year-end financial statement required by section 88-528 and to detect noncompliance with financial requirements established by the commission pursuant to section 88-530, the commission shall, for

good cause shown as determined by criteria set forth in commission rules and regulations, require (1) a verified report of the total grain inventory or (2) an audited financial statement. A verified report of grain inventory or audited financial statement shall be prepared in accordance with accounting principles generally accepted by a person or firm which holds a permit granted by the Nebraska State Board of Public Accountancy.

Source: Laws 2003, LB 735, § 13; Laws 2005, LB 52, § 6.

88-531 License; multiple warehouses; license fee; how computed.

Only one license may be required for the operation of all warehouses operated by one warehouse licensee if:

- (1) Only one set of books is kept for the warehouses;
- (2) Cost slips, scale tickets, warehouse receipts, and checks are issued in one series for grain received or stored in such warehouses; and
- (3) The warehouses are operated in conjunction with each other.

If the commission finds that enforcement of the Grain Warehouse Act or the interests of the storers requires that warehouses operated by the same licensee at separate locations be licensed separately, it may require separate licenses for such facilities pursuant to rules and regulations adopted and promulgated by the commission.

The license fee and security required of such warehouse licensee shall be computed on the basis of the separate capacities of each warehouse.

Source: Laws 1987, LB 164, § 7; Laws 1989, LB 78, § 30.

88-532 License; issuance; expiration; renewal; posting requirements.

Upon payment of the license fee and approval by the commission of the application and the bond, certificate of deposit, irrevocable letter of credit, or other security described in section 88-530, the license shall be issued. A new or renewed license shall expire twelve calendar months after the effective date of the issuance or renewal of such license. A license may be kept in continuous force and effect if the warehouse licensee files a proper application for renewal and security which the commission can approve prior to the date of termination.

Notice of the security in the form prescribed by the commission shall be posted in a conspicuous place in each warehouse showing the amount of security on the stored grain. Each warehouse licensee shall also post in a conspicuous place in each warehouse office the storage fees and receiving and load-out fees charged for each type of grain stored.

Source: Laws 1987, LB 164, § 8; Laws 1989, LB 78, § 31.

88-533 Increase in storage capacity; requirements; fees.

No warehouse licensee shall increase storage capacity without first obtaining the approval of the commission and effecting such revisions in its security as may be required by the commission. Additional fees may be imposed for increases in storage capacity or for any other changes in the license in such reasonable amounts as may be prescribed by the commission.

Source: Laws 1987, LB 164, § 9.

88-534 Payment for grain; when.

Payment to the seller for grain purchased by a warehouse licensee shall be made upon demand by the seller except as otherwise provided by written or oral contract between the parties.

Source: Laws 1987, LB 164, § 10.

88-535 Scale ticket; issuance; prima facie evidence.

Each warehouse licensee shall, at the time of the delivery of grain to or the shipment of grain from a warehouse, issue a lawful scale ticket to the owner or consignee of such grain, except when the delivery or shipment is by rail or water. The scale tickets shall contain all information prescribed by the commission. A scale ticket issued by a warehouse licensee shall be prima facie evidence of the holder's claim of title to the goods described in such ticket.

Source: Laws 1987, LB 164, § 11.

88-536 Receipts; issuance; requirements; commission; powers and duties; registration.

(1) Within fifteen days after demand by the owner or deliverer of any grain to a warehouse for storage, the warehouse licensee shall issue a lawful negotiable or nonnegotiable receipt to such owner or deliverer of such grain. The receipt shall state the date of delivery, the name of the owner, and the grade, gross weight, dockage, and net weight of the grain represented in the receipt.

(2)(a) The commission shall prepare forms for such receipts and may adopt procedures for the electronic issuance of such receipts. All warehouse licensees shall either use forms prepared by the commission for such receipts or follow procedures adopted by the commission for electronic issuance of such receipts. Warehouse licensees that use forms prepared by the commission shall register such receipts with the commission.

(b) The commission shall fix charges to be assessed and collected for such warehouse receipt forms not to exceed the cost of printing, delivering, and handling. Payment of such charges shall be made in advance of delivery of such receipt forms and shall entitle each such receipt to registration without any further charge or fee. The commission may make refunds of such charges for such unused receipt forms as may be returned to the commission.

(c) All procedures for electronic filing of receipts adopted by the commission shall comply with section 86-611. The commission may adopt authentication procedures to verify receipts issued electronically. Compliance with the authentication procedures adopted by the commission shall have the same validity as a signature on any receipt.

(3) Any warehouse licensee may issue a receipt to himself or herself as the owner of grain stored in his or her own warehouse, which receipt shall be registered with the commission. Upon receiving any such grain warehouse receipt for registration and being satisfied that the provisions of the Grain Warehouse Act and any rules and regulations adopted and promulgated pursuant to the act have been complied with, the commission shall cause such receipt to be registered.

Source: Laws 1987, LB 164, § 12; Laws 2003, LB 735, § 14.

88-537 Duplicate receipt; issuance; requirements; liability.

When a negotiable warehouse receipt has been lost or destroyed, the commission may approve the delivery of the grain or the issuance of a duplicate receipt upon satisfactory proof of such loss or destruction if the party who requests it furnishes a bond with corporate or personal surety, to be approved by the commission, conditioned to indemnify the warehouse licensee or any holder or other person entitled to the grain against all loss, liability, or expense which may be sustained by reason of such delivery. The delivery of the grain or the issuance of a duplicate receipt pursuant to the approval of the commission shall not relieve the warehouse licensee from liability to a person to whom the negotiable receipt has been or will be negotiated for value without notice of the proceedings before the commission or of the delivery of the grain or the issuance of the duplicate receipt pursuant to such proceedings.

Source: Laws 1987, LB 164, § 13.

88-538 Duplicate receipt; issuance; effect.

A duplicate receipt shall not be issued by any warehouse licensee without prior approval by the commission. A receipt so issued, upon the face of which the word duplicate is plainly placed, shall be a representation and warranty by the warehouse licensee that such receipt is an accurate copy of an original receipt properly issued and uncanceled at the date of the issuance of the duplicate.

Source: Laws 1987, LB 164, § 14.

88-539 Supervisor of warehouses; appointment; powers and duties.

For the proper enforcement of the Grain Warehouse Act, the commission shall designate and appoint a person experienced in the handling of grain as supervisor of warehouses. The supervisor may perform all duties required of the commission pursuant to the Grain Warehouse Act subject to the approval of the commission.

Source: Laws 1987, LB 164, § 15.

88-540 Delivery of grain; damages; surrender receipt.

Upon demand, presentation of receipts, and payment of lawful charges, the grain represented by such receipts or any part of such grain shall be immediately delivered to the owner or his or her order, and the part delivered shall not be subject to any further charge for storage after such demand for delivery has been made and facilities for receiving and shipping the grain have been provided. If demand is made for only a part of the grain represented by any receipt, the amount delivered shall be entered in a proper blank upon the face of such receipt and delivery of such grain acknowledged on the receipt by the person holding such receipt. For any grain not delivered within twenty-four hours after such demand, the warehouse licensee shall be liable, upon his, her, or its security, to the owner in damages not exceeding one cent per bushel for each day's delay unless he, she, or it delivers to different owners in the order demanded as rapidly as can be done by ordinary diligence. If terminal delivery of grain is demanded, the warehouse licensee shall issue and deliver to the owner or his or her order a surrender receipt, which shall conform to the receipt issued for the grain under section 88-536, making such grain deliverable in its net amount at any terminal market or transit point designated by the owner of such receipt. Such grain shall be subject to the usual freight,

weighing, and switching charges when it arrives at the terminal so designated, and the freight shall be computed on the basis of the gross weight of the grain represented by such surrender receipt. The owner of the receipt may, at his, her, or its option, order the car in which the grain covered by the surrender receipt is to be transported, in which case the grain shall be delivered when the car so ordered is placed at the warehouse.

Source: Laws 1987, LB 164, § 16.

88-541 Schedule of storage rates and charges; requirements.

(1) Each warehouse licensee shall file with the commission a schedule of the licensee's storage rates and charges existing as of the date of filing, and each applicant for a warehouse license shall file with the commission a schedule of the applicant's storage rates and charges existing on the date the application is filed. A warehouse licensee shall post the filed schedule of rates and charges on signage issued by the commission in a conspicuous place at the licensee's warehouse location. Such rates and charges shall be full compensation for receiving, handling, storing, delivering, and insuring grain.

(2) A warehouse licensee may increase or decrease such rates and charges by (a) filing notice of such change of rates and charges with the commission and also sending such notice to all grain owners of record not less than thirty days prior to such change of rates and charges and (b) posting notice of such change of rates and charges on signage issued by the commission in a conspicuous place at the warehouse licensee's warehouse. The new rates and charges shall be charged on all grain in storage at the time of, and all grain received for storage after, the effective date of the change of rates and charges.

(3) No discrimination shall be made between different customers by any state-licensed grain warehouse either in facilities, rates, charges, or handling of any grain, except that members of a cooperative may be given preference in storage facilities in warehouses of the cooperative. The rates charged to any governmental agency shall be exempt from commission regulation.

Source: Laws 1987, LB 164, § 17; Laws 2024, LB262, § 46.

Operative date July 19, 2024.

88-542 Inspections authorized.

The property, books, records, accounts, papers, and proceedings of every warehouse shall, at all times during business hours, be subject to inspection by the commission.

Source: Laws 1987, LB 164, § 18.

88-543 Prohibited acts; penalty.

(1) No warehouse licensee or partner, limited liability company member, officer, or agent thereof shall:

(a) Issue a receipt for grain not actually received. If at any time there is less grain in a warehouse than outstanding receipts issued for grain, there shall be a presumption that the warehouse licensee or partner, limited liability company member, officer, or agent thereof has wrongfully removed grain, has wrongfully caused grain to be removed, or has issued receipts for grain not actually received, and has violated this section;

(b) Create a post-direct delivery storage position without issuing proper documentation consistent with rules and regulations adopted and promulgated by the commission;

(c) Create a post-direct delivery storage position at any time the warehouse licensee does not have sufficient warehouse-owned grain or grain in open storage to cover the storage position created for the benefit of the producer; or

(d) Record grain as being received or loaded out that has not been physically deposited in or physically removed from the warehouse.

(2) Any warehouse licensee or partner, limited liability company member, officer, or agent thereof who knowingly and willingly violates this section shall be guilty of a Class IV felony.

Source: Laws 1987, LB 164, § 19; Laws 1989, LB 78, § 32; Laws 1993, LB 121, § 564; Laws 1994, LB 884, § 94; Laws 2005, LB 439, § 6.

88-543.01 Civil penalty.

The commission may assess a civil penalty, pursuant to section 75-156, against any person who violates the Grain Warehouse Act.

Source: Laws 2003, LB 735, § 15.

88-544 Storage; termination.

At the election of the warehouse licensee and under rules and regulations adopted and promulgated by the commission, storage in a warehouse operated by such licensee may be terminated on application to the commission and upon good cause shown according to the rules and regulations of the commission. Subject to such rules and regulations as the commission may adopt and promulgate, any storage contract on any or all such grain may be terminated by the owner at any time by the payment or tender of all legal charges and the surrender of the warehouse receipt, together with a demand for delivery of such grain or notice to sell the same.

Source: Laws 1987, LB 164, § 20; Laws 1992, LB 366, § 63.

88-545 Commission; enforce act; rules and regulations; violation; penalty; damages; prosecution.

The commission shall enforce the Grain Warehouse Act and shall adopt and promulgate rules and regulations to aid in the administration of the act. Any person or partner, limited liability company member, officer, or agent of any person who violates the Grain Warehouse Act shall be guilty of a Class IV felony, unless otherwise specifically provided, and shall be liable for any damages suffered by any person from such violation. Upon request of the commission, the Attorney General or any county attorney shall assist in the prosecution of any violations of the act.

Source: Laws 1987, LB 164, § 21; Laws 1989, LB 78, § 33; Laws 1993, LB 121, § 565; Laws 1994, LB 884, § 95.

88-545.01 Commission; contracts for audit or examination work authorized; Grain Warehouse Auditing Fund; created; use; investment.

(1) The commission may enter into contracts with public or private entities which provide a benefit for both parties for purposes of performing audit or examination work. The commission shall conduct the work as time permits and shall not allow the work to conflict with the commission's primary responsibility of performing grain warehouse examinations within the prescribed statutory time.

(2) Fees from audit or examination contracts shall be remitted by the commission to the State Treasurer for credit to the Grain Warehouse Auditing Fund which is created. The fund shall be available to the commission to buy material and equipment for performing audits and examinations or to offset the cost of performing audits and examinations. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Grain Warehouse Auditing Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1996, LB 1123, § 7; Laws 2009, First Spec. Sess., LB3, § 99.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

88-546 License; suspension or revocation; procedure.

The commission may, upon complaint filed by it or any person and after a hearing, suspend or revoke the license of any warehouse licensee for failure to comply with the requirements of the Grain Warehouse Act or any rule or regulation adopted and promulgated pursuant to such act. The complaint shall state the grounds for suspension or revocation and shall be filed with the commission pursuant to the commission's rules of procedure. The commission shall serve the warehouse licensee with a copy of the complaint and a copy of the order of the commission stating the time for hearing, which time shall be at least twenty days from the date of service. If the commission determines that the public good requires it, the commission may, upon the filing of a complaint and without hearing, temporarily suspend a license pending the determination of the complaint.

Source: Laws 1987, LB 164, § 22.

88-547 Warehouse; closure; when; commission; powers.

If the commission determines that a shortage of grain exists or that the quality of grain in storage is insufficient to meet the obligations at a warehouse, if a license expires and is not renewed, if a license is surrendered to or canceled or revoked by the commission for violation of any statute or rule or regulation adopted and promulgated by the commission, or if a warehouse is operated without a license, the commission may close the warehouse and do one or more of the following:

(1) Take title to all grain stored in the warehouse at that time in trust for distribution on a pro rata basis to all valid owners, depositors, or storers of grain who are holders of evidence of ownership of grain. No claim of the licensee for grain stored shall be honored until the claims of all other owners, depositors, and storers have been paid in full. Such distribution may be made in grain or in proceeds from the sale of grain. If the commission closes the

warehouse and takes title to the grain, such action shall operate as a stay of the commencement or continuation, including the issuance or employment of process, of any judicial, administrative, or other action or proceeding to take title to the grain that was or could have been commenced before such action by the commission;

(2) After notice and hearing (a) determine the value of the shortage and the pro rata loss to each owner, depositor, or storer of grain, (b) require all or part of the warehouse security to be forfeited to the commission, and (c) distribute the security proceeds on such pro rata basis; or

(3) Commence a suit in district court for the benefit of owners, depositors, or storers of grain.

The commission may deposit the proceeds from the security forfeiture under subdivision (2) of this section or the sale of grain under subdivision (1) of this section in an interest-bearing trust account for the benefit of the valid owners, depositors, or storers of grain pending final determination of the valid owners, depositors, or storers and distribution of such proceeds.

Source: Laws 1987, LB 164, § 23; Laws 1989, LB 78, § 34; Laws 1992, LB 366, § 64; Laws 2005, LB 492, § 6.

When the Public Service Commission adjudicates claims under the Grain Warehouse Act, its objective is to determine those owners, depositors, storers, or qualified check holders at the

time a warehouse is closed. In re Claims Against Pierce Elevator, 291 Neb. 798, 868 N.W.2d 781 (2015).

88-547.01 Deposit of grain; how treated; priority of liens; effect.

(1) For purposes of the Grain Warehouse Act, whenever any grain is physically deposited into any public warehouse and a scale ticket or warehouse receipt is issued therefor, such deposit shall be grain in storage. Such deposit does not constitute a sale of the grain, except grain deposited by priced scale ticket or signed contract passing title to the warehouse licensee.

(2) Upon the commission's closure of a warehouse and taking title to grain within the warehouse pursuant to section 88-547, grain contained in a warehouse, including grain owned by the warehouse licensee, is subject to a first priority lien in favor of valid owners, depositors, or storers of grain who are holders of evidence of ownership of grain. The lien created under this section shall be preferred to any lien or security interest in favor of any creditor of the warehouse licensee regardless of the time when the creditor's lien or security interest attached to the grain. Notice of the lien created under this section need not be filed in order to perfect the lien. All the grain in the warehouse, whether stored or not, first shall be applied at all times to the satisfaction of all valid owners, depositors, or storers of grain who hold evidence of ownership of grain.

(3) In the event no distribution is made pursuant to subdivision (1) of section 88-547 and the commission transfers title to the grain back to the warehouse or to another person, then the first priority lien created under this section shall terminate. Nothing in this section shall affect any other rights, including rights of ownership in grain stored at the warehouse, of valid owners, depositors, or storers of grain who are holders of evidence of ownership of grain. Nothing in this section shall prevent the commission from subsequently closing the warehouse and taking other action pursuant to section 88-547.

Source: Laws 2005, LB 492, § 3.

88-547.02 Judicial proceeding; notice required.

Prior to or within ten days after any creditor of the warehouse licensee commences a judicial proceeding to reduce to judgment, foreclose, or otherwise enforce any claim on a creditor's lien or security interest attached to grain contained in the warehouse, the creditor shall serve written notice on the executive director of the commission.

Source: Laws 2005, LB 492, § 4.

88-548 Federal licensee; exemption from act; duties; commission; grain probe; duties; violation; penalty.

(1) Any grain dealer, person, firm, corporation, or association in this state licensed under the United States Warehouse Act shall be exempt from the Grain Warehouse Act, except that each licensee under the United States Warehouse Act shall (a) annually notify the commission in writing of such license and shall notify the commission at once in writing if the license is terminated, canceled, or suspended and (b) post notification of such licensee's bond under the United States Warehouse Act in a conspicuous place of business listing the total amount of bond on the stored grain.

(2) No warehouse licensee, licensee under the United States Warehouse Act, or grain dealer licensed pursuant to section 75-903 shall use end-intake air probes which use a vacuum to collect a sample from a load of grain to determine foreign material content. The commission shall adopt and promulgate rules and regulations regarding approval of grain probes. Any person who violates this subsection shall be guilty of a Class I misdemeanor.

Source: Laws 1987, LB 164, § 24.

88-549 Warehouse; notice to person storing grain; restriction on storage rates and charges; violation; penalty.

(1) At least once each calendar year and not later than one year from the date of receipt of the previous written notice, each warehouse licensee shall send written notice to each person who stores grain in such warehouse at such person's last-known address specifying the type and amount of grain in storage, the location at which the grain is being stored, and the current rate of storage.

(2) A warehouse licensee shall not charge any storage rates and charges other than or in addition to the schedule of storage rates and charges duly filed and posted pursuant to section 88-541.

(3) Any warehouse licensee who violates subsection (1) or (2) of this section shall be guilty of a Class V misdemeanor.

Source: Laws 1987, LB 164, § 25; Laws 1992, LB 366, § 65; Laws 2024, LB262, § 47.

Operative date July 19, 2024.

88-550 Grain dust inspections; Department of Environment and Energy; commission; duties.

The Department of Environment and Energy and the commission shall, during the course of their regular inspections required by law, inspect warehouses for conditions which are or may be conducive to grain dust explosions. Such conditions shall include, but not be limited to, the presence at the warehouse of excessive grain dust, faulty equipment, or any other condition

which could reasonably lead to an explosion if not corrected. The department and commission shall report any such condition to the State Fire Marshal as soon as practicable after each inspection.

Source: Laws 1987, LB 164, § 26; Laws 1993, LB 3, § 73; Laws 2019, LB302, § 178.

88-551 Fees; where credited.

Except as provided in sections 88-527, 88-545.01, and 88-552, all fees collected pursuant to the Grain Warehouse Act shall be paid to the State Treasurer and credited to the General Fund.

Source: Laws 1987, LB 164, § 27; Laws 1996, LB 1123, § 6.

88-552 Nebraska Grain Warehouse Surveillance Cash Fund; created; use; investment.

There is hereby created in the state treasury a fund to be known as the Nebraska Grain Warehouse Surveillance Cash Fund. Such fund shall be used solely for disbursing funds and receiving reimbursement for services performed by the commission in the suspension or termination of a warehouse operation, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. All money received by the commission for such services shall be remitted to the State Treasurer for credit to the Nebraska Grain Warehouse Surveillance Cash Fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1986, LB 137, § 1; R.S.1943, (1981), § 88-502.02; Laws 1987, LB 164, § 28; Laws 1995, LB 7, § 154; Laws 2009, First Spec. Sess., LB3, § 100.

Cross References

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

ARTICLE 6

WAREHOUSING GRAIN ON FARMS

Section

- 88-601. Repealed. Laws 1989, LB 36, § 1.
- 88-602. Repealed. Laws 1989, LB 36, § 1.
- 88-603. Repealed. Laws 1989, LB 36, § 1.
- 88-604. Repealed. Laws 1989, LB 36, § 1.
- 88-605. Repealed. Laws 1989, LB 36, § 1.
- 88-606. Repealed. Laws 1989, LB 36, § 1.
- 88-607. Repealed. Laws 1989, LB 36, § 1.
- 88-608. Repealed. Laws 1989, LB 36, § 1.
- 88-609. Repealed. Laws 1989, LB 36, § 1.
- 88-610. Repealed. Laws 1989, LB 36, § 1.
- 88-611. Repealed. Laws 1989, LB 36, § 1.
- 88-612. Repealed. Laws 1989, LB 36, § 1.
- 88-613. Repealed. Laws 1989, LB 36, § 1.
- 88-614. Repealed. Laws 1989, LB 36, § 1.
- 88-615. Repealed. Laws 1989, LB 36, § 1.
- 88-616. Repealed. Laws 1989, LB 36, § 1.

- 88-601 Repealed. Laws 1989, LB 36, § 1.
- 88-602 Repealed. Laws 1989, LB 36, § 1.
- 88-603 Repealed. Laws 1989, LB 36, § 1.
- 88-604 Repealed. Laws 1989, LB 36, § 1.
- 88-605 Repealed. Laws 1989, LB 36, § 1.
- 88-606 Repealed. Laws 1989, LB 36, § 1.
- 88-607 Repealed. Laws 1989, LB 36, § 1.
- 88-608 Repealed. Laws 1989, LB 36, § 1.
- 88-609 Repealed. Laws 1989, LB 36, § 1.
- 88-610 Repealed. Laws 1989, LB 36, § 1.
- 88-611 Repealed. Laws 1989, LB 36, § 1.
- 88-612 Repealed. Laws 1989, LB 36, § 1.
- 88-613 Repealed. Laws 1989, LB 36, § 1.
- 88-614 Repealed. Laws 1989, LB 36, § 1.
- 88-615 Repealed. Laws 1989, LB 36, § 1.
- 88-616 Repealed. Laws 1989, LB 36, § 1.

CHAPTER 89

WEIGHTS AND MEASURES

Article.

1. General Provisions.
 - (a) General Provisions. 89-101 to 89-182. Repealed.
 - (b) Weights and Measures Act. 89-182.01 to 89-1,103.
 - (c) Grain Moisture Measuring Devices. 89-1,104 to 89-1,108.
2. Nebraska Sugar Beet Weighing and Testing Act. Repealed.

Cross References

Acre-foot, defined, see section 46-228.

Agricultural Liming Materials Act, see section 2-4301.

Boxing gloves, minimum weight, see section 81-8,134.

Department of Agriculture, general powers, see section 81-201.

Irrigation:

Automatic measuring devices, requirements, see section 46-158.

Standards of measurement for adjudication of water rights, see section 46-228.

Kilowatt hour, watt, defined, basis for electric service charges, see sections 70-407 to 70-409.

Liquefied petroleum gas, measurement standards, see sections 57-508 to 57-517.

Municipal powers:

Cities of the first class, see section 16-224.

Cities of the second class and villages, see section 17-554.

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

Pesticide Act, see section 2-2622.

Reservoirs, standards of measurement of storage, see section 46-228.

State weighing stations, see sections 60-1301 to 60-1309.

ARTICLE 1

GENERAL PROVISIONS

(a) GENERAL PROVISIONS

Section

89-101.	Repealed. Laws 1972, LB 1413, § 23.
89-102.	Repealed. Laws 1972, LB 1413, § 23.
89-103.	Repealed. Laws 1972, LB 1413, § 23.
89-104.	Repealed. Laws 1972, LB 1413, § 23.
89-105.	Repealed. Laws 1972, LB 1413, § 23.
89-106.	Repealed. Laws 1972, LB 1413, § 23.
89-107.	Repealed. Laws 1972, LB 1413, § 23.
89-108.	Repealed. Laws 1972, LB 1413, § 23.
89-109.	Repealed. Laws 1972, LB 1413, § 23.
89-110.	Repealed. Laws 1972, LB 1413, § 23.
89-111.	Repealed. Laws 1972, LB 1413, § 23.
89-112.	Repealed. Laws 1972, LB 1413, § 23.
89-113.	Repealed. Laws 1972, LB 1413, § 23.
89-114.	Repealed. Laws 1972, LB 1413, § 23.
89-115.	Repealed. Laws 1972, LB 1413, § 23.
89-116.	Repealed. Laws 1972, LB 1413, § 23.
89-117.	Repealed. Laws 1972, LB 1413, § 23.
89-118.	Repealed. Laws 1972, LB 1413, § 23.
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89-120.	Repealed. Laws 1972, LB 1413, § 23.
89-121.	Repealed. Laws 1972, LB 1413, § 23.
89-122.	Repealed. Laws 1972, LB 1413, § 23.
89-123.	Repealed. Laws 1972, LB 1413, § 23.
89-124.	Repealed. Laws 1972, LB 1413, § 23.
89-125.	Repealed. Laws 1972, LB 1413, § 23.

WEIGHTS AND MEASURES

Section	
89-126.	Repealed. Laws 1972, LB 1413, § 23.
89-127.	Repealed. Laws 1972, LB 1413, § 23.
89-128.	Repealed. Laws 1972, LB 1413, § 23.
89-129.	Repealed. Laws 1972, LB 1413, § 23.
89-130.	Repealed. Laws 1972, LB 1413, § 23.
89-131.	Repealed. Laws 1972, LB 1413, § 23.
89-132.	Repealed. Laws 1972, LB 1413, § 23.
89-133.	Repealed. Laws 1972, LB 1413, § 23.
89-134.	Repealed. Laws 1972, LB 1413, § 23.
89-135.	Repealed. Laws 1972, LB 1413, § 23.
89-136.	Repealed. Laws 1972, LB 1413, § 23.
89-137.	Repealed. Laws 1972, LB 1413, § 23.
89-138.	Repealed. Laws 1972, LB 1413, § 23.
89-139.	Repealed. Laws 1972, LB 1413, § 23.
89-140.	Repealed. Laws 1972, LB 1413, § 23.
89-141.	Repealed. Laws 1972, LB 1413, § 23.
89-142.	Repealed. Laws 1969, c. 20, § 19.
89-143.	Repealed. Laws 1969, c. 20, § 19.
89-144.	Repealed. Laws 1969, c. 20, § 19.
89-145.	Repealed. Laws 1969, c. 20, § 19.
89-146.	Repealed. Laws 1969, c. 20, § 19.
89-147.	Repealed. Laws 1969, c. 20, § 19.
89-148.	Repealed. Laws 1969, c. 20, § 19.
89-149.	Repealed. Laws 1969, c. 20, § 19.
89-150.	Repealed. Laws 1969, c. 20, § 19.
89-151.	Repealed. Laws 1969, c. 20, § 19.
89-152.	Repealed. Laws 1969, c. 20, § 19.
89-153.	Repealed. Laws 1969, c. 20, § 19.
89-154.	Repealed. Laws 1972, LB 1413, § 23.
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89-156.	Repealed. Laws 1972, LB 1413, § 23.
89-157.	Repealed. Laws 1972, LB 1413, § 23.
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89-160.	Repealed. Laws 1972, LB 1413, § 23.
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89-162.	Repealed. Laws 1972, LB 1413, § 23.
89-163.	Repealed. Laws 1972, LB 1413, § 23.
89-164.	Repealed. Laws 1972, LB 1413, § 23.
89-165.	Repealed. Laws 1972, LB 1413, § 23.
89-166.	Repealed. Laws 1972, LB 1413, § 23.
89-167.	Repealed. Laws 1972, LB 1413, § 23.
89-168.	Repealed. Laws 1972, LB 1413, § 23.
89-169.	Repealed. Laws 1972, LB 1413, § 23.
89-170.	Repealed. Laws 1945, c. 260, § 5.
89-171.	Repealed. Laws 1972, LB 1413, § 23.
89-172.	Repealed. Laws 1972, LB 1413, § 23.
89-173.	Repealed. Laws 1972, LB 1413, § 23.
89-174.	Repealed. Laws 1972, LB 1413, § 23.
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89-176.	Repealed. Laws 1972, LB 1413, § 23.
89-177.	Repealed. Laws 1972, LB 1413, § 23.
89-178.	Repealed. Laws 1972, LB 1413, § 23.
89-179.	Repealed. Laws 1972, LB 1413, § 23.
89-180.	Repealed. Laws 1972, LB 1413, § 23.
89-181.	Repealed. Laws 1972, LB 1413, § 23.
89-182.	Repealed. Laws 1972, LB 1413, § 23.

(b) WEIGHTS AND MEASURES ACT

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89-183.	Terms, defined.

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- 89-189. Repealed. Laws 1991, LB 356, § 36.
- 89-190. Repealed. Laws 1991, LB 356, § 36.
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- 89-196. Advertisement with price; declaration of quantity and identity.
- 89-196.01. Violations; cease and desist order; enforcement of act.
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- 89-1,104. Grain moisture measuring devices; inspections; fee.
- 89-1,104.01. Moisture Testing Examination Fund; created; use; investment; State Treasurer; duties.
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- 89-1,107. Grain moisture measuring devices; use in buying and selling grain; approval; violations; penalty; exception.
- 89-1,108. Grain moisture measuring devices; sections; violations; penalty.

(a) GENERAL PROVISIONS

- 89-101 Repealed. Laws 1972, LB 1413, § 23.**
- 89-102 Repealed. Laws 1972, LB 1413, § 23.**
- 89-103 Repealed. Laws 1972, LB 1413, § 23.**
- 89-104 Repealed. Laws 1972, LB 1413, § 23.**
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- 89-135 Repealed. Laws 1972, LB 1413, § 23.
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- 89-137 Repealed. Laws 1972, LB 1413, § 23.
- 89-138 Repealed. Laws 1972, LB 1413, § 23.

- 89-139 Repealed. Laws 1972, LB 1413, § 23.
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- 89-151 Repealed. Laws 1969, c. 20, § 19.
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- 89-167 Repealed. Laws 1972, LB 1413, § 23.
- 89-168 Repealed. Laws 1972, LB 1413, § 23.
- 89-169 Repealed. Laws 1972, LB 1413, § 23.

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89-174 Repealed. Laws 1972, LB 1413, § 23.

89-175 Repealed. Laws 1972, LB 1413, § 23.

89-176 Repealed. Laws 1972, LB 1413, § 23.

89-177 Repealed. Laws 1972, LB 1413, § 23.

89-178 Repealed. Laws 1972, LB 1413, § 23.

89-179 Repealed. Laws 1972, LB 1413, § 23.

89-180 Repealed. Laws 1972, LB 1413, § 23.

89-181 Repealed. Laws 1972, LB 1413, § 23.

89-182 Repealed. Laws 1972, LB 1413, § 23.

(b) WEIGHTS AND MEASURES ACT

89-182.01 Act, how cited.

Sections 89-182.01 to 89-1,103 shall be known and may be cited as the Weights and Measures Act.

Source: Laws 1991, LB 356, § 5.

89-183 Terms, defined.

For purposes of the Weights and Measures Act:

(1) Actual cost means all the costs associated with the enforcement of the act, including overhead, administration, personnel, and equipment expenses;

(2) Certificate of Conformance means a National Type Evaluation Program Certificate of Conformance issued by (a) the National Institute of Standards and Technology or (b) the National Conference on Weights and Measures establishing that the commercial weighing and measuring device, based on testing, meets the requirements of National Institute of Standards and Technology Handbook 44;

(3) Commercial weighing and measuring device means any weights and measures or weighing and measuring device used or employed in commerce in (a) establishing the size, quantity, extent, area, or measurement of any commodity sold, offered, or submitted for hire, (b) computing any basic charge or payment for services rendered on the basis of weight, measure, or count, or (c) establishing eligibility for any award. A commercial weighing and measuring device also includes any accessory attached to or used in connection with a commercial weighing or measuring device when such accessory is so designed or installed that its operation affects or may affect the accuracy of the device;

(4) Commodity means any service or item or any combination of items forming a distinctive product sold in commerce which is affected by any determination of weight, measure, or count;

(5) Correct, when used in connection with commercial weighing and measuring devices, means conformance to all applicable requirements of the act;

(6) Department means the Department of Agriculture or its authorized agent;

(7) Director means the Director of Agriculture or his or her designated employee, representative, or authorized agent;

(8) Kept for sale, in any of its variant forms, means the possession of commodities by a business which sells such commodities;

(9) Modification or modified, when used in connection with commercial weighing and measuring devices, means any change which does not alter the original metrological design characteristics as specified by the device manufacturer or National Type Evaluation Program technical policies;

(10) Net drained weight means the weight of a commodity excluding any materials, substances, or items not considered to be part of the commodity. Materials, substances, or items not considered to be part of the commodity include free liquid, containers, conveyances, bags, wrappers, packaging materials, labels, individual piece coverings, decorative accompaniments, prizes, and coupons;

(11) Net weight means the weight of a commodity excluding any materials, substances, or items not considered to be part of the commodity. Materials, substances, or items not considered to be part of the commodity include containers, conveyances, bags, wrappers, packaging materials, labels, individual piece coverings, decorative accompaniments, prizes, and coupons;

(12) Package means any commodity put up or packaged in any container in advance of sale in units suitable for sale;

(13) Person means any individual, partnership, limited liability company, association, corporation, or organized group of persons, whether incorporated or not;

(14) Primary standards means the physical standards of the state which serve as the legal reference from which all other standards are derived;

(15) Sale, in any of its variant forms, means sale, to barter, exchange, offer for sale, or expose for sale, in any of their variant forms, or otherwise supply;

(16) Sale from bulk means sale, in any of its variant forms, of commodities when the quantity is determined at the time of sale;

(17) Secondary standards means the physical standards which are traceable to the primary standards through comparisons using acceptable laboratory procedures. Such standards shall be used in the sale of a commodity or in the verification of weights and measures or weighing and measuring devices for accuracy;

(18) Tare weight means the weight of containers, conveyances, bags, wrappers, packaging materials, labels, individual piece coverings, decorative accompaniments, prizes, coupons, or items not considered to be part of the commodity deducted from the gross weight to determine the weight of the commodity;

(19) Weighing and measuring device means all instruments and devices of every kind used to determine the quantity of any commodity and includes weights and measures and any appliances and accessories associated with any

such instruments and devices except meters, appliances, and accessories which are exempted from the requirements of the act pursuant to subdivision (5) of section 89-187;

(20) Weighing and measuring establishment means a location with one or more commercial weighing and measuring devices or any operation which employs commercial weighing and measuring devices which are mobile; and

(21) Weight, when used in connection with any commodity, means net weight, except when a commodity is sold by drained weight, the term means net drained weight.

Source: Laws 1972, LB 1413, § 1; Laws 1991, LB 356, § 6; Laws 1999, LB 473, § 1; Laws 2003, LB 161, § 1.

89-184 Units of measurement; recognition.

The customary units of measurement in use in the United States and the metric units of measurement are jointly recognized, and either one or both of these systems shall be used in commerce within the state. The definitions of basic units of measurement and the tables of measurement and equivalents as published by the National Institute of Standards and Technology are recognized and shall govern weighing and measuring devices, standards, and transactions in the state.

Source: Laws 1972, LB 1413, § 2; Laws 1991, LB 356, § 7.

89-185 Standards; primary and secondary.

Standards that are traceable to the United States prototype standards supplied by the federal government or approved as being satisfactory by the National Institute of Standards and Technology shall be the primary standards of measurement and shall be maintained so that they are traceable to the National Institute of Standards and Technology. All secondary standards may be prescribed by the director and shall be verified upon their initial receipt and as often thereafter as deemed necessary by the director.

Source: Laws 1972, LB 1413, § 3; Laws 1991, LB 356, § 8; Laws 2003, LB 161, § 2.

89-186 Handbooks; adoption by reference.

(1) The Legislature hereby adopts by reference the following:

(a) The standards of the National Conference on Weights and Measures published in National Institute of Standards and Technology Handbook 44 entitled Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices as it existed on January 1, 2019, except Section 3.31. Vehicle - Tank meters. UR.2.2. Ticket Printer, Customer Ticket, Section 2.20. Scales, N.3. Minimum Test Weights and Test Loads; and Table 4, are not adopted. In addition to the language found in Section 3.30. Liquid-Measuring Devices, S.1.6.4., S.1.6.5., UR.3.2., and UR.3.3. of such handbook, any computing device in which a product or grade is offered for sale at more than one unit price may also compute at the lowest possible unit price for such transaction. All prices shall still be displayed or posted on the face of the dispenser. Such handbook shall govern all commercial and law enforcement weighing and measuring devices in the state;

(b) The Uniform Regulation for the Method of Sale of Commodities of the National Conference on Weights and Measures published in National Institute of Standards and Technology Handbook 130 entitled Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality as it existed on January 1, 2019. Such handbook shall be used to determine the proper units of measurement to be used in the keeping for sale or sale of commodities;

(c) The Uniform Packaging and Labeling Regulation of the National Conference on Weights and Measures published in National Institute of Standards and Technology Handbook 130 entitled Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality as it existed on January 1, 2019. Such handbook shall govern the packaging and labeling by weight, measure, or count of commodities kept for sale or sold in this state; and

(d) The procedures designated in National Institute of Standards and Technology Handbook 133 entitled Checking the Net Contents of Packaged Goods as it existed on January 1, 2019.

(2) Copies of the handbooks adopted by reference in this section shall be filed with the Secretary of State, Clerk of the Legislature, and Department of Agriculture. Copies filed with the Clerk of the Legislature shall be filed electronically.

(3) Whenever there exists an inconsistency between the provisions of the Weights and Measures Act other than this section and any of the handbooks adopted by reference, the requirements of such provisions of the act shall control.

Source: Laws 1972, LB 1413, § 4; Laws 1980, LB 633, § 6; Laws 1991, LB 356, § 9; Laws 1992, LB 366, § 67; Laws 1993, LB 267, § 28; Laws 1999, LB 473, § 2; Laws 2003, LB 161, § 3; Laws 2013, LB222, § 46; Laws 2020, LB835, § 5.

89-186.01 Commercial weighing and measuring devices; Certificate of Conformance; required; when.

(1) No person shall sell a commercial weighing and measuring device within the State of Nebraska unless a Certificate of Conformance has been issued for the device except when the device is exempted by subsection (6) of this section.

(2) No person shall use a commercial weighing and measuring device within the State of Nebraska unless a Certificate of Conformance has been issued for the device prior to use except when the device is exempted by subsection (3), (4), or (5) of this section.

(3) Commercial weighing and measuring devices in service in Nebraska prior to September 6, 1991, which meet the specifications, tolerances, and other technical requirements of National Institute of Standards and Technology Handbook 44 shall be exempt from meeting the requirements for the Certificate of Conformance.

(4) Commercial weighing and measuring devices removed from service by the owner or on which the department has issued a removal order after September 6, 1991, and returned to service at a later date shall be modified to meet all specifications, tolerances, and other technical requirements of National Institute of Standards and Technology Handbook 44 adopted by the Legislature on the date of the return to service. Such commercial weighing and measuring devices shall not be required to have been issued a Certificate of Conformance.

(5) Commercial weighing and measuring devices in service prior to September 6, 1991, which are modified after such date shall meet all specifications, tolerances, and other technical requirements of National Institute of Standards and Technology Handbook 44 adopted by the Legislature on the date of the modification. Such commercial weighing and measuring devices shall not be required to have been issued a Certificate of Conformance.

(6) Commercial weighing and measuring devices in service prior to September 6, 1991, and sold after such date shall be modified by the seller, unless the buyer and seller agree by contract to exchange the modification responsibility, to meet all specifications, tolerances, and other technical requirements of National Institute of Standards and Technology Handbook 44 adopted by the Legislature on the date sold. Such commercial weighing and measuring devices shall not be required to have been issued a Certificate of Conformance.

Source: Laws 1991, LB 356, § 10; Laws 1999, LB 473, § 3.

89-187 Director of Agriculture; powers; fees; administrative fees.

For purposes of administering and enforcing the Weights and Measures Act, the director is authorized to:

- (1) Maintain traceability of the primary standards to the National Institute of Standards and Technology;
- (2) Enforce the provisions of the Weights and Measures Act;
- (3) Adopt and promulgate reasonable rules and regulations for the enforcement of the act including the following:
 - (a) Requirements for the voluntary registration of sales and repair personnel for commercial weighing and measuring devices including:
 - (i) Registration fees for such personnel which shall not exceed the actual cost to defray the operation of the voluntary registration program;
 - (ii)(A) Qualifications for registration, which may include examinations, (B) performance standards to maintain registration, (C) types of equipment necessary for the work to be performed by the personnel, (D) responsibilities and privileges of registration, and (E) revocation and suspension of such registration and probation of the registrant; and
 - (iii) Minimum standards for the installation and maintenance of commercial weighing and measuring devices;
 - (b) Additional standards not specifically provided for in the act;
 - (c) Standards for (i) attachments or parts entering into the construction or installation of commercial weighing and measuring devices which shall tend to secure correct results in the use of such devices and (ii) the setting of laboratory fees which shall not exceed the actual cost for testing, correcting, calibrating, and verifying secondary standards and the establishment of standard laboratory operating procedures;
 - (d) Requirements for the suitable use of commercial weighing and measuring devices; and
 - (e) Guidelines for the appropriate method of weighing or measuring whenever the director determines that such guidelines would further the purpose of the act;

(4) Establish standards of weight, measure, or count, reasonable standards of fill, and standards for the presentation of cost-per-unit information for any commodity;

(5) Upon an application filed with the department by the applicant, grant exemptions, including specific exemptions for single-use commercial weighing and measuring devices, from the provisions of the act or the rules and regulations when the applicant on such application provides assurances, acceptable to the director, that such exemption is appropriate to the maintenance of good commercial practices within the state. Notwithstanding any other provision of the act, meters used by a public utility system for the measurement of electricity, natural or manufactured gas, water, or the usage of communication services, the appliances or accessories associated with such meters, and all weighing and measuring devices inspected or tested by the Public Service Commission shall be exempt from the registration, inspection, and testing requirements of the act, except that this exemption shall not apply to meters which determine the weight or measurement of motor fuel;

(6) Conduct investigations to insure compliance with the act;

(7) Delegate to appropriate personnel any of these responsibilities for the proper administration of the director's office;

(8) In his or her discretion, inspect and test weighing and measuring devices kept for sale or sold;

(9) Inspect and test annually and from time to time, as in the director's judgment seems necessary, to ascertain whether commercial weighing and measuring devices are correct;

(10) Register and test as far as practical all commercial weighing and measuring devices used in checking the receipt or disbursement of supplies in every institution for which funds are appropriated by the Legislature;

(11) Test annually and at the request of the Nebraska State Patrol all weighing and measuring devices used for the enforcement of sections 60-3,144, 60-3,147, and 60-6,294. The agency responsible for such weighing and measuring devices shall pay the department for the actual cost of such tests. The department shall bill test fees to such agency upon completion of the test;

(12) Approve for use and may mark commercial weighing and measuring devices which the director finds to be correct and shall reject and mark or tag as rejected such commercial weighing and measuring devices which the director finds to be not correct or not registered and inspected in accordance with the Weights and Measures Act. Commercial weighing and measuring devices that have been rejected may be seized if not made correct within the time specified or if used or disposed of in a manner not specifically authorized. The director shall condemn and may seize commercial weighing and measuring devices which are found not to be correct and not capable of being made correct;

(13) Weigh, measure, or inspect commodities kept for sale, sold, or in the process of delivery to determine whether they contain the amounts represented and whether they are kept for sale or sold in accordance with the act or the rules and regulations. When commodities are found not to contain the amounts represented or are found to be kept for sale, sold, or in the process of delivery in violation of the act, the director may issue stop-sale, hold, or removal orders and may mark or tag such commodities as being in violation of the act. In

carrying out the provisions of this section, the director shall employ recognized procedures pursuant to subdivisions (1)(b) through (d) of section 89-186;

(14) Provide for the weights and measures training of inspection personnel and adopt and promulgate by rule and regulation minimum training requirements which shall be met by all inspection personnel;

(15) Adopt and promulgate rules and regulations prescribing the appropriate term or unit of measurement to be used whenever the director determines in the case of a specific commodity that an existing practice of declaring the quantity by weight, measure, numerical count, or combination thereof does not facilitate value comparisons by consumers or offers an opportunity for consumer confusion;

(16) Allow reasonable variations from the stated quantity of contents which shall include those caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice only after the commodity has entered intrastate commerce;

(17) Verify advertised prices, price representations, and point-of-sale systems, as deemed necessary, to determine: (a) The accuracy of prices, quantity, and computations; (b) the correct use of the equipment; and (c) if such systems utilize scanning or coding means in lieu of manual entry, the accuracy of prices and quantity printed or recalled from a database;

(18) On or before July 1 of each year, notify all persons who have registered any commercial weighing or measuring device of the amount of fees which are due and that the fees are due on August 1 and shall be delinquent after such date;

(19) Require all persons who operate a weighing and measuring establishment to obtain a permit to operate such establishment pursuant to section 89-187.01 and to pay to the department an application permit fee pursuant to section 89-187.02;

(20) Require all persons who operate a weighing and measuring establishment to, on or before August 1 of each year:

(a) Register each commercial weighing and measuring device with the department upon forms furnished by the director;

(b) Pay to the department a registration fee of four dollars; and

(c) Pay to the department a device inspection fee.

(i) The device inspection fee shall be due each August 1 and shall be set by the director on or before July 1 of each year. The director may raise or lower the device inspection fees each year to meet the criteria in this subdivision, but the fee shall not be greater than the amount in column B of subdivision (20)(c)(ii) of this section. The same percentage shall be applied to each device category for all device inspection fee increases or decreases. The director shall use the amounts in column A of subdivision (20)(c)(ii) of this section as a base for future fee increases or decreases. The director shall determine the fees based on estimated annual revenue and fiscal year-end cash fund balances as follows:

(A) The estimated annual revenue shall not be greater than one hundred seven percent of program cash fund appropriations allocated for the Weights and Measures Act; and

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(B) The estimated fiscal year-end cash fund balance shall not be greater than seventeen percent of program cash fund appropriations allocated for the act.

(ii)

Scales:	A	B
Up through 35 pounds capacity	7.96	14.34
Multiunit Scales	51.00	80.37
Over 35 through 1,000 pounds capacity	15.13	25.35
Over 1,000 through 4,000 pounds capacity	31.87	51.03
Over 4,000 through 50,000 pounds capacity	36.65	58.36
Over 50,000 through 150,000 pounds capacity	39.04	62.03
Over 150,000 pounds capacity	86.87	135.40
Length Measuring Devices:		
Cordage or fabric	16.56	27.55
Pumps:		
Service Station Dispensers—per measuring element	5.09	9.94
High-capacity service station dispensers over 20 gallons per minute—per dispensing element	17.52	29.02
Compressed natural gas—per dispensing element	91.65	142.74
Meters:		
Vehicle tank meters	14.17	23.88
Loading rack meters	31.87	51.03
Liquid petroleum gas meters	40.00	63.50
Liquid fertilizer and herbicide meters	36.65	58.36
Liquid feed meters	36.65	58.36
Cryogenic	53.39	84.04
Mass Flow Metering Systems:		
Mass flow meters (all liquid)	78.26	122.19;
and		

(21) Require persons delinquent under subdivision (20) of this section to pay an administrative fee of twenty-five percent of the annual fees due for each month any such fees are delinquent not to exceed one hundred percent of such fees. Such administrative fees paid shall be in addition to the annual fees due. The purpose of the additional administrative fee is to cover the administrative costs associated with collecting fees. All money collected as an additional administrative fee shall be remitted to the State Treasurer for credit to the Weights and Measures Administrative Fund.

Source: Laws 1972, LB 1413, § 5; Laws 1974, LB 17, § 1; Laws 1979, LB 540, § 1; Laws 1980, LB 633, § 7; Laws 1983, LB 617, § 30; Laws 1984, LB 977, § 1; Laws 1985, LB 460, § 23; Laws 1991, LB 356, § 11; Laws 1992, LB 366, § 68; Laws 1993, LB 370, § 492; Laws 1993, LB 267, § 29; Laws 1999, LB 473, § 4; Laws 2001, LB 541, § 8; Laws 2003, LB 161, § 4; Laws 2005, LB 274, § 284; Laws 2016, LB909, § 13; Laws 2020, LB835, § 6.

89-187.01 Weighing and measuring establishment; permit required.

A person shall not operate a weighing and measuring establishment in the State of Nebraska unless such person holds a valid permit from the department. If the permitholder has more than one location with commercial weighing and measuring devices, he or she shall have a permit for each location.

Source: Laws 1991, LB 356, § 12; Laws 2020, LB835, § 7.

89-187.02 Permit; application; fee.

Application for a permit to operate a weighing and measuring establishment shall be made to the director on forms prescribed and furnished by the department. Such application shall include the full name and mailing address of the applicant; the names and addresses of any partners, members, or corporate officers; the name and address of the person authorized by the applicant to receive notices and orders of the department as provided in the Weights and Measures Act; whether the applicant is an individual, partnership, limited liability company, corporation, or other legal entity; and the location and type of all commercial weighing and measuring devices. An application for a permit shall be made prior to the operation of a weighing and measuring establishment. The application shall be accompanied by a one-time permit fee of five dollars and the annual device registration and inspection fees required in section 89-187. The full annual device registration and inspection fees are required regardless of when during the year the device is put into operation.

Source: Laws 1991, LB 356, § 13; Laws 1993, LB 121, § 566; Laws 1997, LB 752, § 233; Laws 1999, LB 473, § 5; Laws 2003, LB 161, § 5; Laws 2016, LB909, § 14; Laws 2020, LB835, § 8.

89-187.03 Permit; placed-in-service report or inspection; denial of permit; procedure.

Before issuing a permit to operate a weighing and measuring establishment, the director shall receive a placed-in-service report from a repairperson, who is registered with the department, or inspect each weighing and measuring device to determine whether the applicant qualifies to hold a permit pursuant to subsection (1) of section 89-187.07 except when the requirements of section 89-187.04 have been met. A placed-in-service report shall be in the form prescribed by the department. A weighing and measuring establishment receiving a placed-in-service report for all of its weighing and measuring devices, passing inspection by the department, or meeting the requirements of section 89-187.04 and otherwise found to qualify to hold a permit pursuant to subsection (1) of section 89-187.07 shall be issued a permit. An applicant who does not receive a permit shall be notified in writing of the grounds for denial, and such applicant shall be afforded the opportunity of a hearing to present evidence that the establishment is qualified to hold a permit pursuant to subsection (1) of section 89-187.07 and should be issued a permit. All such hearings shall be in compliance with the Administrative Procedure Act.

Source: Laws 1991, LB 356, § 14.

Cross References

Administrative Procedure Act, see section 84-920.

89-187.04 Permit; placed-in-service report or inspection; when not required.

An applicant for a permit with commercial weighing and measuring devices registered with the department shall not be required to obtain a placed-in-service report or have such devices pass a new inspection when (1) the director determines that a new inspection is not necessary and (2) the devices have been properly registered for the previous year and all fees have been paid by the applicant.

Source: Laws 1991, LB 356, § 15.

89-187.05 Permit; posting; changes requiring notice to department.

(1) A weighing and measuring establishment which has a permanent location for commercial weighing and measuring devices shall have a valid permit posted in a conspicuous place at the establishment, and there shall not be a change in ownership, location, or business name without the permitholder obtaining a new permit. Any permit for such establishment shall lapse automatically upon a change of ownership, location, or business name.

(2) A weighing and measuring establishment which does not have a permanent location for commercial weighing and measuring devices shall have a copy of a valid permit posted on or about each device and shall not have a change in ownership, business name, or permanent mailing address without the permitholder obtaining a new permit. Any permit for such establishment shall lapse automatically upon a change of ownership, business name, or permanent mailing address.

(3) The holder of any weighing and measuring establishment permit shall notify the department in writing at least thirty days prior to any change requiring a new permit under subsection (1) or (2) of this section. A permitholder shall notify the department in writing before there is a change of the name or address of the person authorized to receive notices and orders of the department. When an establishment is to be permanently closed, the permitholder shall return the permit to the department within one week after the closing.

Source: Laws 1991, LB 356, § 16; Laws 1999, LB 473, § 6.

89-187.06 Permit; governmental agencies; exempt.

Weighing and measuring devices used by governmental agencies shall be exempt from the requirements of sections 89-187.01 to 89-187.05.

Source: Laws 1991, LB 356, § 17.

89-187.07 Permitholder; duties; disciplinary actions.

(1) The holder of a permit issued pursuant to the Weights and Measures Act shall comply with the act, the rules and regulations adopted and promulgated pursuant to the act, and any order of the director issued pursuant to the act. The permitholder shall not interfere with the department in the performance of its duties.

(2) A permitholder may be put on probation requiring such person to comply with the conditions set out in an order of probation issued by the director or be ordered to cease and desist pursuant to section 89-196.01 after: (a) The director determines the permitholder has not complied with subsection (1) of this section; (b) the permitholder is given written notice to comply and written notice of the right to a hearing to show cause why the specified order should not be issued; and (c) the director finds that issuing the specified order is appropriate, based on the hearing record or the available information if the hearing is waived by the permitholder.

(3) A permit may be suspended after: (a) The director determines the permitholder has not complied with subsection (1) of this section; (b) the permitholder is given written notice to comply and written notice of the right to a hearing to show cause why the permit should not be suspended; and (c) the director finds that issuing an order suspending the permit is appropriate, based

on the hearing record or the available information if the hearing is waived by the permitholder.

(4) A permit may be immediately suspended and the director may order the permitholder's establishment closed prior to hearing when: (a) The director determines an immediate danger to the public health, safety, or welfare exists in the permitholder's establishment; and (b) the permitholder receives written notice to comply and written notice of the right to a hearing to show cause why the suspension should not be sustained. Within fifteen days after the suspension, the permitholder may request in writing a date for a hearing and the director shall consider the interests of the permitholder when the director establishes the date and time of the hearing, except that no hearing shall be held sooner than is reasonable under the circumstances. When a permitholder does not request a hearing date within such fifteen-day period, the director shall establish a hearing date and notify the permitholder of the date and time of such hearing.

(5) A permit may be revoked after: (a) The director determines the permitholder has committed serious, repeated, or multiple violations of any of the requirements of subsection (1) of this section; (b) the permitholder is given written notice to comply and written notice of the right to a hearing to show cause why the permit should not be revoked; and (c) the director finds that issuing an order revoking the permit is appropriate based on the hearing record or on the available information if the hearing is waived by the permitholder.

(6) Any establishment for which the permit has been suspended shall close and remain closed until the permit is reinstated. Any establishment for which the permit has been revoked shall close and remain closed until a new permit has been issued.

(7) The director may terminate proceedings to suspend or revoke a permit or subject a permitholder to an order of the director described in subsection (2) of this section at any time if the reasons for such proceedings no longer exist. A permit which has been suspended may be reinstated, a person with a revoked permit may be issued a new permit, or a permitholder may no longer be subject to such an order if the director determines that the conditions which prompted the suspension, revocation, or order of the director no longer exist.

(8) Proceedings to suspend or revoke a permit or subject a permitholder to an order of the director described in subsection (2) of this section shall not preclude the department from pursuing other administrative, civil, or criminal actions, such as the stop-use or cease and desist order, an injunction, or a misdemeanor action.

Source: Laws 1991, LB 356, § 18; Laws 1999, LB 473, § 7.

89-187.08 Notice or order; service; contents; hearings.

(1) Any notice or order provided for in the Weights and Measures Act shall be personally served on the permitholder or on the person authorized by the permitholder to receive notices and orders of the department or shall be sent by certified mail, return receipt requested, to the last-known address of the permitholder or the person authorized to receive such notices and orders. A copy of the notice and the order shall be filed in the records of the department.

(2) Any notice to comply provided for in the act shall set forth the acts or omissions with which the permitholder is charged.

(3) A notice of the permitholder's right to a hearing provided for in the act shall set forth the time and place of the hearing except as provided in subsection (4) of section 89-187.07. A notice of the permitholder's right to such hearing shall include notice that a permitholder's right to a hearing may be waived pursuant to subsection (5) of this section. A notice of the permitholder's right to a hearing to show cause why the permit should not be revoked shall include notice to the permitholder that the permit may be revoked or suspended, that the permitholder may be subject to an order of the director described in subsection (2) of section 89-187.07, or that the permit may be suspended and the permitholder subject to such an order if the director determines such action is more appropriate. A notice of the permitholder's right to a hearing to show cause why the permit should not be suspended shall include notice to the permitholder that the permit may be suspended or that the permitholder may also be subject to an order of the director described in subsection (2) of section 89-187.07 if the director determines such action is more appropriate.

(4) The hearings provided for in the act shall be conducted by the director at a time and place he or she designates. The director shall make a final finding based upon the complete hearing record and issue an order. If the director has suspended a permit pursuant to subsection (4) of section 89-187.07, the director shall sustain, modify, or rescind the order. All hearings shall be in accordance with the Administrative Procedure Act.

(5) A permitholder shall be deemed to waive the right to a hearing if such permitholder does not come to the hearing at the time and place set forth in the notice described in subsection (3) of this section without requesting the director at least three business days before the designated time to change the time and place for the hearing, except that before an order of the director becomes final, the director may designate a different time and place for the hearing if the permitholder shows the director that the permitholder had a justifiable reason for not coming to the hearing and not timely requesting a change in the time and place for such hearing. If the permitholder waives the right to a hearing, the director shall make a final finding based upon the available information and issue an order. If the director has suspended a permit pursuant to subsection (4) of section 89-187.07, the director shall sustain, modify, or rescind the order.

(6) Any person aggrieved by the finding of the director shall have ten days from the entry of the director's order to request a new hearing if such person can show that a mistake of fact has been made which affected the director's determination. Any order of the director shall become final upon the expiration of ten days after its entry if no request for a new hearing is made.

Source: Laws 1991, LB 356, § 19; Laws 1999, LB 473, § 8.

Cross References

Administrative Procedure Act, see section 84-920.

89-188 Director; powers.

When necessary for the enforcement of the Weights and Measures Act or the rules and regulations adopted pursuant to the act, the director may:

(1) Enter any commercial premises during normal business hours, except that in the event such premises are not open to the public, the director shall first present his or her credentials and obtain consent before making entry thereto unless a search warrant has previously been obtained;

(2) Issue stop-use, hold, and removal orders with respect to any commercial weighing and measuring device and stop-sale, hold, and removal orders with respect to any commodity kept for sale or sold;

(3) Seize, for use as evidence, without formal warrant, any commercial weighing and measuring device which is not correct or is not approved by the department or commodity found to be used, kept for sale, or sold in violation of the provisions of the act or the rules and regulations;

(4) Stop any commercial vehicle from which commodities are kept for sale, sold, or in the process of delivery on the basis of weight, measure, or count and, after presentment of his or her credentials, inspect the contents, require that the person in charge of that vehicle produce any documents in his or her possession concerning the contents, and require him or her to proceed with the vehicle to a specified place for inspection;

(5) Charge and collect all fees prescribed by the act and the rules or regulations;

(6) Access all books, papers, and other information necessary for the enforcement of the act. If after inspection the director finds or has reason to believe that the requirements set forth in the act are not being met, he or she shall have access to all books, papers, records, bills of lading, invoices, and other pertinent data relating to the use, sale, or representation of any commodity including weighing and measuring devices within this state;

(7) Cooperate with and enter into agreements with any person in order to carry out the purposes of the act;

(8) Inspect weighing and measuring devices which are not required to be registered upon the request of the owner of such devices and seek reimbursement for the actual cost of the inspection;

(9) Establish an authorized laboratory under the National Conference on Weights and Measures, National Type Evaluation Program, and conduct field testing of weighing and measuring devices to determine if such devices meet the requirements in order to issue a Certificate of Conformance. The department shall be reimbursed for the actual cost of such tests by the person seeking such certification; and

(10) Enter into a settlement with any person regarding the disposition of any permit or cease and desist order.

Source: Laws 1972, LB 1413, § 6; Laws 1991, LB 356, § 20; Laws 1999, LB 473, § 9; Laws 2003, LB 161, § 6; Laws 2016, LB909, § 15.

89-189 Repealed. Laws 1991, LB 356, § 36.

89-190 Repealed. Laws 1991, LB 356, § 36.

89-191 Repealed. Laws 1991, LB 356, § 36.

89-192 Commodities; sale; weight, measure, count.

Except as otherwise provided by the director, commodities in liquid form shall be sold by liquid measure or by weight and commodities not in liquid form shall be sold only by weight, by measure, or by count, so long as the method of sale provides the ability for cost comparison and accurate quantity information.

Source: Laws 1972, LB 1413, § 10; Laws 1991, LB 356, § 21.

89-193 Invoice; when required; contents.

Whenever the quantity is determined for a commodity sold from bulk, except sales from bulk of less than twenty dollars and sales of motor vehicle fuel of less than one hundred dollars, an invoice shall be prepared by the person physically in control of the quantity determination and shall contain the following information:

- (1) The name and address of the buyer and seller involved in the transaction;
- (2) The date delivered;
- (3) The quantity delivered and the quantity upon which the price is based if different from the delivered quantity;
- (4) The identity in the most descriptive terms commercially practicable, including any quality representation made in connection with the sale; and
- (5) The count of individually wrapped packages, if more than one.

Source: Laws 1972, LB 1413, § 11; Laws 1982, LB 678, § 1; Laws 1991, LB 356, § 22.

89-194 Package; label; contents.

Except as otherwise provided in the Weights and Measures Act or the rules and regulations adopted and promulgated pursuant to the act, any package kept for sale or sold shall bear on the outside of the package a definite, plain, and conspicuous declaration of:

- (1) The identity of the commodity in the package unless the same can easily be identified through the wrapper or container;
- (2) The quantity of contents in terms of weight, measure, or count. When items are combined to form a distinctive product, the quantity representation may be in terms of the total quantity of the combined product and a quantity representation need not be made for each item, except that if the label lists the ingredients they shall be in the order of their predominance by weight; and
- (3) The name and place of business of the manufacturer, packer, or distributor in the case of any package kept for sale or sold in any place other than on the premises where packaged.

Source: Laws 1972, LB 1413, § 12; Laws 1991, LB 356, § 23.

89-195 Package; price per pound and total selling price; required.

In addition to the declarations required by section 89-194, any package sold at retail being one of a lot containing random weights of the same commodity shall bear on the outside of the package a plain and conspicuous declaration of the price per pound and the total selling price.

Source: Laws 1972, LB 1413, § 13; Laws 1991, LB 356, § 24.

89-196 Advertisement with price; declaration of quantity and identity.

Whenever a commodity is advertised in any manner with the price stated, there shall be closely and conspicuously associated with the price a declaration of the quantity and the identity of the commodity offered for that price. If a dual declaration is required, only the declaration that sets forth the quantity in terms of the smaller unit of measurement need appear in the advertisement.

Source: Laws 1972, LB 1413, § 14; Laws 1991, LB 356, § 25.

89-196.01 Violations; cease and desist order; enforcement of act.

(1) Whenever the director has reason to believe that any person has violated any provision of the Weights and Measures Act or any rule or regulation adopted and promulgated pursuant to the act, a hearing notice may be issued requiring the person to appear before the director to show cause why an order should not be entered requiring such person to cease and desist from the violation charged. Such hearing notice shall set forth the alleged violation, fix the time and place of the hearing, and specify the action to be considered at such hearing. Hearings shall be conducted as provided for in section 89-187.08. After a hearing, if the director finds such person to be in violation, he or she may enter an order requiring the person to cease and desist from the specific act, practice, or omission.

(2) The director may apply to the county attorney of the county in which the violation occurred or the Attorney General's office to take appropriate action pursuant to sections 89-198 and 89-1,101 without first entering an order as set forth in subsection (1) of this section when there exists an endangerment to the public health, safety, or welfare.

Source: Laws 1991, LB 356, § 26; Laws 1999, LB 473, § 10.

89-197 Unlawful acts.

It shall be unlawful for any person to:

(1) Use in commerce any weighing and measuring device which is not correct;

(2) Remove any tag, seal, or mark of a stop-use, stop-sale, hold, or removal order issued by the department from any weighing and measuring device or commodity without specific written authorization from the department;

(3) Fail to report to the department when any tag, seal, or mark of a stop-use, stop-sale, hold, or removal order issued by the department has been removed from any weighing and measuring device or commodity without specific written authorization from the department if such person operates a weighing and measuring establishment and knows or has reason to know the tag, seal, or mark has been removed;

(4) Hinder, obstruct, or refuse to assist the director in the performance of his or her duties;

(5) Maintain or have in his or her possession any commercial weighing and measuring device that has not been registered and inspected in accordance with the provisions of the Weights and Measures Act;

(6) Sell or keep for sale less than the quantity he or she represents of a commodity;

(7) Take more than the quantity he or she represents of a commodity when, as buyer, he or she furnishes the weight or measure by means of which the amount of the commodity is determined;

(8) Operate any weighing and measuring establishment without a valid permit, while the permit is suspended, or after the permit has been revoked if a permit is required by the act;

(9) Determine a gross weight and tare weight to arrive at a net weight by the use in commerce of different weighing and measuring devices that in combination will not meet the absolute value of maintenance tolerance;

(10) Falsify in any manner, by any means, or by or through a representative a recorded representation or documentation from any weighing and measuring device or any representation or delivery ticket of a commodity bought or sold by weight, measure, or count;

(11) Use any commercial weighing and measuring device in a commercial application unless a Certificate of Conformance has been issued for such device unless exempt in section 89-186.01;

(12) Sell any weighing and measuring device for use in a commercial application unless a Certificate of Conformance has been issued for such devices unless exempt in section 89-186.01;

(13) Use, add to, or modify a commercial weighing and measuring device in any way which makes the device not correct unless such change has been authorized by the director as provided for in the act;

(14) Misrepresent the price of any commodity kept for sale or sold by weight, measure, or count or represent the price in any manner calculated or tending to mislead or in any way deceive a person;

(15) Misrepresent the quantity of any commodity kept for sale or sold or represent the quantity in any manner calculated or tending to mislead or in any way deceive a person;

(16) Fail to pay all fees as prescribed by the act and the rules and regulations adopted and promulgated pursuant to the act;

(17) Refuse to keep and make available for examination by the department all books, papers, and other information necessary for the enforcement of the act; or

(18) Use commercial weighing and measuring devices not in accordance with rules and regulations adopted and promulgated by the director pursuant to subdivision (3)(d) of section 89-187.

Source: Laws 1972, LB 1413, § 15; Laws 1991, LB 356, § 27; Laws 1993, LB 267, § 30; Laws 2016, LB909, § 16.

89-198 Restraining order or injunction; when.

(1) In order to obtain compliance with the Weights and Measures Act, the director may apply for a restraining order, a temporary or permanent injunction, or a mandatory injunction against any person who has violated, is violating, or is threatening to violate the act or the rules and regulations adopted and promulgated pursuant to the act. The district court of the county where the violation has occurred, is occurring, or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(2) It shall be the duty of the Attorney General or the county attorney of the county in which any violation of the act or the rules and regulations has occurred, is occurring, or is about to occur, when notified by the director of such violation or threatened violation, to pursue appropriate proceedings without delay pursuant to this section, section 89-1,101, or both. Before the director reports a violation, an opportunity shall be given to such person to

present his or her views to the director except when there exists an endangerment to the public health, safety, or welfare.

Source: Laws 1972, LB 1413, § 16; Laws 1991, LB 356, § 28; Laws 1993, LB 267, § 31.

89-199 Weighing and measuring devices; presumption.

Whenever weighing and measuring devices exist in or about any place in which or from which buying or selling is commonly carried on, there shall be a rebuttable presumption that such weighing and measuring devices are commercial weighing and measuring devices.

Source: Laws 1972, LB 1413, § 17; Laws 1991, LB 356, § 29.

89-1,100 Weights and Measures Administrative Fund; created; use; investment; lien.

The director shall collect registration, permit, laboratory, test, administrative, and inspection fees and money required to be reimbursed as provided for in the Weights and Measures Act and shall remit such funds to the State Treasurer. The State Treasurer shall credit such funds to the Weights and Measures Administrative Fund, which fund is hereby created. All fees and reimbursements collected pursuant to the act and credited to the fund shall be appropriated to the uses of the department to aid in defraying the expenses of administering the act, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any unexpended balance in the Weights and Measures Administrative Fund at the close of any biennium shall, when reappropriated, be available for the uses and purposes of the fund for the succeeding biennium. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The registration, permit, laboratory, test, administrative, and inspection fees and money required to be reimbursed as provided for in the Weights and Measures Act shall constitute a lien on the weighing and measuring devices or standards required to be registered or approved for use in this state until such fees and reimbursements are paid. The director may sue for such fees and reimbursements and may seek to foreclose on any lien in the name of the state. The county attorney of the county in which the device is located or the Attorney General's office shall, upon the request of the director, take appropriate action to establish and foreclose on any such lien.

Source: Laws 1972, LB 1413, § 18; Laws 1974, LB 17, § 2; Laws 1986, LB 258, § 45; Laws 1991, LB 356, § 30; Laws 1994, LB 1066, § 142; Laws 2001, LB 541, § 9; Laws 2003, LB 161, § 7; Laws 2009, First Spec. Sess., LB3, § 101; Laws 2016, LB909, § 17.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

89-1,101 Violations; penalty.

Any person who violates any provision of the Weights and Measures Act or any order of the department after such order has become final or upon termination of any review proceeding, when the order has been sustained by a

court of law, shall be guilty of a Class III misdemeanor. Upon a subsequent conviction thereof, he or she shall be guilty of a Class I misdemeanor.

Source: Laws 1972, LB 1413, § 19; Laws 1974, LB 17, § 3; Laws 1977, LB 39, § 338; Laws 1987, LB 201, § 6; Laws 1991, LB 356, § 31.

89-1,101.01 Violations; costs of enforcement.

All actual costs associated with seizing any weighing and measuring device or commodity which is in violation of the Weights and Measures Act or the rules and regulations adopted and promulgated pursuant to the act, issuing and enforcing any stop-use, hold, or removal order for commercial weighing and measuring devices, issuing and enforcing any stop-sale, hold, or removal order for commodities, and stopping commercial vehicles shall be incurred by the owner of such commodity or weighing and measuring device. The department shall not be liable for any actual or incidental costs incurred by any person due to such departmental actions or in enforcing the act. The department shall be reimbursed by the owner for the actual cost incurred by the department in seizing any weighing and measuring device or commodity, issuing and enforcing any stop-use, hold, or removal order for commercial weighing and measuring devices, issuing and enforcing any stop-sale, hold, or removal order for commodities, and stopping commercial vehicles.

Source: Laws 1991, LB 356, § 32.

89-1,101.02 Records.

Every person who keeps, sells, or uses a commercial weighing and measuring device shall keep and make available for examination by the department for a period of three years at a minimum the following records:

- (1) All invoices generated from a sale from bulk;
- (2) Bills of lading, invoices, or other pertinent data relating to commodities bought or sold; and
- (3) Any other information that would verify accurate quantity determinations by weight, measure, or count.

Source: Laws 1991, LB 356, § 33.

89-1,102 Repealed. Laws 1991, LB 356, § 36.

89-1,102.01 Division of Weights and Measures; established.

There is hereby established a Division of Weights and Measures under the control of the department which shall be responsible for the enforcement of the Weights and Measures Act.

Source: Laws 1991, LB 356, § 35.

89-1,103 Act, how construed.

The Weights and Measures Act shall be so interpreted and construed as to effectuate the general purpose to make uniform the law of those states which have enacted corresponding provisions.

Source: Laws 1972, LB 1413, § 21; Laws 1991, LB 356, § 34.

(c) GRAIN MOISTURE MEASURING DEVICES

89-1,104 Grain moisture measuring devices; inspections; fee.

The Public Service Commission, grain warehouse department, shall enforce the provisions of sections 89-1,104 to 89-1,108. It shall make or cause to be made all inspections and may establish tolerances and specifications for grain moisture measuring devices similar to the tolerances and specifications recommended or used by the grain branch of the United States Department of Agriculture, which shall have for their object the establishment of more accurate grain moisture measuring in the State of Nebraska. The Public Service Commission may charge a fee to cover the cost of inspecting grain moisture measuring devices.

Source: Laws 1978, LB 636, § 1.

89-1,104.01 Moisture Testing Examination Fund; created; use; investment; State Treasurer; duties.

The fees charged pursuant to section 89-1,104 shall be remitted by the Public Service Commission to the State Treasurer. The State Treasurer shall credit such fees to the Moisture Testing Examination Fund, which fund is hereby created. The fund shall be appropriated to the Public Service Commission to be used to cover the costs associated with the grain moisture measuring devices program. The money in such fund may be used at any time by the commission. 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 366, § 66; Laws 1994, LB 1066, § 143; Laws 2003, LB 735, § 16.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

89-1,105 Grain moisture measuring devices; make comparative tests.

The supervisor of the grain warehouse department of the Public Service Commission, or his or her inspectors, shall inspect, make comparative tests of, and ascertain if correct, every grain moisture measuring device used or employed in this state by any proprietor or agent, lessee, or employee thereof in proving or ascertaining the moisture and test weight of grain offered for storage or sale, sold, or purchased or in the process of being purchased. Such inspector shall use as a standard for making such comparative tests a grain moisture measuring device meeting the tolerances and specifications established pursuant to section 89-1,104.

Source: Laws 1978, LB 636, § 2; Laws 2005, LB 52, § 7.

89-1,106 Grain moisture measuring devices; comparative tests; sealing or marking.

Whenever the supervisor of the grain warehouse department of the Public Service Commission, or his or her inspectors, compares grain moisture tests of the device being tested with the standard grain moisture measuring device and finds that they correspond or causes them to correspond with the standard, the supervisor, or his or her inspectors, shall seal or mark such grain moisture

measuring testing device with appropriate seals or works. Any such grain moisture measuring testing device which upon such inspection shall be found to be defective shall be sealed or marked with an appropriate seal indicating such device to be defective and the owner or user of such device shall be notified in writing on the date of such inspection of such defective condition by the supervisor of the grain warehouse department, or his or her inspectors.

Source: Laws 1978, LB 636, § 3.

89-1,107 Grain moisture measuring devices; use in buying and selling grain; approval; violations; penalty; exception.

Commencing September 1, 1979, any person who, by himself or by his agent or as agent of another person, shall use in buying or selling grain any grain moisture measuring device which has not been tested and approved for use by the supervisor of the grain warehouse department of the Public Service Commission or his or her inspectors shall be guilty of a Class IIIA misdemeanor, except that the use of a newly purchased grain moisture measuring device in the buying or selling of grain prior to regular inspection and approval shall not be considered a misdemeanor if the user of such device has given notice to the supervisor of the grain warehouse department of the Public Service Commission of the purchase and intended use of such new device. Such notice shall be given by either certified or registered mail not later than ten days prior to the date of such intended use.

Source: Laws 1978, LB 636, § 4.

89-1,108 Grain moisture measuring devices; sections; violations; penalty.

A person who violates sections 89-1,104 to 89-1,108 shall be guilty of a Class IIIA misdemeanor and, if a public employee, such person shall be subject to dismissal.

Source: Laws 1978, LB 636, § 5.

ARTICLE 2

NEBRASKA SUGAR BEET WEIGHING AND TESTING ACT

Section

- 89-201. Repealed. Laws 1976, LB 535, § 1.
- 89-202. Repealed. Laws 1976, LB 535, § 1.
- 89-203. Repealed. Laws 1976, LB 535, § 1.
- 89-204. Repealed. Laws 1976, LB 535, § 1.
- 89-205. Repealed. Laws 1976, LB 535, § 1.
- 89-206. Repealed. Laws 1976, LB 535, § 1.
- 89-207. Repealed. Laws 1976, LB 535, § 1.
- 89-208. Repealed. Laws 1976, LB 535, § 1.
- 89-209. Repealed. Laws 1976, LB 535, § 1.

89-201 Repealed. Laws 1976, LB 535, § 1.

89-202 Repealed. Laws 1976, LB 535, § 1.

89-203 Repealed. Laws 1976, LB 535, § 1.

89-204 Repealed. Laws 1976, LB 535, § 1.

89-205 Repealed. Laws 1976, LB 535, § 1.

§ 89-206

WEIGHTS AND MEASURES

89-206 Repealed. Laws 1976, LB 535, § 1.

89-207 Repealed. Laws 1976, LB 535, § 1.

89-208 Repealed. Laws 1976, LB 535, § 1.

89-209 Repealed. Laws 1976, LB 535, § 1.

CHAPTER 90

SPECIAL ACTS

Article.

1. State, General Provisions. 90-101 to 90-120.
2. Specific Conveyances. 90-201 to 90-280.
3. Capitol Environs. 90-301 to 90-309.
4. Specific Projects. 90-401 to 90-405.
5. Appropriations. 90-501 to 90-563.

ARTICLE 1

STATE, GENERAL PROVISIONS

Section

- 90-101. State name.
- 90-102. State banner; design; legend described; official state flag; when and where displayed.
- 90-103. State banner; use as advertisement or trademark, prohibited.
- 90-104. State banner; violations; penalty.
- 90-105. State symbol and slogan; adoption.
- 90-106. State symbol and slogan; use by state agencies; imprint on state stationery.
- 90-107. State bird; western meadowlark.
- 90-108. State gem; blue agate.
- 90-109. State fossil; mammoth.
- 90-110. State rock; prairie agate.
- 90-111. State song; Beautiful Nebraska.
- 90-112. State grass; little blue stem.
- 90-113. State tree; cottonwood.
- 90-114. State insect; honeybee.
- 90-115. Nebraska Educational Telecommunications Building in Lincoln; named the Terry M. Carpenter and Jack G. McBride Educational Telecommunications Building.
- 90-116. State soil; Holdrege series.
- 90-117. State mammal; whitetail deer.
- 90-118. Repealed. Laws 1999, LB 813, § 62.
- 90-119. Governor; designate official state items.
- 90-120. Repealed. Laws 2008, LB 195, § 1.

90-101 State name.

The State of Nebraska shall hereafter, in a popular sense, be known and referred to as the Cornhusker State.

Source: Laws 1945, c. 256, § 1, p. 796; R.R.S.1943, § 84-713.01.

90-102 State banner; design; legend described; official state flag; when and where displayed.

The banner of the State of Nebraska shall consist of a reproduction of the Great Seal of the State, charged on the center in gold and silver on a field of national blue. The banner shall be the official state flag of the State of Nebraska and may be displayed on such occasions, at such times, and under such conditions as the flag of the United States of America. The banner shall be displayed on or near the State Capitol, the Governor's Mansion, all court-houses, city or village halls, schoolhouses, and other public administrative

buildings in this state under or to the left of the flag of the United States of America.

Source: Laws 1925, c. 151, § 1, p. 387; C.S.1929, § 84-720; R.S.1943, § 84-714; Laws 1963, c. 305, § 2, p. 902; Laws 1965, c. 570, § 1, p. 1859; R.R.S.1943, § 84-714.

Cross References

Desecration of the flag, see section 28-928.

Great Seal of the State, see section 84-501.

Placing of banner on top of State Capitol Building when Legislature is in session, see section 50-116.

90-103 State banner; use as advertisement or trademark, prohibited.

The state banner, provided for in section 90-102, shall never be used as a business advertisement or trademark, either in its entirety or in a composite; and any insult to such banner is forbidden.

Source: Laws 1925, c. 151, § 3, p. 388; C.S.1929, § 84-722; R.S.1943, § 84-715.

90-104 State banner; violations; penalty.

Any person, firm or corporation who shall violate any of the provisions of section 90-103, shall be deemed guilty of a Class III misdemeanor.

Source: Laws 1925, c. 151, § 5, p. 388; C.S.1929, § 84-724; R.S.1943, § 84-716; Laws 1977, LB 39, § 339.

90-105 State symbol and slogan; adoption.

The following is hereby adopted as the official symbol and slogan for the State of Nebraska:



Source: Laws 1963, c. 533, § 1, p. 1678; R.R.S.1943, § 84-716.01.

90-106 State symbol and slogan; use by state agencies; imprint on state stationery.

The official slogan and official symbol, either separately or in conjunction with each other, shall be used by all agencies of the state whenever appropriate in the promotion of the state. They shall be imprinted on all state letterheads and the reverse side of all mailing envelopes as new supplies are acquired.

Source: Laws 1963, c. 533, § 3, p. 1678; R.R.S.1943, § 84-716.03.

90-107 State bird; western meadowlark.

The western meadowlark is hereby declared the state bird of Nebraska.

Source: Laws 1929, c. 139, § 1, p. 495; C.S.1929, § 84-725; R.S.1943, § 84-717.

90-108 State gem; blue agate.

The chalcedony stone, known as blue agate, is hereby declared the state gem stone of Nebraska.

Source: Laws 1967, c. 608, § 1, p. 2057; R.R.S.1943, § 84-725.

90-109 State fossil; mammoth.

The mammoth is hereby designated as the official state fossil.

Source: Laws 1967, c. 609, § 1, p. 2057; R.R.S.1943, § 84-726.

90-110 State rock; prairie agate.

The chalcedony stone, commonly known as prairie agate, is hereby declared the state rock of Nebraska.

Source: Laws 1967, c. 610, § 1, p. 2058; R.R.S.1943, § 84-727.

90-111 State song; Beautiful Nebraska.

The song Beautiful Nebraska with words by Jim Fras and Guy G. Miller and music by Jim Fras is hereby adopted as the Nebraska state song.

Source: Laws 1967, c. 613, § 1, p. 2060; R.R.S.1943, § 84-728; Laws 2008, LB728, § 1.

90-112 State grass; little blue stem.

Little blue stem, known as andropogon scoparius, is hereby declared the official state grass of Nebraska.

Source: Laws 1969, c. 829, § 1, p. 3151; R.R.S.1943, § 84-729.

90-113 State tree; cottonwood.

The cottonwood is hereby declared the state tree of Nebraska.

Source: Laws 1972, LB 1089, § 1; C.S.Supp.,1974, § 84-730.

90-114 State insect; honeybee.

The honeybee (*Apis mellifera*) is hereby adopted as the official state insect.

Source: Laws 1975, LB 15, § 1.

90-115 Nebraska Educational Telecommunications Building in Lincoln; named the Terry M. Carpenter and Jack G. McBride Educational Telecommunications Building.

The Nebraska Educational Telecommunications Building in Lincoln, Nebraska, shall be named and known as the Terry M. Carpenter and Jack G. McBride Educational Telecommunications Building.

Source: Laws 1978, LB 955, § 2; Laws 2011, LB122, § 1.

90-116 State soil; Holdrege series.

Soils of the Holdrege series, classified as Typic Argiustolls, fine-silty, mixed, mesic, is hereby adopted as the official state soil of Nebraska.

Source: Laws 1979, LB 475, § 1.

90-117 State mammal; whitetail deer.

The whitetail deer (*Odocoileus virginianus*) is hereby adopted as the official state mammal.

Source: Laws 1981, LB 27, § 1.

90-118 Repealed. Laws 1999, LB 813, § 62.**90-119 Governor; designate official state items.**

The Governor may designate official state items, including animals, plants, minerals, and other things. Legislative approval of any such designation is not required. Any designation made on or prior to September 13, 1997, is not affected by this section.

Source: Laws 1997, LB 106, § 1.

90-120 Repealed. Laws 2008, LB 195, § 1.**ARTICLE 2****SPECIFIC CONVEYANCES**

Section

- 90-201. Department of Health and Human Services; convey property to University of Nebraska at Kearney; revenue; restriction.
- 90-202. Norfolk Regional Center; Director of Administrative Services; duties; report.
- 90-203. Conveyance to Northeast Community College Area; donation of land.
- 90-204. Cession of lands to the United States.
- 90-205. Repealed. Laws 1987, LB 32, § 3.
- 90-206. Repealed. Laws 1987, LB 32, § 3.
- 90-207. Repealed. Laws 1987, LB 32, § 3.
- 90-208. Repealed. Laws 1987, LB 32, § 3.
- 90-209. Game and Parks Commission; acquire described property; powers and duties.
- 90-210. Repealed. Laws 1987, LB 32, § 3.
- 90-211. Repealed. Laws 1987, LB 32, § 3.
- 90-212. Repealed. Laws 1987, LB 32, § 3.
- 90-213. Game and Parks Commission; Cottonmill State Recreation Area; convey to city of Kearney and county of Buffalo; revert.
- 90-214. Game and Parks Commission; Stolley State Recreation Area; convey to city of Grand Island and county of Hall; revert.
- 90-215. Repealed. Laws 2010, LB 743, § 6.
- 90-216. Game and Parks Commission; Long Bridge State Special Use Area; convey to county of Merrick; revert.
- 90-217. Repealed. Laws 1987, LB 32, § 3.
- 90-218. Governor; convey state's reversionary interest in described property.
- 90-219. Department of Correctional Services; lease agreement with city of Kearney; term.
- 90-220. Game and Parks Commission; acceptance of certain Pauline M. Armstrong real estate; terms and conditions.
- 90-221. Repealed. Laws 1996, LB 1044, § 985.
- 90-222. Repealed. Laws 1996, LB 1044, § 985.
- 90-223. Governor; convey easement and property to city of Lincoln.
- 90-224. Adjutant General; convey easement to the city of York.

SPECIFIC CONVEYANCES

- Section
- 90-225. Commissioner of Labor; convey property to city of Omaha.
- 90-226. Repealed. Laws 1987, LB 32, § 3.
- 90-227. Adjutant General; convey easement to city of Lexington.
- 90-228. Department of Correctional Services; convey described property.
- 90-229. Repealed. Laws 1996, LB 1044, § 985.
- 90-230. Repealed. Laws 1996, LB 1044, § 985.
- 90-231. Repealed. Laws 1996, LB 1044, § 985.
- 90-232. Repealed. Laws 1996, LB 1044, § 985.
- 90-233. Repealed. Laws 1996, LB 1044, § 985.
- 90-234. Repealed. Laws 1996, LB 1044, § 985.
- 90-235. Repealed. Laws 1996, LB 1044, § 985.
- 90-236. Repealed. Laws 1996, LB 1044, § 985.
- 90-237. Repealed. Laws 1996, LB 1044, § 985.
- 90-238. Department of Transportation; acquire described property.
- 90-239. Governor; convey property to city of Lincoln.
- 90-240. State Board of Agriculture; convey easement.
- 90-241. Adjutant General; convey described property.
- 90-242. Department of Correctional Services; convey described property.
- 90-243. Department of Correctional Services; convey described property.
- 90-244. Repealed. Laws 2016, LB978, § 5.
- 90-245. Adjutant General; convey described easement.
- 90-246. Department of Correctional Services; convey described property.
- 90-247. Department of Correctional Services; sell described property.
- 90-248. Department of Correctional Services; sale of land; State Treasurer's Land Sales Distributive Fund; created; use; investment.
- 90-249. Repealed. Laws 1996, LB 1044, § 985.
- 90-250. Repealed. Laws 1996, LB 1044, § 985.
- 90-251. State Department of Education; sell described property; proceeds.
- 90-252. Department of Correctional Services; convey described property.
- 90-253. Department of Economic Development; convey described property; proceeds.
- 90-254. Department of Correctional Services; convey described property.
- 90-255. Department of Correctional Services; donation to county; damages paid by county.
- 90-256. Repealed. Laws 1996, LB 1044, § 985.
- 90-257. Repealed. Laws 1996, LB 1044, § 985.
- 90-258. Repealed. Laws 1996, LB 1044, § 985.
- 90-259. Repealed. Laws 1996, LB 1044, § 985.
- 90-260. Game and Parks Commission; convey described property.
- 90-261. Repealed. Laws 2000, LB 885, § 3.
- 90-262. Repealed. Laws 2000, LB 885, § 3.
- 90-263. Repealed. Laws 2000, LB 885, § 3.
- 90-264. Adjutant General; convey easement to the city of Wahoo.
- 90-265. Game and Parks Commission; convey described property.
- 90-266. Buffalo County; grant permanent easement.
- 90-267. Nebraska Army National Guard complex; sale of property authorized.
- 90-268. Proceeds; disposition.
- 90-269. Military Department Joint Operations Center project; transfer of funds.
- 90-270. Joint Operations Center Capital Construction Fund; created; use; investment.
- 90-271. Ferguson House; sale prohibited.
- 90-272. Game and Parks Commission; convey property to village of Arnold.
- 90-273. Game and Parks Commission; convey property to city of Atkinson.
- 90-274. Game and Parks Commission; convey property to village of Ayr.
- 90-275. Game and Parks Commission; convey property to county of Sherman.
- 90-276. Game and Parks Commission; convey property to village of Brownville.
- 90-277. Property conveyed to Brownville; management.
- 90-278. Game and Parks Commission; convey property to county of Chase.
- 90-279. Game and Parks Commission; convey property to Lower Loup Natural Resources District.
- 90-280. Property conveyed to Lower Loup Natural Resources District; operation and maintenance.

90-201 Department of Health and Human Services; convey property to University of Nebraska at Kearney; revenue; restriction.

The Department of Health and Human Services is authorized and directed to convey to the University of Nebraska at Kearney for academic and developmental purposes at the termination of the current lease of the real estate on February 28, 2006, the following described real estate located in Buffalo County, Nebraska:

A tract of land being part of Government Lot 1, part of Government Lot 2, part of Government Lot 3, part of Government Lot 4, part of the South half of the Northwest Quarter, part of the Northwest Quarter of the Southwest Quarter, part of the South half of the Northeast Quarter and part of the North half of the Southeast Quarter of Section 4, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, all more particularly described as follows: Referring to the Southeast Corner of the Northeast Quarter of said Section 4 and assuming the South line of said Northeast Quarter as bearing N 89° 59' 10'' W and all bearings contained herein are relative thereto; thence N 89° 59' 10'' W and on the South line of the Northeast Quarter of said section a distance of 660.0 feet to the ACTUAL PLACE OF BEGINNING; thence S 01° 37' 34'' W a distance of 18.65 feet to a point on the North property line of an existing road; thence N 89° 29' 57'' W and on the aforesaid North property line a distance of 3372.3 feet to the point of curvature; thence on a 1332.72 foot radius curve to the left forming a central angle of 13° 10' a distance of 306.26 feet to the point of tangency; thence tangent S 77° 20' 03'' W a distance of 224.85 feet to the point of curvature; thence on a 687.31 foot radius curve to the right forming a central angle of 07° 31' 16'' a distance of 90.32 feet; thence leaving said curve N 01° 39' E a distance of 85.39 feet to a point on the South line of the Northwest Quarter of said Section 4; thence N 01° 31' 22'' E a distance of 310.2 feet to the Northeast corner of a tract of land known as Reservation No. 2 as located in State Application Resurvey No. 154 and filed in the Buffalo County Surveyors Office; thence N 89° 57' 11'' W and on the North line of said Reservation No. 2 tract a distance of 243.86 feet; thence N 01° 43' 30'' W a distance of 1501.2 feet; thence S 85° 38' E a distance of 681.66 feet to the Southeast corner of a tract of land known as Reservation No. 1, thence N 21° 02' W and on the easterly line of said Reservation No. 1 a distance of 535.07 feet; thence S 80° 22' 31'' E a distance of 365.02 feet; thence S 86° 03' 12'' E a distance of 351.11 feet; thence N 86° 44' 38'' E a distance of 359.33 feet; thence N 79° 19' 21'' E a distance of 443.41 feet; thence N 77° 14' 05'' E a distance of 660.05 feet; thence N 83° 05' E a distance of 195.54 feet; thence N 89° 51' 32'' E a distance of 1503.54 feet to a point, said point being 660.0 feet West of the East line of said Section 4; thence S 01° 37' 34'' W a distance of 2450.53 feet to the place of beginning. Containing 221.3 acres, more or less.

A tract of land being part of the North half of the South half of Section 4, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Referring to the Northeast corner of the Southeast Quarter of Section 4 and assuming the North line of said Southeast Quarter as bearing N 89° 59' 10'' W and all bearings contained herein are relative thereto; thence N 89° 59' 10'' W and on the North line of said Southeast Quarter a distance of 660.0 feet; thence S 01° 37' 34'' W a distance of 84.67 feet to the ACTUAL PLACE OF BEGINNING, said place of beginning being on the South property line of an existing road; thence N 89° 29' 57'' W and on the

aforesaid South property line a distance of 3369.9 feet to the point of curvature; thence on a 1266.72 foot radius curve to the left forming a central angle of 13° 10' a distance of 291.1 feet to the point of tangency; thence tangent S 77° 20' 03" W a distance of 224.85 feet to the point of curvature; thence on a 753.31 foot radius curve to the right forming a central angle of 12° 40' 30" a distance of 166.65 feet to the point of tangency; thence tangent N 89° 59' 27" W a distance of 126.4 feet to the point of curvature; thence on a 1673.61 foot radius curve to the right forming a central angle of 05° 35' a distance of 163.09 feet to the point of tangency; thence tangent N 84° 24' 27" W a distance of 158.4 feet to the point of curvature; thence on a 1232.18 foot radius curve to the right forming a central angle of 06° 21' 40" a distance of 136.8 feet to the point of intersection of the West line of the Southwest Quarter of said Section 4; thence leaving said curve S 01° 41' W and on the West line of said Southwest Quarter a distance of 501.45 feet to a point on the North property line of the Union Pacific Railroad; thence N 85° 39' 06" E and on the aforesaid North property line a distance of 188.78 feet to the point of curvature; thence on a 11017.1 foot radius curve to the left forming a central angle of 01° 29' a distance of 285.22 feet to the point of tangency; thence tangent N 84° 10' 06" E a distance of 4185.03 feet to a point, said point being 660.0 feet West of the East line of said Section 4; thence N 01° 37' 34" E a distance of 61.84 feet to the place of beginning. Containing 31.8 acres, more or less, of which 0.4 acres, more or less, are presently being used for road purposes on the West side.

If the University of Nebraska at Kearney sells any part of the real estate before development of the real estate, the funds received shall be remitted to the Department of Health and Human Services. Any continuing agriculture-related net revenue from the real estate conveyed to the University of Nebraska at Kearney under this section shall be remitted to the Department of Health and Human Services for a period of ten years after conveyance.

Source: Laws 2005, LB 668, § 1.

90-202 Norfolk Regional Center; Director of Administrative Services; duties; report.

Notwithstanding sections 72-811 to 72-818 or any other provision of law, the Director of Administrative Services shall cause a survey of the property which comprises the Norfolk Regional Center to be done and, in consultation with the Department of Health and Human Services, shall determine what portion is not needed for state purposes. Pursuant to such survey and determination, the Director of Administrative Services shall submit a report to the Legislature and the Governor and request authorization to give the Northeast Community College Area the right of first refusal to purchase the portion of property not needed for state purposes at its appraised value as determined under subsection (3) of section 72-815 for the purpose of development of the Northeast Community College Technology Park. The report submitted to the Legislature shall be submitted electronically. Approval of the Governor and the Legislature or, if the Legislature is not in session, the Executive Board of the Legislative Council shall be required to give such right of first refusal to the Northeast Community College Area.

Source: Laws 2015, LB56, § 1.

90-203 Conveyance to Northeast Community College Area; donation of land.

(1) For purposes of this section, qualified property means the 43.55 acres that were deemed to be not needed for state purposes pursuant to section 90-202 and were deemed to be excess land by the Vacant Building and Excess Land Committee.

(2) Notwithstanding sections 72-811 to 72-818 or any other provision of law, the Director of Administrative Services shall, within thirty days after April 28, 2017, submit a request to the Legislature and the Governor asking for authorization to convey the qualified property to the Northeast Community College Area as a donation so that the qualified property may be used for the purpose of development of the Northeast Community College Technology Park.

(3) Approval of the Governor and the Legislature or, if the Legislature is not in session, the Executive Board of the Legislative Council shall be required to donate the qualified property to the Northeast Community College Area.

(4) If the Northeast Community College Area sells the qualified property within ten years after it is donated pursuant to this section, all proceeds of the sale shall be remitted to the State Treasurer for credit to the General Fund.

Source: Laws 2017, LB376, § 1.

90-204 Cession of lands to the United States.

(1) The State of Nebraska shall cede all criminal and civil jurisdiction over and within the lands described in subsection (4) of this section to the United States.

(2) The jurisdiction ceded by subsection (1) of this section shall be vested upon acceptance by the United States by and through its appropriate officials.

(3) The Governor is hereby authorized and empowered to execute all proper conveyances necessary to grant the cession provided in this section upon request of the United States by its appropriate officials.

(4) This section applies to the following described real estate located in Sarpy County, Nebraska:

(a) Tract number 58: A tract of land situated in the southwest quarter of section 35, township 14 north, range 13 east of the sixth principal meridian, Sarpy County, Nebraska, the boundary of which is described as follows: Beginning at a point on the south line of said section 35, said point being 486.75 feet east of the southwest corner of said section 35, thence north 275.9 feet, thence east 211.2 feet, thence south 66 feet, thence west 2.48 feet, thence south 209.9 feet to the south line of said section 35, thence west along the south line of said section 35 a distance of 208.72 feet to the point of beginning. The tract of land herein described contains 1.32 acres, more or less;

(b) Tract number 240: All that portion of The Burlington Northern and Santa Fe Railway Company's (formerly Chicago, Burlington & Quincy Railroad Company) Pappio to Gilmore Jct., Nebraska Branch Line right-of-way, now discontinued, varying in width on each side of said Railway Company's Main Track centerline as originally located and constructed upon, over, and across the southwest quarter of the northwest quarter, the north half of the northwest quarter of the southwest quarter, the northeast quarter of the southwest quarter, and the north half of the southeast quarter (later platted as a part of Palmtag's Subdivision) section 11, township 13 north, range 13 east of the sixth principal meridian, Sarpy County, Nebraska, extending from Station 185 + 38 (MP 4.94) on the westerly right-of-way line of an existing public road to Station

151 + 04 on the easterly right-of-way line of Highway 75 as shown in quit claim deed filed January 11, 1990, instrument number 90-00655 and being more particularly described as follows: Commencing at the west quarter corner of said section 11; thence north 02 degrees, 38 minutes, 08 seconds west along the west line of said section 11, a distance of 899.52 feet; thence northeasterly along the existing easterly right-of-way line of said Highway 75, deflecting 59 degrees, 24 minutes, 24 seconds right, 49.54 feet; thence southeasterly along said existing easterly right-of-way line of Highway 75, along a curve to the left having a radius of 1,659.93 feet, deflection to the initial tangent being 90 degrees, 00 minutes, 00 seconds right, subtending a central angle of 15 degrees, 16 minutes, 17 seconds, for a distance of 442.43 feet; thence southwesterly along said existing easterly right-of-way line of Highway 75, deflecting 90 degrees, 00 minutes, 00 seconds left, 166.00 feet to Offutt Boundary Marker 88-20; thence southeasterly along said existing easterly right-of-way line of Highway 75, along a curve to the left, having a radius of 1,825.93 feet, deflection to the initial tangent being 90 degrees, 00 minutes, 00 seconds left, subtending a central angle of 00 degrees, 30 minutes, 23 seconds, for a distance of 16.14 feet; thence southerly along said existing easterly right-of-way line of Highway 75, along a curve to the left having a radius of 3,164.04 feet, deflection to the initial tangent being 62 degrees, 36 minutes, 54 seconds right, subtending a central angle of 02 degrees, 32 minutes, 39 seconds, 140.49 feet to the northeasterly right-of-way line of the Union Pacific Railroad (formerly Missouri Pacific Railroad) and being the point of beginning; thence northerly along the last described course, 140.49 feet to the northerly right-of-way line of said abandoned Burlington Northern and Santa Fe Railway; thence southeasterly along said northerly right-of-way line of the abandoned railroad, along a curve to the left having a radius of 1,859.17 feet for an arc length of 903.19 feet, more or less, to the north line of said north half of the northwest quarter of the southwest quarter (Offutt Boundary Marker 88-19); thence north 87 degrees, 40 minutes, 01 seconds east along said northerly right-of-way line and along said north line of the north half of the northwest quarter of the southwest quarter, a distance of 276.79 feet, more or less, to the northeast corner thereof (Offutt Boundary Marker 88-18); thence south 05 degrees, 27 minutes, 27 seconds west along said northerly right-of-way line and along the east line of said north half of the northwest quarter of the southwest quarter, a distance of 58.57 feet, more or less, to Offutt Boundary Marker 88-17; thence south 84 degrees, 32 minutes, 33 seconds east along said northerly right-of-way line, 1,818.10 feet to Offutt Boundary Marker 88-16; thence north 05 degrees, 27 minutes, 27 seconds east along said northerly right-of-way line, 25.00 feet to Offutt Boundary Marker 88-15; thence south 84 degrees, 32 minutes, 33 seconds east along said northerly right-of-way line, 181.80 feet to Offutt Boundary Marker 88-14; thence southeasterly along said northerly right-of-way line along a curve to the right having a radius of 1,712.04 feet for an arc length of 389.57 feet (the chord bears south 78 degrees, 01 minutes, 26 seconds east, 388.73 feet) to the westerly right-of-way line of an existing county road; thence south 18 degrees, 29 minutes, 42 seconds west along said westerly right-of-way line, 75.00 feet to Station 185 + 38 (M.P. 4.94) on the centerline of said abandoned railroad; thence continuing south 18 degrees, 29 minutes, 42 seconds west along said westerly right-of-way line, 75.00 feet to the southerly right-of-way line of said abandoned railroad; thence northwesterly along said southerly right-of-way line along a curve to the left having a radius of 1,562.04 feet for an arc length of 357.28 feet, more or less, to a point, said point being 75.00 feet southwesterly of

and at right angles to said centerline at Station 181 + 96; thence north 84 degrees, 32 minutes, 33 seconds west along said southerly right-of-way line to the intersection with the centerline of the old channel (about year 1900) of Papillion Creek; thence southeasterly along said centerline of the old channel and being the southerly right-of-way line of the said abandoned railroad to a point 250.00 feet southerly of, measured at right angles to said centerline of the abandoned railroad; thence north 84 degrees, 32 minutes, 33 seconds west along said southerly right-of-way line, 1,880.00 feet, more or less, to a point, said point being 250.00 feet southwesterly of and at right angles to said centerline of the abandoned railroad at Station 162 + 26; thence northwesterly along a curve to the right having a radius of 2,159.17 feet for an arc length of 566.00 feet, more or less, to the intersection of said southerly right-of-way line with said northeasterly right-of-way line of Union Pacific Railroad (formerly the Missouri Pacific Railroad); thence northwesterly along said northeasterly right-of-way line to the point of beginning;

(c) Tract number 227: A tract of land situated in the south half of section 35, township 14 north, range 13 east of the sixth principal meridian, Sarpy County, Nebraska, more particularly described as follows: Beginning at the point where the easterly right-of-way line of State Highway 73-75 intersects the south line of said section 35; thence north along said easterly right-of-way line of State Highway 73-75, a distance of 610.00 feet; thence southeasterly a distance of 2,365.00 feet to a point on said south line of section 35, said point being 2,285.00 feet easterly from said point of intersection of said south line with said easterly right-of-way line of State Highway 73-75 and also being a point on the northeasterly right-of-way line of Nelson Drive, state-owned, hard-surfaced four-lane highway; thence westerly along aforesaid south line, section 35 to the southwesterly right-of-way line of said Nelson Drive; thence northwesterly, along aforesaid westerly right-of-way line, a distance of 640.00 feet; thence southwesterly, at right angles, to the left a distance of 60.00 feet; thence southeasterly, a distance of 360.00 feet, to a point on said south line, said point being 300.00 feet westerly from said southwesterly right-of-way line of Nelson Drive; thence westerly, along said south line, to the point of beginning. Excepting therefrom, a tract of land situated in said south half of section 35, more particularly described as follows: Beginning at a point on the south line of said section 35, said point being 486.75 feet east of the southwest corner thereof; thence north 275.9 feet; thence east 211.2 feet; thence south 66.00 feet; thence west 2.48 feet; thence south 209.9 feet to said south line; thence west along said south line a distance of 208.72 feet to the point of beginning. The tract of land herein described contains 13.60 acres, more or less;

(d) Tract number 228: A tract of land, situated in the south half of section 35, township 14 north, range 13 east of the sixth principal meridian, Sarpy County, Nebraska, more particularly described as follows: Commencing at the southwest corner of said section 35, thence easterly, along the south line of said south half, a distance of 523.00 feet to the easterly right-of-way line of the U.S. Highway 73 and 75; thence northerly, along said easterly right-of-way of said highway, a distance of 610.00 feet to the point of beginning of said tract of land to be described; thence southeasterly, a distance of 2,365.00 feet to a point on said line of south half, said point being 2,285.00 feet easterly from said point of intersection of said south line with said easterly right-of-way line of state highway 73-75, and also being a point on the northerly right-of-way line of Nelson Drive, state-owned, hard-surfaced four-lane highway; thence northwest-

erly, along aforesaid northerly right-of-way line of said Nelson Drive, to the centerline of existing drainage ditch; thence southwesterly, along the centerline of aforesaid drainage ditch, to said easterly right-of-way line of State Highway 73 and 75; thence southerly along aforesaid easterly right-of-way line of State Highway 73 and 75, to the point of beginning. The tract of land herein described contains 4.30 acres, more or less; and

(e) Tract number 229: A tract of land situated in tax lot 11a and tax lot 11b, which are a part of the south half of section 35, township 14 north, range 13 east of the sixth principal meridian, Sarpy County, Nebraska, more particularly described as follows: Commencing at the south quarter corner of said section 35; which is also the southwest corner of said tax lot 11b; thence easterly along the south line of said section 35, which also is the south line of said tax lot 11b, a distance of 445.50 feet to the southeast corner of said tax lot 11b which is also the point of beginning of said tract of land to be described; thence northerly along the east line of said tax lot 11b, a distance of 1,081.40 feet; thence westerly at right angles to the left a distance of 170.00 feet; thence southerly at right angles to the left a distance of 33.00 feet; thence westerly at right angles to the right a distance of 590.00 feet; thence northerly at right angles to the right to a point said point being more particularly described as follows: Commencing at said southwest corner of said tax lot 11b; thence northerly along the west line of said tax lot 11b, which is also the north-south centerline of said section 35, a distance of 1,083.81 feet; thence westerly at right angles to the left a distance of 315.40 feet to said point being described; thence north 76 degrees, 01 minutes, 00 seconds west a distance of 258.17 feet; thence north 24 degrees, 50 minutes, 00 seconds east a distance of 11.95 feet; thence north 65 degrees, 10 minutes, 00 seconds west a distance of 235.27 feet; thence north a distance of 39.16 feet to a point on the easterly line of Martinview Addition in said Sarpy County, as platted and recorded; thence southwesterly along a curve to the right having a radius of 284.50 feet, for an arc length of 446.90 feet, said curve being the southeasterly line of Martinview Addition; thence south 89 degrees, 46 minutes, 05 seconds west along the southerly line of said Martinview Addition a distance of 161.04 feet; thence south 89 degrees, 41 minutes, 55 seconds west along aforesaid southerly line of Martinview Addition, a distance of 391.56 feet; thence south 83 degrees, 34 minutes, 10 seconds west a distance of 134.92 feet; thence south 72 degrees, 28 minutes, 10 seconds west a distance of 128.74 feet; thence south 82 degrees, 39 minutes, 10 seconds west to the northeasterly right-of-way line of state-owned four-lane highway, known as Nelson Drive; thence southeasterly along the aforesaid northeasterly right-of-way line of Nelson Drive; to a point on said south line of tax lot 11b; thence easterly along said south line a distance of 282.50 feet to the point of beginning. The tract of land herein described contains 40.51 acres, more or less.

Source: Laws 2019, LB214, § 1.

90-205 Repealed. Laws 1987, LB 32, § 3.

90-206 Repealed. Laws 1987, LB 32, § 3.

90-207 Repealed. Laws 1987, LB 32, § 3.

90-208 Repealed. Laws 1987, LB 32, § 3.

90-209 Game and Parks Commission; acquire described property; powers and duties.

The Game and Parks Commission is hereby authorized to acquire, using funds received from the federal Land and Water Conservation Fund, other applicable federal-aid funds, and donations or bequests, the following described property, all in Sarpy County:

The northeast quarter and the northwest quarter of the northwest quarter of section 19, township 14 north, range 14 east, the north half and the north half of the south half of section 20, township 14 north, range 14 east, and the southwest quarter of the southwest quarter and the northeast quarter of the southwest quarter of section 18, township 14 north, range 14 east.

The Game and Parks Commission may enter into agreements or leases with political subdivisions or nonprofit corporations for the operation and development of the property for recreational and educational purposes, but the commission shall be responsible for the general administration and continued maintenance of such property and may accept gifts, grants, and bequests for such purposes.

Source: Laws 1975, LB 507, § 1.

90-210 Repealed. Laws 1987, LB 32, § 3.

90-211 Repealed. Laws 1987, LB 32, § 3.

90-212 Repealed. Laws 1987, LB 32, § 3.

90-213 Game and Parks Commission; Cottonmill State Recreation Area; convey to city of Kearney and county of Buffalo; revert.

The Game and Parks Commission is authorized and directed to convey to the city of Kearney and to the county of Buffalo, such city and county acting jointly, or to either the city of Kearney or to the county of Buffalo, acting separately, for public park purposes the following described real estate now known as Cottonmill State Recreation Area, situated in the county of Buffalo, in the State of Nebraska, to wit: Part of the south half of section 32, township 9, range 16, west of the sixth principal meridian, more fully described as follows: Beginning at the southeast corner of section 32, and running thence north along the east line of section 32, a distance of six hundred eighty-two feet, to the point of beginning; running thence west sixty-two degrees ten minutes south for a distance of seven hundred twenty-seven and four-tenths feet, thence bearing right seventy-eight degrees forty-one minutes for a distance of one thousand one hundred ninety-two feet, thence bearing left eighty-three degrees fifty minutes for a distance of three hundred eighty-eight and one-tenth feet, thence bearing right eighty-two degrees thirty-five minutes for a distance of five hundred eighty-two and one-tenth feet, thence bearing right nine degrees forty-one minutes for a distance of three hundred two and seven-tenths feet, thence bearing left twenty-five degrees forty-seven minutes for a distance of four hundred eighty-six and one-tenth feet, thence bearing right thirty-three degrees thirty-nine minutes for a distance of six hundred seventy-eight and nine-tenths feet, to a point on the east and west half section line of section 32, thence east along the east and west half section line to the northeast corner of the southeast quarter of section 32, thence south along the east line of section 32, to the point of beginning; subject, however, to the rights of the Kearney Water and Electric

Power Company, in and to and over and across the premises described for canal and flowage purposes, more particularly set forth in a decree of the district court of Buffalo County, Nebraska, entered on March 22, 1918, a case therein indexed as the Kearney Water and Electric Power Company, plaintiff, vs. Zada M. Lancaster, et al, defendants; *Provided*, that should the city of Kearney and the county of Buffalo, such city and county acting jointly or separately, cease to operate the lands conveyed as a public park and recreation area, title to said lands shall revert to the Game and Parks Commission.

Source: Laws 1973, LB 163, § 1; C.S.Supp.,1974, § 81-815.46.

90-214 Game and Parks Commission; Stolley State Recreation Area; convey to city of Grand Island and county of Hall; reverter.

The Game and Parks Commission is authorized and directed to convey to the city of Grand Island and to the county of Hall, such city and county acting jointly, or to either the city of Grand Island or the county of Hall, acting separately, for public park purposes the following described real estate now known as Stolley State Recreation Area situated in the county of Hall, in the State of Nebraska, to wit: Commencing at a point on the north line of section 28, township 11 north, range 9 west of the sixth principal meridian, five hundred forty-four and seven-tenths feet east of the northwest corner of said section 28, and running thence west along the north line of said section 28 and section 29, in the same town and range, one thousand eight hundred seventy and seven-tenths feet; thence south one thousand twelve and five-tenths feet; thence east, parallel with the north line of said sections 28 and 29, one thousand eight hundred thirty-four and five-tenths feet; thence north nine hundred twelve and three-tenths feet to a stake, thence northeasterly sixty-three and two-tenths feet to a stake; thence north forty-three and eight-tenths feet to the place of beginning, and containing forty-two and eighty-three hundredths acres, a little more or less; *Provided*, that should the city of Grand Island and the county of Hall, such city and county acting jointly or separately, cease to operate the lands conveyed as a public park and recreation area, title to said lands shall revert to the Game and Parks Commission.

Source: Laws 1973, LB 163, § 2; C.S.Supp.,1974, § 81-815.47.

90-215 Repealed. Laws 2010, LB 743, § 6.

90-216 Game and Parks Commission; Long Bridge State Special Use Area; convey to county of Merrick; reverter.

The Game and Parks Commission is authorized and directed to convey to the county of Merrick for public park purposes the following described real estate now known as Long Bridge State Special Use Area, situated in the county of Merrick, in the State of Nebraska, to wit: A part of the east one thousand eight hundred thirty-nine and forty-two hundredths feet of fractional section 30 in township 12 north, range 7 west of the sixth principal meridian, described as follows: Beginning at the northeast corner of said section 30, thence south forty-four degrees fifty minutes west one hundred seventy-seven and nine-tenths feet, thence south twenty-five degrees thirty-three minutes west one hundred sixty-nine and five-tenths feet, thence thirty-two degrees twenty minutes west one hundred ninety-three and zero-tenths feet, thence south forty-two degrees six minutes west one hundred ninety-three and three-tenths feet, thence south thirty-two degrees thirty-two minutes west three hundred eighteen and two-

tenths feet, thence south fifty-nine degrees nine minutes west four hundred fifty-eight and five-tenths feet, thence south thirty-two degrees twelve minutes west five hundred forty-three and zero-tenths feet, thence south forty degrees thirty-eight minutes west two hundred eleven and three-tenths feet, thence south fifty-one degrees zero minutes west three hundred eleven and zero-tenths feet, thence south forty degrees twenty-one minutes west two hundred sixty-nine and five-tenths feet to the west line of said tract, thence south one thousand one hundred ninety feet to the original south bank of Grand Island according to the original government survey, thence northeasterly along said original south bank of Grand Island according to the original government survey to the location of the original meander corner on the east line of said section 30, thence north one hundred twenty-one and four-tenths feet to the place of beginning, together with all accretion land in connection therewith and pertaining thereto, containing one hundred forty-six acres, more or less; *Provided*, that should the county of Merrick cease to operate the lands conveyed as a public park and recreation area, title to said lands shall revert to the Game and Parks Commission.

Source: Laws 1973, LB 163, § 4; C.S.Supp.,1974, § 81-815.49.

90-217 Repealed. Laws 1987, LB 32, § 3.

90-218 Governor; convey state's reversionary interest in described property.

The Governor is hereby authorized to enter into an agreement to sell and convey the state's reversionary interest in the public way legally described as follows: Calvert Street from the east line of 13th Street to the west line of 14th Street, abutted by block 23, Fairmont Addition, and abutted by the northeast quarter of section 2, township 9 North, range 6 East, in the city of Lincoln, Lancaster County, Nebraska.

Source: Laws 1976, LB 999, § 1.

90-219 Department of Correctional Services; lease agreement with city of Kearney; term.

The Legislature hereby approves and recommends to the Governor that the Department of Correctional Services enter into a lease agreement with the city of Kearney relating to lands owned by the department at a fixed annual cash rental for a term of not more than ninety-nine years. Such land is described as follows:

The northeast quarter of section 33, township 9 north, range 16 west of the sixth principal meridian in Buffalo County, Nebraska, more particularly described as follows: Commencing at a point two hundred fifty-five feet south of the northeast corner of section 33, thence west three hundred forty feet; thence south three hundred feet parallel to the east section line; thence east three hundred forty feet; thence north three hundred feet along the east section line to the point of beginning, containing two and thirty-four hundredths acres, more or less.

Source: Laws 1977, LB 80, § 1.

90-220 Game and Parks Commission; acceptance of certain Pauline M. Armstrong real estate; terms and conditions.

(1) The Game and Parks Commission shall enter into an agreement to accept as a gift to the State of Nebraska from Pauline M. Armstrong, personally, from

the trustee of the Pauline M. Armstrong Trust, or from the trustee of the Henry J. and Pauline M. Armstrong Charitable Trust, the following described real estate: The east half of the northwest quarter and the northeast quarter of section 26, township 12 north, range 8 east of the 6th principal meridian, Lancaster County, Nebraska.

(2) In consideration of such conveyance the commission agrees, to the extent that such terms and conditions are feasible, to the following terms and conditions:

(a) A portion of such conveyance shall be used as a game preserve for the production and maintenance of wild game and other wildlife; and

(b) The property conveyed shall be developed in a manner similar to other state parks and recreation areas, including but not limited to the provision of access roads, parking areas, shelters, and facilities. The property conveyed may be developed in a manner consistent with the landscape plans developed by the Game and Parks Commission for such property prior to August 26, 1983.

Source: Laws 1978, LB 885, § 1; Laws 1983, LB 75, § 1.

90-221 Repealed. Laws 1996, LB 1044, § 985.

90-222 Repealed. Laws 1996, LB 1044, § 985.

90-223 Governor; convey easement and property to city of Lincoln.

(1) The Governor is authorized by the Legislature to convey to the city of Lincoln, Nebraska, a permanent easement for the construction, reconstruction, inspection, maintenance, operation, and replacement of a water main over and through certain real property, situated in the city of Lincoln, Lancaster County, Nebraska, described as follows:

(a) The south fifteen feet of Lot 7, Block 15, Riverside Addition;

(b) The south fifteen feet of the north-south alley vacated by Ordinance Number 7620 of the city of Lincoln abutting Lots 6 and 7, Block 15, Riverside Addition;

(c) The south fifteen feet of that portion of Lot C, Riverside Addition, lying north of the north line of Military Road;

(d) The north fifteen feet of the west fifteen feet of that portion of Lot C, Riverside Addition, lying south of the south line of Military Road;

(e) The north fifteen feet of that portion of 12th Street vacated by Ordinance Number 1886 of the city of Lincoln lying south of the south line of Military Road; and

(f) The north fifteen feet of the east four hundred fifty-two feet of that portion of Lot E, Riverside Addition, lying south of the south line of Military Road.

(2) The Governor is authorized by the Legislature to convey to the city of Lincoln, Nebraska, ownership of the water main and appurtenances thereto owned by the State of Nebraska located beneath such property and also located in public right-of-way known as Military Road and 14th Street within the city of Lincoln, Lancaster County, Nebraska.

Source: Laws 1980, LB 602, § 1.

90-224 Adjutant General; convey easement to the city of York.

(1) The Adjutant General is authorized by the Legislature to convey to the city of York, Nebraska, a permanent easement for the construction, reconstruction, inspection, maintenance, operation, and replacement of a sanitary sewer pipe for the passage of sewage water, together with all appurtenances, structures, and other applicable equipment pertaining to any sewer in, through, over, and under certain real estate legally described as follows:

The west two hundred fifty feet, more or less, of the east five hundred ten and one-half feet, more or less, of the north half of the southeast quarter of the northeast quarter of section 6, township 10 north, range 2 west of the 6th principal meridian, a part of the city of York, York County, Nebraska (State of Nebraska Armory site).

(2) The permanent easement for the sewage pipe conveyed in this section shall be ten feet in width and five feet on either side of the centerline, described as follows:

Beginning at a point on the north right-of-way line of sixth street and such point being seven and eighty-seven hundredths feet east of the southwest corner of the above described tract of land; thence in a northeasterly direction using a deflection angle to the left of twenty-eight degrees twenty minutes zero seconds from the northerly right-of-way line of sixth street a distance of six and ninety-seven hundredths feet to a point; thence northerly along a line which has a deflection angle to the left of sixty-one degrees forty minutes zero seconds from the last described course a distance of one hundred forty-five feet to a point; thence in a northwesterly direction along a line which has a deflection angle to the left of nineteen degrees seventeen minutes twenty-four seconds from the last described course a distance of forty-two and thirty-eight hundredths feet to a point on the westerly property line of such tract and such point being one hundred eighty-eight and thirty-one hundredths feet north of the southwest corner of such tract.

Source: Laws 1980, LB 602, § 2.

90-225 Commissioner of Labor; convey property to city of Omaha.

The Commissioner of Labor is hereby authorized and empowered to sell and convey, after June 30, 1981, the following described property: The north sixty-six feet of lots two and three, also described as the north one-half of lots two and three, and the north twenty-five feet of the south one-half of lots two and three, all in block two, Kountze and Ruth's addition to the city of Omaha, Douglas County, Nebraska.

Source: Laws 1980, LB 914, § 1.

90-226 Repealed. Laws 1987, LB 32, § 3.

90-227 Adjutant General; convey easement to city of Lexington.

The Adjutant General is authorized by the Legislature to convey to the city of Lexington, Nebraska:

(1) A permanent easement for the construction, reconstruction, inspection, maintenance, operation, and replacement of a sanitary sewer pipe for the passage of sewer water, together with all appurtenances, structures, and other applicable equipment pertaining to any sewer in, through, over, and under certain real estate known as the National Guard Armory property and legally described as follows:

Beginning at the northwest corner of lot three, Bowen's first addition to the city of Lexington, Dawson County, Nebraska; then south along the west line of lot three, twenty-one feet to the true point of beginning; then east, five hundred fifteen and nine-tenths feet; then south and along the east line of lot three, sixteen feet; then west, five hundred fifteen and nine-tenths feet; and then north and along the west line of lot three, sixteen feet to the point of beginning; and

(2) A permanent easement for the construction, reconstruction, inspection, maintenance, operation, and replacement of electrical transmission line together with all appurtenances, structures, and other applicable equipment pertaining to such electrical transmission in, through, over, and under certain real estate known as the National Guard Armory property and legally described as follows:

The east forty feet of the north one hundred thirty-five feet of the south one hundred fifty-five feet of lot three, Bowen's first addition to the city of Lexington, Dawson County, Nebraska.

Source: Laws 1983, LB 116, § 1.

90-228 Department of Correctional Services; convey described property.

The Department of Correctional Services is hereby authorized to sell and convey by quitclaim deed a tract of land located in the northwest quarter of the southwest quarter of section four, township eight north, range sixteen west of the sixth principal meridian, Buffalo County, Nebraska, more particularly described as follows: Referring to the northwest corner of said southwest quarter; thence easterly on the north line of said southwest quarter a distance of two hundred sixty-four feet to the actual place of beginning; thence continuing easterly on the aforesaid north line a distance of three hundred eighty-eight and eighty-eight hundredths feet to a four-inch iron pipe; thence southerly a distance of eighty-five and thirty-nine hundredths feet to a point on the north line of the existing public road; thence westerly on a six hundred eighty-seven and thirty-one hundredths radius curve and on the aforesaid north line a distance of sixty-two and two hundredths feet to the point of tangency, said point being right eighty-five degrees fifty minutes fifty-three seconds from the east line of said tract and a chord distance of sixty-two feet from the last described point; thence tangent a distance of one hundred thirty-eight and four-tenths feet to the point of curvature; thence on a one thousand six hundred seven and sixty-one hundredths foot radius curve to the right forming a central angle of five degrees thirty-five minutes zero seconds a distance of one hundred fifty-six and sixty-six hundredths feet to the point of tangency; thence tangent a distance of thirty-two and twelve hundredths feet to a point, said point being two hundred sixty-four feet east of the west line of said southwest quarter; thence northerly and parallel to the aforesaid west line a distance of seventy-seven and eighty-seven hundredths feet to the place of beginning; containing seventy-seven hundredths acres, more or less.

Source: Laws 1983, LB 522, § 1.

90-229 Repealed. Laws 1996, LB 1044, § 985.

90-230 Repealed. Laws 1996, LB 1044, § 985.

90-231 Repealed. Laws 1996, LB 1044, § 985.

90-232 Repealed. Laws 1996, LB 1044, § 985.

90-233 Repealed. Laws 1996, LB 1044, § 985.

90-234 Repealed. Laws 1996, LB 1044, § 985.

90-235 Repealed. Laws 1996, LB 1044, § 985.

90-236 Repealed. Laws 1996, LB 1044, § 985.

90-237 Repealed. Laws 1996, LB 1044, § 985.

90-238 Department of Transportation; acquire described property.

The Department of Transportation is authorized to acquire from the Chicago and North Western Transportation Company its abandoned right-of-way described as follows: All of Chicago and North Western Transportation Company abandoned right-of-way in section 34, township 15 north, range 7 east, Saunders County, Nebraska. The department is also authorized to acquire all rights, interests, and titles related to such abandoned right-of-way.

Source: Laws 1984, LB 853, § 1; Laws 2017, LB339, § 297.

90-239 Governor; convey property to city of Lincoln.

(1) The Governor is authorized by the Legislature to convey to the city of Lincoln, Nebraska, a permanent easement for the construction, reconstruction, inspection, maintenance, operation, and the replacement of a sanitary sewer, together with all appurtenances, structures, and other applicable equipment pertaining thereto over and through certain real property, situated in the city of Lincoln, Lancaster County, Nebraska, described as follows:

A strip of land forty feet in width through a portion of Lot 75, irregular tract, located in the southwest quarter of section 13, township 10 north, range 6 east of the sixth principal meridian, Lancaster County, Nebraska.

(2) The permanent easement for the sanitary sewer conveyed in this section shall be twenty feet on either side of the centerline described as follows:

Commencing at the intersection with the centerline of Seventeenth Street and the south line of such southwest quarter of section 13, also known as the centerline of Holdrege Street extended; thence north along the centerline of Seventeenth Street, a distance of one hundred nineteen and forty-five hundredths feet to the centerline of the Burlington Northern Railroad right-of-way; thence northeasterly along such centerline a distance of one hundred sixty-four and seventy-six hundredths feet; thence northerly along a line which deflects fifty-six degrees, fifty-three minutes, zero seconds left, a distance of sixty-two and ninety-seven hundredths feet to the point of tangency with a circular curve; thence northerly along the arc of such circular curve bear to the left, whose central angle is thirty-one degrees, four minutes, twenty seconds, whose radius is three hundred thirty and twenty-eight hundredths feet, and whose tangent length is ninety-one and eighty-two hundredths feet, a distance of fifty-three and seventy-nine hundredths feet to the point of beginning; thence continuing along such circular curve, a distance of one hundred twenty-five and thirty-three hundredths feet to the point of tangency with a straight line; thence northwesterly along such straight line, a distance of three hundred four and seventy hundredths feet to the point of tangency with a circular curve; thence northerly along the arc of such circular curve bearing to the right, whose central angle is

thirty-one degrees, twenty-nine minutes, zero seconds, whose radius is two hundred feet, and whose tangent length is fifty-six and thirty-seven hundredths feet, a distance of one hundred nine and ninety hundredths feet to the point of tangency with a straight line; thence north along such straight line, a distance of two hundred nine and sixty-one hundredths feet to the point of tangency with a circular curve; thence northwesterly along the arc of such circular curve bearing to the left, whose central angle is forty-five degrees, zero minutes, whose radius is two hundred feet and whose tangent length is eighty-two and eighty-four hundredths feet, a distance of one hundred fifty-seven and eight hundredths feet; thence west along a line which deflects forty-five degrees, zero minutes left from a line tangent to the previously described circular curve, a distance of one hundred thirty-four feet; thence northwesterly along a line which deflects seventy degrees, forty-eight minutes right, a distance of one hundred twenty feet to the point of ending; containing an area of forty-six thousand four hundred twenty-four and eighty hundredths square feet, more or less.

Source: Laws 1984, LB 863, § 1.

90-240 State Board of Agriculture; convey easement.

The State Board of Agriculture is authorized by the Legislature to convey to the city of Lincoln, Nebraska, a permanent easement for the construction, reconstruction, inspection, maintenance, operation, and replacement of street improvements in, through, over, and under certain real estate legally described as follows:

(1) A portion of lot 79, irregular tract, located in the northeast quarter of section 13, township 10 north, range 6 east of the sixth principal meridian, in the city of Lincoln, Lancaster County, Nebraska, more particularly described as follows:

Beginning at the northeast corner of such lot 79; thence proceeding southerly along a line parallel to and 33 feet west of the east line of section 13, a distance of 61.04 feet; thence southwesterly deflecting 55 degrees right, a distance of 56.02 feet; thence northwesterly deflecting 90 degrees right, a distance of 50 feet; thence northeasterly deflecting 90 degrees right along the north line of such lot 79, a distance of 91.03 feet to the point of beginning; containing an area of 3,676.15 square feet, more or less; and

(2) A portion of lot 80, irregular tract, located in the northeast quarter of section 13, township 10 north, range 6 east of the sixth principal meridian, in the city of Lincoln, Lancaster County, Nebraska, more particularly described as follows:

Beginning at the northeast corner of such lot 80; thence proceeding southerly along a line parallel to and 33 feet west of the east line of section 13, a distance of 97.66 feet; thence northwesterly deflecting 145 degrees right, a distance of 80 feet; thence northeasterly deflecting 90 degrees right along the north line of such lot 80, a distance of 56.02 feet to the point of beginning; containing an area of 2,240.80 square feet, more or less.

Source: Laws 1985, LB 33, § 1.

90-241 Adjutant General; convey described property.

The Adjutant General is authorized by the Legislature to convey to the city of Wayne, Nebraska:

A permanent easement for the construction, reconstruction, inspection, maintenance, operation, and replacement of a sanitary sewer line, water main, storm sewer main, electrical transmission line, and permanent concrete street, together with all appurtenances, structures, and all other applicable equipment pertaining to any sanitary sewer line, water main, electrical transmission line, storm sewer main, and public concrete street, in, through, over, and under certain real estate known as the National Guard Armory property and legally described as follows:

Beginning at the southwest corner of lot 9, block 7, Sunnyview Addition to the city of Wayne, Nebraska; thence southeasterly along the south line of such lot 9, as extended east, thirty-five feet; thence southerly and parallel to the east line of said lot 9, as extended south, 418.90 feet to the north right-of-way of Nebraska State Highway No. 35; thence westerly along said north right-of-way line, thirty-five feet; thence northerly and along the east line of said lot, as extended south, 418.90 feet, to the point of beginning, said real estate being located in the southeast quarter of section 7, township 26 north, range 4, east of the sixth principal meridian, Wayne County, Nebraska.

Source: Laws 1985, LB 235, § 1.

90-242 Department of Correctional Services; convey described property.

The Department of Correctional Services is authorized by the Legislature to convey to the county of Lancaster, Nebraska, a permanent easement for slope work and bridge maintenance on certain real estate legally described as follows: The west seventeen feet of the fifty feet of the south sixty feet of the north four hundred thirty-one and nine-tenths feet of the north half of the southeast quarter of section 10, township 9 north, range 6 east of the sixth principal meridian, Lancaster County, Nebraska.

Source: Laws 1985, LB 265, § 1.

90-243 Department of Correctional Services; convey described property.

The Department of Correctional Services is authorized by the Legislature to convey to the county of Lancaster, Nebraska, a temporary easement for channel relocation and cleanout on the real estate legally described as follows: An irregular tract of land consisting of twenty-four hundredths of an acre, more or less, situated in the north half of the southeast quarter of section 10, township 9 north, range 6 east of the sixth principal meridian, Lancaster County, Nebraska, situated immediately to the west of the real estate described in section 90-242. The temporary easement shall last for the duration of the contract existing between Lancaster County and the Department of Correctional Services governing channel relocation and cleanout of the described real estate.

Source: Laws 1985, LB 265, § 2.

90-244 Repealed. Laws 2016, LB978, § 5.

90-245 Adjutant General; convey described easement.

The Adjutant General is authorized by the Legislature to convey to the city of Gering, Nebraska, a permanent easement for the construction, reconstruction,

inspection, maintenance, operation, and replacement of street improvements in, through, over, and under certain real estate known as the National Guard Armory property and legally described as follows:

Beginning at a point 65.0 feet east of the southwest corner of the southwest quarter of the southeast quarter of section 2, township 21 north, range 55 west of the sixth principal meridian, Scotts Bluff County, Nebraska; thence east, a distance of 300.0 feet parallel with the north line of the southwest quarter of the southeast quarter of said section; thence north, a distance of 25.0 feet parallel to the west line of the southwest quarter of the southeast quarter of said section; thence west, a distance of 300.0 feet parallel to the north line of the southwest quarter of the southeast quarter of said section; thence south, a distance of 25.0 feet to the point of beginning.

Source: Laws 1986, LB 756, § 1.

90-246 Department of Correctional Services; convey described property.

The Department of Correctional Services is hereby authorized to sell and convey by quitclaim deed four real estate lots in the Hawthorne Addition of the city of Lincoln, Lancaster County, Nebraska, more particularly described as follows: Lots 8 and 9 on block 37 and lots 8 and 9 on block 38, Hawthorne Addition to the city of Lincoln, Lancaster County, Nebraska.

Source: Laws 1987, LB 374, § 1.

90-247 Department of Correctional Services; sell described property.

The Department of Correctional Services is hereby authorized to sell and convey by quitclaim deed two tracts of land located in the southeast quarter of section two, township nine north, range six, east of the sixth principal meridian, Lancaster County, Nebraska, more particularly described as follows:

(1) Referring to the east one-quarter corner of said section two; thence southerly along the east line of the southeast quarter of said section two on an assumed bearing of south zero degrees, zero minutes, zero seconds east a distance of sixty-six and no tenths feet; thence south eighty-nine degrees, fifty-six minutes, ten seconds west along the southerly thirty-three and no tenths-foot right-of-way line of Calvert Street as platted in the city of Lincoln a distance of five hundred forty-two and fifty-five hundredths feet to the point of beginning; thence south two degrees, fifty-seven minutes, twelve seconds west along the west line of relocated Thirteenth Street a distance of five hundred eighty-two and thirty-two hundredths feet to the point of curvature of a nine hundred thirteen and fifty-one hundredths-foot radius curve to the left; thence in a southwesterly direction along said nine hundred thirteen and fifty-one hundredths-foot radius curve to the left having a chord bearing of south sixteen degrees, twenty-three minutes, two seconds east and a chord distance of five hundred fifteen and thirty-five hundredths feet to the point of tangency of said curve; thence south thirty degrees, thirty-five minutes, nine seconds east a distance of three hundred ninety-three and ninety-one hundredths feet; thence south forty-six degrees, ten minutes, forty-two seconds west a distance of fifty-eight and thirty-four hundredths feet to a point on a five thousand thirty-two and seventy-four hundredths-foot radius curve to the right, said point being on the northeasterly one hundred fifteen and no tenths-foot right-of-way line of Nebraska State Highway No. 2; thence in a northwesterly direction along said five thousand thirty-two and seventy-four hundredths-foot radius curve to the

right having a chord bearing of north forty degrees, seventeen minutes, thirty-two seconds west and a chord distance of five hundred eighty-one and thirty-eight hundredths feet to the point of tangency of said curve; thence north fifty-four degrees, fifty-eight minutes, thirty-nine seconds west a distance of one hundred forty and no tenths feet; thence north thirty degrees, fifty-eight minutes, seven seconds west a distance of three hundred thirteen and eighty-two hundredths feet to the point of curvature of a two thousand twenty-two and twenty-two hundredths-foot radius curve to the right; thence in a northwesterly direction along said two thousand twenty-two and twenty-two hundredths-foot radius curve to the right having a chord bearing of north twenty-seven degrees, five minutes, eleven seconds west and a chord distance of three hundred forty-one and ninety hundredths feet to the point of tangency of said curve; thence north fourteen degrees, thirty-nine minutes, fifty-seven seconds west a distance of three hundred sixty-nine and fifty-two hundredths feet to a point on the southerly thirty-three and no tenths-foot right-of-way line of Calvert Street; thence north eighty-nine degrees, fifty-six minutes, ten seconds east along the southerly thirty-three and no tenths-foot right-of-way line of Calvert Street a distance of six hundred twenty-seven and sixty-three hundredths feet to the point of beginning; containing an area of eleven and twenty-eight hundredths acres, more or less; and

(2) Referring to the southeast corner of said section 2; thence in a northerly direction along the east line of the southeast quarter of said section two on an assumed bearing of north zero degrees, zero minutes, zero seconds east a distance of one thousand three hundred seventy-six and seventy hundredths feet; thence north ninety degrees, zero minutes, zero seconds west perpendicular to the last-described course a distance of thirty-three and no tenths feet to a point on the westerly thirty-three and no tenths-foot right-of-way line of Fourteenth Street as platted in the city of Lincoln and the point of beginning; thence south fifty-nine degrees, fifty-five minutes, thirty-five seconds west a distance of seventy-nine and seventy-four hundredths feet to a point on the northeasterly eighty-five and no tenths-foot right-of-way line of relocated Thirteenth Street; thence north thirty-three degrees, thirteen minutes, nine seconds west a distance of three hundred seventy-six and one hundredths feet; thence north twenty-three degrees, four minutes, fifty-seven seconds west a distance of one hundred eighty and sixty-eight hundredths feet; thence north twelve degrees, fifteen minutes, twenty-one seconds west a distance of one hundred fifty-five and two hundredths feet to a point on the southerly thirty and no tenths-foot right-of-way line of Stockwell Street; thence south eighty-nine degrees, one minute, forty seconds east along the southerly thirty and no tenths-foot right-of-way line of Stockwell Street a distance of three hundred seventy-eight and eighty-hundredths feet to a point on the westerly thirty-three and no tenths-foot right-of-way line of said Fourteenth Street; thence south zero degrees, zero minutes, zero seconds east along the westerly thirty-three and no tenths-foot right-of-way line of said Fourteenth Street a distance of five hundred eighty-five and eighty-eight hundredths feet to the point of beginning; containing an area of three and sixty-three hundredths acres, more or less.

Source: Laws 1987, LB 526, § 1.

90-248 Department of Correctional Services; sale of land; State Treasurer's Land Sales Distributive Fund; created; use; investment.

The land described in section 90-247 shall be sold to the highest bidder at public auction. The income from the sale of all or any portion of the land described in section 90-247 shall be deposited in the State Treasurer's Land Sales Distributive Fund, which fund is hereby created. The distributive fund shall be used only for the purpose of refunding money to the purchaser of the land as provided by any contract or agreement or, when all conditions of the sale have been fulfilled, for transfer of the income from the sale and any accrued interest to the State Treasurer for credit to the General Fund. Any money in the distributive fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1987, LB 526, § 2; Laws 1995, LB 7, § 155.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

90-249 Repealed. Laws 1996, LB 1044, § 985.

90-250 Repealed. Laws 1996, LB 1044, § 985.

90-251 State Department of Education; sell described property; proceeds.

(1) The State Department of Education may sell and convey by quitclaim deed two parcels of land generally described as follows:

(a) A parcel of land in the northwest quarter of section 31, township 9, range 14, in Otoe County, Nebraska, designated as tract number 4, consisting of eleven and nine-tenths acres, more or less, as shown by the plat of Lester Ehlers, engineer and surveyor, sworn to November 22, 1950, filed December 4, 1950, in Deeds Book 97, page 298, in the Office of the Register of Deeds of Otoe County, Nebraska, subject to and less public road and Missouri Pacific Railroad right-of-way; and

(b) A triangular tract of land starting at the northeast corner of the southeast quarter of the northeast quarter of section 36, township 9, range 13, thence south on the section line three hundred fifty feet, thence in a northwesterly direction four hundred four feet along the center line of the Missouri Pacific Railroad right-of-way to the north line of the southeast quarter of the northeast quarter, thence east on such line to the point of beginning, containing one and six-tenths acres, more or less, all of the above-described land being subject to the Missouri Pacific Railroad right-of-way and the public road and all of such land being in Otoe County, Nebraska.

(2) The income from the sale of all or any portion of the land described in subsection (1) of this section shall be deposited in the State Department of Education Trust Fund. The department may use the income from the sale of the land to pay any selling expenses associated with the sale.

Source: Laws 1987, LB 526, § 5.

90-252 Department of Correctional Services; convey described property.

(1) The Department of Correctional Services is hereby authorized to sell and convey by quitclaim deed to Lancaster County, Nebraska, a tract of land located in the northwest quarter of section 9, township 9 north, range 6 east of the 6th principal meridian, Lancaster County, Nebraska, more particularly described as follows:

Beginning at the southeast corner of the northwest quarter thence in a westerly direction with the south line of the northwest quarter, a distance of seven hundred feet; thence in a northerly direction perpendicular to the south line, a distance of thirty-three feet; thence in a northeasterly direction to a point located six hundred feet westerly from the southeast corner as measured with the south line and forty feet distant from and measured perpendicular to the south line; thence in an easterly direction parallel with the south line, a distance of five hundred feet; thence in a northeasterly direction to a point located fifty feet northerly from and measured perpendicular to the south line and forty feet westerly from and measured perpendicular to the east line of the northwest quarter; thence in a northerly direction parallel with and forty feet distant from the east line of the northwest quarter, a distance of eight hundred eighty-six and seventy-six hundredths feet; thence in a northwesterly direction to a point located eleven hundred thirty-six and seventy-six hundredths feet northerly from the southeast corner of the northwest quarter as measured with the east line and sixty feet westerly from and measured perpendicular to the east line; thence in a northeasterly direction to a point located thirteen hundred thirty-six and seventy-six hundredths feet northerly from the southeast corner as measured with the east line and forty feet westerly from and measured perpendicular to the east line; thence in a northwesterly direction to a point located one thousand nineteen and ninety-six hundredths feet southerly from the northeast corner of the northwest quarter as measured with the east line and fifty feet westerly from and measured perpendicular to the east line; thence in a northerly direction parallel with the east line, a distance of two hundred feet; thence in a northeasterly direction to a point located six hundred nineteen and sixty-nine hundredths feet southerly from the northeast corner as measured with the east line and forty feet westerly from and measured perpendicular to the east line; then in a northerly direction, parallel with the east line to a point on the north line of the northwest quarter; thence in an easterly direction on the north line to the northeast corner of the northwest quarter; thence in a southerly direction on the east line of the northwest quarter, a distance of two thousand six hundred fifty-six and seventy-two hundredths feet, more or less, to the point of beginning; containing three and twenty-four hundredths acres, more or less, of which two and fifty-two hundredths acres, more or less, is existing county road right-of-way, making a net additional right-of-way of seventy-two hundredths acre, more or less.

(2) The Department of Correctional Services may receive payments from Lancaster County for trees removed from state property in connection with this conveyance. Such payments shall be deposited in the Department of Correctional Services Facility Cash Fund to be used by the department for the purchase and planting of replacement trees.

Source: Laws 1988, LB 854, § 1.

90-253 Department of Economic Development; convey described property; proceeds.

The Department of Economic Development is authorized, upon written approval of the Governor, to sell, lease, or otherwise convey the following described real estate: All of lots 4 thru 15, block 6, Murray's Addition to Oklahoma, an addition to the city of Omaha, in section 34, township 15 north, range 13 east of the 6th P.M.; Douglas County, Nebraska, together with the easterly part of lots 16 and 17 more particularly described as follows: Begin-

ning at the southeast corner of lot 16 thence one hundred thirty-four feet to the northeast corner of lot 17; thence east sixty-two and eight-tenths feet; thence southwesterly to a point thirty-eight and nine-tenths feet east of the southwest corner of lot 17; thence southwesterly to a point eight and six-tenths feet east of the southwest corner of lot 16; thence east to the point of beginning; together with the easterly part of lot 19 more particularly described as follows: Beginning at the southeast corner of said lot 19; thence north fifty and eight-tenths feet; thence southwesterly sixty and three-tenths feet to a point thirty-two and one-half feet west of the said southeast corner; thence east thirty-two and one-half feet to the point of beginning. Together with the following described parts of lots 9 thru 16, block 5, said Murray's Addition: Beginning at the southwest corner of lot 9; said block 5; thence north seventy-five feet; thence southeasterly to a point on the east line of said lot 9, fifty-five feet north of the southeast corner of said lot 9 then southeasterly to a point on the east line of lot 11; said block 5 said point being twenty-seven feet north of the southeast corner of said lot 11, thence east to a point on the east line of lot 12; said block 5, said point being twenty-seven feet north of the southeast corner of said lot 12; thence northeasterly to a point on the east line of lot 13; said block 5; said point being forty feet north of the southeast corner of said lot 13; thence northeasterly to a point on the east line of lot 14; said block 5; said point being sixty feet north of the southeast corner of said lot 14; thence northeasterly to a point on the east line of lot 16; said block 5, said point being one hundred twenty-nine feet north of the southeast corner of said lot 16; thence south to the southeast corner of said lot 16; thence west to the southwest corner of said lot 9. Together with the streets and alleys lying between the above described lots; commonly referred to as the Nebraska Omaha Travel Information Center. If the real estate is leased, such lease may contain an option to purchase the property at a value in the best interests of the state to be determined by the department. Proceeds of the sale or lease shall be deposited in the appropriate fund in the same manner as proceeds are deposited in section 81-161.04 and used for the purposes set forth for the fund.

Source: Laws 1988, LB 1143, § 8.

90-254 Department of Correctional Services; convey described property.

The Department of Correctional Services is authorized by the Legislature to convey by quitclaim deed to the county of Lancaster, Nebraska, for the widening and improvement of Old Cheney Road and South Folsom Streets, a part of lot 43, irregular tract in the southeast quarter, and of lot 41, irregular tract in the northeast quarter, both in section 10, township 9 north, range 6 east of the 6th principal meridian, Lancaster County, Nebraska, more particularly described as follows: Referring to the southeast corner of the southeast quarter of said section 10; thence westerly with the south line of the said southeast quarter to the southwest corner of the southeast quarter of the said southeast quarter; thence northerly with the west line of the said southeast quarter of the southeast quarter to a point thirty-three feet distant from and measured perpendicular to the said south line, said point being a point of intersection with the existing northerly right-of-way line of West Old Cheney Road and the point of beginning; thence continuing with the last-described course to a point fifty feet distant from the said south line; thence easterly parallel with the said south line, a distance of seven hundred twenty-one and ninety-five hundredths feet, more or less, to a point of intersection with the existing northerly right-of-

way line; thence southwesterly on a deflection angle of one hundred sixty-seven degrees, twenty-three minutes, thirty-eight seconds right, with the said right-of-way line, a distance of seventy-seven and eighty-nine hundredths feet to a point thirty-three feet northerly from and measured perpendicular to the said south line; thence westerly parallel with the said south line to the point of beginning; and referring to the southwest corner of the southeast quarter of said section 10; thence northerly with the west line of the said southeast quarter, a distance of one thousand three hundred nineteen and nineteen hundredths feet, more or less, to the southwest corner of the northwest quarter of the southeast quarter, said point also being the point of beginning; thence easterly with the south line of the said northwest quarter of the southeast quarter to a point fifty feet distant from the said west line; thence northerly parallel with the said west line to a point of intersection with the existing easterly right-of-way of South Folsom Street, said point located one hundred forty-one and twenty-two hundredths feet southerly from the northwest corner of the northeast quarter of said section 10, as measured with the said west line; thence southwesterly on a deflection angle of one hundred sixty-eight degrees, twenty-one minutes, thirty-six seconds left, with the said right-of-way line, a distance of eighty-four and twenty-six hundredths feet; thence westerly perpendicular to the said west line, a distance of thirty-three feet to a point of intersection with the said west line, said point also being two hundred twenty-three and seventy-five hundredths feet southerly from the said northwest corner; thence southerly with the said west line to the point of beginning; containing four and sixty-one hundredths acres, more or less.

Source: Laws 1990, LB 970, § 1.

90-255 Department of Correctional Services; donation to county; damages paid by county.

The Department of Correctional Services is authorized by the Legislature to convey to the county of Lancaster, Nebraska, the real estate described in section 90-254 as a donation. Damages computed for removal of trees or fencing shall be paid by Lancaster County to the Department of Correctional Services Facility Cash Fund to be used for replacement of such trees and fencing.

Source: Laws 1990, LB 970, § 2.

90-256 Repealed. Laws 1996, LB 1044, § 985.

90-257 Repealed. Laws 1996, LB 1044, § 985.

90-258 Repealed. Laws 1996, LB 1044, § 985.

90-259 Repealed. Laws 1996, LB 1044, § 985.

90-260 Game and Parks Commission; convey described property.

The Game and Parks Commission is authorized and directed to convey to the Department of Transportation the following described real estate situated in the county of Dawson, in the State of Nebraska, to wit: A tract of land located in the northeast quarter of section 20, township 9 north, range 21 west of the 6th principal meridian, Dawson County, Nebraska, described as follows: Beginning at the northeast corner of section 20; thence westerly on the north line of the northeast quarter of section 20 a distance of 2,360.8 feet; thence southeasterly

133 degrees, 47 minutes left a distance of 34.3 feet; thence continuing southeasterly 21 degrees, 49 minutes left a distance of 107.5 feet; thence continuing southeasterly 21 degrees, 49 minutes right a distance of 734.9 feet to point of curvature; thence continuing southeasterly on a 718.5-foot radius curve to the left (initial tangent of which coincides with the last-described course) a distance of 331.3 feet to point of tangency; thence continuing southeasterly tangent, a distance of 787.3 feet; thence continuing southeasterly 2 degrees, 11 minutes left a distance of 686.6 feet to a point on the east line of the northeast quarter; thence northerly on the east line a distance of 1,256.9 feet to the point of beginning, containing 39.04 acres, more or less.

Source: Laws 1991, LB 500, § 1; Laws 2017, LB339, § 298.

90-261 Repealed. Laws 2000, LB 885, § 3.

90-262 Repealed. Laws 2000, LB 885, § 3.

90-263 Repealed. Laws 2000, LB 885, § 3.

90-264 Adjutant General; convey easement to the city of Wahoo.

The Adjutant General is authorized by the Legislature to convey to the city of Wahoo, Nebraska, a permanent easement for the maintenance of a sanitary sewer line, with all appurtenances and accessories, in, through, over, and under certain real estate legally described as follows: A twelve-foot-wide strip of land for the maintenance of a sanitary sewer line, with appurtenances and accessories, being part of vacated 17th Street, part of vacated 18th Street, and part of Block 2, in Sunnyside Addition to the City of Wahoo, Saunders County, Nebraska, being described as follows: Commencing at the southeast corner of Block 1 of said Sunnyside Addition; thence N88° 21' 15" W (assumed bearing) on the south line of said Block 1, 125.65 feet to the true point of beginning; thence continuing N88° 21' 15" W on said south line, 12.00 feet; thence S00° 56' 40" W, 339.46 feet; thence S74° 21' 08" E, 148.70 feet to a point on the west line of Chestnut Street; thence N00° 00' 00" W on said west line, 12.46 feet; thence N74° 21' 08" W, 136.08 feet; thence N00° 56' 40" E, 330.05 feet to the true point of beginning.

Source: Laws 1995, LB 772, § 1.

90-265 Game and Parks Commission; convey described property.

The Game and Parks Commission is authorized and directed to convey to the county of Buffalo for public park purposes, subject to the conditions described in section 90-266, the following described real estate now known as Ravenna State Recreation Area, situated in Buffalo County, Nebraska, to wit:

(1) A tract of land in the southwest quarter of section 10 and the east part of the southeast quarter of section 9, township 12 north, range 14 west of the sixth principal meridian, situated in Buffalo County, Nebraska, described as follows: Beginning at a point 200 feet east of the southwest corner of the southwest quarter of section 10, township 12 north range 14 west of sixth principal meridian; thence north for a distance of 900 feet; thence west for a distance of 200 feet; thence north to a point 450 feet south of northwest corner of the southwest quarter of said section 10; thence west for a distance of 385 feet; thence north for a distance of 50 feet; thence east for a distance of 385 feet to the northwest corner of the southwest quarter of said section 10; thence east for

a distance of 700 feet; thence angle right 42 degrees, 30 minutes, for a distance of 236 feet; thence angle right 8 degrees, 0 minutes, for a distance of 284 feet; thence angle left 3 degrees, 2 minutes, for a distance of 138 feet; thence angle left 17 degrees, 9 minutes, for a distance of 197 feet; thence angle right 43 degrees, 34 minutes, for a distance of 383 feet; thence angle right 16 degrees, 51 minutes, for a distance of 216 feet; thence angle right 20 degrees, 47 minutes, for a distance of 21 feet; thence angle left 13 degrees, 53 minutes, for a distance of 272 feet, to the east line of the west half of the said southwest quarter of section 10; thence south one for a distance of 1,044 feet to the south line of said southwest quarter of section 10; thence west for a distance of 1,120 feet to the place of beginning and containing 78.03 acres, more or less;

(2) A tract of land beginning at the southeast corner of the west half of the southwest quarter of section 10, township 12 north, range 14 west of the sixth principal meridian, running due north for a distance of 1,044 feet; thence angle right 7 degrees, 38 minutes, for a distance of 272 feet; thence angle right 13 degrees, 53 minutes, for a distance of 214 feet; thence angle left 20 degrees, 47 minutes, for a distance of 216 feet; thence angle left 43 degrees, 34 minutes, for a distance of 182 feet; thence angle right 157 degrees, 21 minutes, for a distance of 137 feet; thence angle right 21 degrees, 53 minutes, for a distance of 100 feet; thence angle right 14 degrees, 17 minutes, for a distance of 95 feet; thence angle right 10 degrees, 7 minutes, for a distance of 164 feet; thence angle right 5 degrees, 43 minutes, for a distance of 100 feet; thence angle right 5 degrees, 30 minutes, for a distance of 195 feet; thence angle left 12 degrees, 26 minutes, for a distance of 72 feet; thence angle left 17 degrees, 1 minute, for a distance of 307 feet; thence angle right 11 degrees, 47 minutes, for a distance of 100 feet; thence angle right 2 degrees, 30 minutes, for a distance of 150 feet; thence angle right 1 degree, 19 minutes, for a distance of 160 feet; thence angle right 0 degrees, 44 minutes, for a distance of 220 feet; thence angle left 27 degrees, 52 minutes, for a distance of 111 feet, to the railroad right-of-way line; thence on the railroad right-of-way line angle right 62 degrees, 27 minutes, for a distance of 37.8 feet, to the intersection of the right-of-way line and the south line of section 10, township 12 north, range 14 west of the sixth principal meridian; thence a distance of 82.7 feet west along the south line of section 10, township 12 north, range 14 west of the sixth principal meridian, to the southeast corner of the west half of the southwest quarter of section 10, township 12 north, range 14 west of the sixth principal meridian, which is the point of beginning, containing 2.63 acres, more or less; and

(3) A strip of land 100 feet in width situated in the southeast quarter of the northeast quarter of section 16, township 12 north, range 14 west of the sixth principal meridian, extending southwesterly from the east line of said section 16 to the northeasterly boundary line of Nebraska State Highway 2, said strip being 50 feet in width, measured at right angles on each side of the following described center line of former main track of the Pleasanton branch of Union Pacific Railroad Company as formerly constructed and operated: Beginning at a point on the east line of said section 16 that is a distance of 1,550 feet south of the northeast corner of said section 16; thence southwesterly along a straight line forming an angle of 46 degrees, 15 minutes, from south to southwest with the east line of said section 16 for a distance of 1,130 feet, more or less, to a point in said northeasterly boundary line of existing Nebraska State Highway 2, containing an area of 2.59 acres, more or less, in Buffalo County, Nebraska.

Source: Laws 1996, LB 1070, § 1.

90-266 Buffalo County; grant permanent easement.

Buffalo County, Nebraska, shall grant a permanent easement across the real estate described in section 90-265 to Emil J. Obermiller and Vicki L. Obermiller for the purpose of access to the Obermiller's property adjacent to such real estate. Emil J. Obermiller and Vicki L. Obermiller shall grant a permanent easement on such adjacent real estate to Buffalo County, Nebraska, and the city of Ravenna, for recreational trail purposes, on one hundred feet from the northernmost boundary to the south and the entire width from east to west of such one hundred feet, of the real estate situated in Buffalo County, Nebraska, and described on microfilm roll 94, pages 2946 and 2947, in the records of the Buffalo County Register of Deeds.

Source: Laws 1996, LB 1070, § 2.

90-267 Nebraska Army National Guard complex; sale of property authorized.

(1) Notwithstanding sections 72-811 to 72-818 or any other provision of law, the State Building Administrator or his or her designee, in consultation with the Adjutant General, is authorized to sell land and six buildings located at 1300 Military Road, 1234 Military Road, 1237 Military Road, Cold Storage Building, and the Engagement Skills Trainer in Lincoln, Nebraska, 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 Lancaster County and not less than thirty days prior to the sale of the property. The properties are all in the Nebraska Army National Guard complex along Military Road between 10th Street and 14th Street in Lincoln, Nebraska. The tracts include Tracts A, B, C, and D. The larger tracts have been split to provide a general legal description for each of the six parcels. The following of the subject properties are in Tract A and legally described as follows:

(a) TAG. The southeast part of Tract A in the area of the TAG Building, the lot would then extend northwest into the north part of Lot A. The site would generally include the south 200 feet of the east 300 feet of Tract A plus a tract about 100 feet in width that extends north from the west part of the 300 feet. The total size is estimated to be 82,764 square feet;

(b) NEMA. This tract is the northeast part of Tract A extending north along 14th Street from the TAG tract to the north property line. It would include the east 200 feet of Tract A except the south 200 feet. The total size is estimated to be 80,150 square feet; and

(c) USPFO. This is the remainder of Tract A. It is generally the west 368 feet of Tract A extending from Military Road north of Salt Creek but excluding the part owned by the State of Nebraska and leased to the city of Lincoln. The total size is estimated to be 3.74 acres or 162,914 square feet.

(2) The other three tracts are located in the east 300-plus feet of Tract B. Such tracts are located south of Military Road, and the east line of the tracts is about 160 feet west of 14th Street. The tracts have a depth of about 352 feet. These properties are legally described as follows:

(a) DCSIM Building. Generally the east 178 feet of the south 196 feet of the tracts;

(b) Trainer Building. Generally the west 192 feet of the north 156 feet of the tracts and including an easement drive to the DCSIM Tract; and

(c) Cold Storage Building. Generally the east 122 feet of the tracts.

(3) The land and buildings described in this section may be sold either as a combined package or in such individual parcels as mutually agreed upon by the State Building Administrator and the Adjutant General.

(4) This section terminates on July 1, 2015.

Source: Laws 2003, LB 403, § 1; Laws 2006, LB 1061, § 18.
Termination date July 1, 2015.

90-268 Proceeds; disposition.

All proceeds from the sale of any land or buildings described in section 90-267, including investment income on the sale proceeds of the property, shall be separately accounted for and credited to a separate optional cash account within the Vacant Building and Excess Land Cash Fund and shall be designated for the Military Department Joint Operations Center project.

This section terminates on July 1, 2015.

Source: Laws 2003, LB 403, § 2; Laws 2006, LB 1061, § 19.
Termination date July 1, 2015.

90-269 Military Department Joint Operations Center project; transfer of funds.

After paying any maintenance expenses pending the sale and selling expenses associated with the sale of land and buildings described in section 90-267, the State Building Administrator shall administratively transfer any money available in the separate optional cash account within the Vacant Building and Excess Land Cash Fund designated for the Military Department Joint Operations Center project as authorized pursuant to section 90-268, in the following priority manner:

(1) First, \$975,000 shall be administratively transferred from the Vacant Building and Excess Land Cash Fund to the Joint Operations Center Capital Construction Fund in either a single full transfer amount or in partial transfer amounts as the funds become available;

(2) Second, after completing the transfer of the total amount specified in subdivision (1) of this section, an amount shall be administratively transferred from the Vacant Building and Excess Land Cash Fund to the Military Department Cash Fund in the exact amount equal to or less than one hundred thousand dollars as certified in writing by the Adjutant General to the budget administrator of the budget division of the Department of Administrative Services and to the State Building Administrator, but only as required to fully reimburse the federal government for certain previous renovation expenses; and

(3) Third, after completing the full transfer amounts required pursuant to subdivisions (1) and (2) of this section, any remaining fund balance in the separate optional cash account within the Vacant Building and Excess Land Cash Fund as designated for the Military Department Joint Operations Center project, including any investment income credited to the fund, shall be administratively transferred to the General Fund.

This section terminates on July 1, 2015.

Source: Laws 2003, LB 403, § 3; Laws 2006, LB 1061, § 20.
Termination date July 1, 2015.

90-270 Joint Operations Center Capital Construction Fund; created; use; investment.

The Joint Operations Center Capital Construction Fund is created. The fund shall consist of revenue administratively transferred from the Vacant Building and Excess Land Cash Fund pursuant to section 90-269 and may also include administrative interfund transfers from the Governor's Emergency Cash Fund and the Military Department Cash Fund, which are hereby authorized, except that any administrative interfund transfers made pursuant to this section from the Governor's Emergency Cash Fund and the Military Department Cash Fund shall be reversed on or before June 30, 2015. The Joint Operations Center Capital Construction Fund shall be used to construct and furnish combined office space for the Nebraska Emergency Management Agency and the Nebraska State Patrol Communications Operations Center, including any necessary relocation expenses of the offices and the Nebraska State Patrol communications switcher. The fund shall be administered by the State Administrator of the Nebraska Emergency Management Agency. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The fund balance in the Joint Operations Center Capital Construction Fund existing as of June 30, 2015, plus any investment income credited to the fund after June 30, 2015, shall be transferred to the General Fund.

This section terminates on July 1, 2015.

Source: Laws 2003, LB 403, § 4; Laws 2006, LB 1061, § 21.
Termination date July 1, 2015.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

90-271 Ferguson House; sale prohibited.

The Department of Administrative Services shall not sell the property known as the Ferguson House and the appurtenant carriage house located at 700 South 16th Street, Lincoln, Nebraska. The legal description of this property is lots 4, 5, and 6, block 153, original plat, Lincoln, Lancaster County, Nebraska.

Source: Laws 2004, LB 1092, § 10.

90-272 Game and Parks Commission; convey property to village of Arnold.

The Game and Parks Commission is authorized to convey to the village of Arnold for public park purposes the following described real estate now known as Arnold State Recreation Area, situated in the county of Custer, in the State of Nebraska, to wit: A tract of land in the northwest quarter of the southeast quarter of section 28, township 17 north, range 25 west of the 6th principal meridian, described as follows: Beginning at the northeast corner of said northwest quarter of the southeast quarter, running thence west 660.0 feet, thence south 330.0 feet, thence south 45 degrees east to a point 330.0 feet north of the southeast corner of said northwest quarter of the southeast quarter,

thence north 990.0 feet to the place of beginning, and containing 10 acres more or less; and a tract of land in the northeast quarter of the southeast quarter of section 28, township 17 north, range 25 west of the 6th principal meridian, described as follows: Beginning at the northwest corner of said northeast quarter of the southeast quarter, running thence east 660.0 feet, more or less, to the center of the channel of the South Loup River, thence in a southerly and easterly direction along the center of the channel of said river to its intersection with the east line of said northeast quarter of the southeast quarter, said point of intersection being 528.0 feet, more or less, south of the northeast corner of said northeast quarter of the southeast quarter, thence south along said east line 630.0 feet, thence west 1,320.0 feet, more or less, to the west line of said northeast quarter of the southeast quarter, thence north along said west line 1,158.0 feet to the place of beginning, and containing 30 acres, more or less, except that if the village of Arnold ceases to operate the lands conveyed as a public park and recreation area, title to such lands shall revert to the Game and Parks Commission.

Source: Laws 2010, LB743, § 1.

90-273 Game and Parks Commission; convey property to city of Atkinson.

The Game and Parks Commission is authorized to convey to the city of Atkinson for public park purposes the following described real estate now known as Atkinson State Recreation Area, situated in the county of Holt, in the State of Nebraska, to wit: A tract of land in Blocks 53, 54, 55, 56, 57, 58, 59, and 60, all in Mathew's Addition to Atkinson, Holt County, Nebraska; and the southeast quarter of the southwest quarter of section 30, township 30 north, range 14 west of the 6th principal meridian, excepting therefrom a parcel described as follows: Commencing at the southwest corner of the southeast quarter of the southwest quarter, section 30, township 30 north, range 14 west of the 6th principal meridian, thence running due north 42.42 rods; thence running due east 36.36 rods; thence running due south 24.24 rods; thence running due east 18.18 rods; thence running due south 18.18 rods; thence running due west 54.54 rods to the place of beginning, containing 49.51 acres, more or less, Holt County, Nebraska; the southwest quarter of section 30, township 30 north, range 14 west, Holt County, Nebraska; and that part of the southwest quarter of the southeast quarter of section 30, township 30 north, range 14 west of the 6th principal meridian, Holt County, Nebraska, described as follows: Commencing at the northwest corner of the southwest quarter of the southeast quarter of said section 30, thence running on a line south 57 degrees, 35 minutes, east a distance of 347.56 feet, thence due south a distance of 433.75 feet, thence due west a distance of 293.38 feet, thence due north a distance of 620.1 feet to the point of beginning containing 3.55 acres, more or less, except that if the city of Atkinson ceases to operate the lands conveyed as a public park and recreation area, title to such lands shall revert to the Game and Parks Commission.

Source: Laws 2010, LB743, § 2.

90-274 Game and Parks Commission; convey property to village of Ayr.

The Game and Parks Commission is authorized to convey to the village of Ayr for public park purposes the following described real estate, now known as

Crystal Lake State Recreation Area, situated in the county of Adams, in the State of Nebraska, to wit:

(1) That part of the southeast quarter of section 28, township 6 north, range 10 west of the 6th principal meridian, in Adams County, Nebraska, described as follows: Begin at a stone at the northeast corner of the southeast quarter of section 28, township 6 north, range 10 west; thence south along the section line 254 feet to a point where the south right-of-way line of the Burlington-Northern Railroad intersects the said section line, said point being the point of beginning for the parcel herein conveyed; thence northwesterly along the south right-of-way line of the Burlington-Northern Railroad, 648 feet to an iron pin; thence left 95 degrees, 28 minutes, 414.7 feet to an iron pin; thence left 38 degrees, 21 minutes, 324.2 feet; thence right 57 degrees, 15 minutes, 805.8 feet to an iron pin; thence right 60 degrees, 13 minutes, 48.9 feet to an iron pin; thence left 51 degrees, 20 minutes, 1,026.7 feet to an iron pin; thence left 62 degrees, 21 minutes, 208.9 feet to an iron pin on the south side of section 28; thence left 58 degrees, 38 minutes, 186.5 feet along the section line to an iron pin; thence left 48 degrees, 22 minutes, 371.7 feet to an iron pin; thence left 21 degrees, 30 minutes, 574 feet to an iron pin; thence right 70 degrees, 20 minutes, 605.8 feet to an iron pin on the section line between sections 27 and 28; thence north along said section line 1,588 feet to the point of beginning, containing 32.79 acres more or less;

(2) That part of the southwest quarter of section 27, township 6 north, range 10 west, in Adams County, Nebraska, described as follows: Begin at a stone at the northwest corner of the southwest quarter of section 27, township 6 north, range 10 west; thence south along the section line 254 feet to a point where the south right-of-way line of the Burlington-Northern Railroad intersects the said section line, said point being the point of beginning for the parcel herein conveyed; thence southeasterly along the south right-of-way line of said railroad 265.7 feet to an iron pin; thence right 81 degrees, 14 minutes, 272 feet to an iron pin; thence left 52 degrees, 50 minutes, 151 feet to an iron pin; thence left 12 degrees, 165 feet to an iron pin; thence right 19 degrees, 06 minutes, 211.5 feet to an iron pin; thence right 6 degrees, 36 minutes, 132 feet to an iron pin; thence right 6 degrees, 34 minutes, 198.2 feet to an iron pin; thence left 6 degrees, 35 minutes, 198 feet to an iron pin; thence right 10 degrees, 22 minutes, 132.3 feet to an iron pin; thence right 13 degrees, 54 minutes, 132 feet to an iron pin; thence right 7 degrees, 15 minutes, 132 feet; thence right 13 degrees, 05 minutes, 120.5 feet; thence left 15 degrees, 28 minutes, 131.8 feet; thence right 31 degrees, 10 minutes, 66 feet; thence right 34 degrees, 14 minutes, 99 feet; thence right 23 degrees, 04 minutes, 157.8 feet; thence right 19 degrees, 19 minutes, 264 feet; thence right 9 degrees, 20 minutes, 642.6 feet to a point on the north and south dividing line between sections 27 and 28 and 812 feet north of the southwest corner of section 27; thence north along the section line, 1,588 feet to the place of beginning, containing 30.22 acres; and

(3) That part of the southwest quarter of section 27, township 6 north, range 10 west of the 6th principal meridian, in Adams County, Nebraska, more particularly described as follows: To ascertain the point of beginning, begin at the northwest corner of the southwest quarter of section 27, township 6 north, range 10 west; thence south along the section line 254 feet to the point where the south right-of-way line of the Burlington-Northern Railroad intersects the said section line; thence southeasterly along the south right-of-way line of said railroad 265.70 feet; thence deflecting right 81 degrees, 14 minutes, for a

distance of 55.63 feet to the actual point of beginning; thence continuing on the same course 216.37 feet; thence deflecting left 52 degrees, 50 minutes, for a distance of 38.57 feet; thence deflecting left 127 degrees, 01 minute for a distance of 130.48 feet; thence deflecting left 8 degrees, 40 minutes, for a distance of 59.87 feet; thence deflecting left 15 degrees, 24 minutes, for a distance of 54.80 feet to the actual point of beginning and containing 0.154 acres, a little more or a little less as surveyed by Edwin D. Benjamin.

If the village of Ayr ceases to operate the lands conveyed as a public park and recreation area, title to such lands shall revert to the Game and Parks Commission.

Source: Laws 2011, LB563, § 1.

90-275 Game and Parks Commission; convey property to county of Sherman.

The Game and Parks Commission is authorized to convey to the county of Sherman for public park purposes the following described real estate, now known as Bowman State Recreation Area, situated in the county of Sherman, in the State of Nebraska, to wit:

(1) A tract of land in the northwest quarter of section 13, township 15 north, range 15 west of the 6th principal meridian, in Sherman County, Nebraska, more particularly described as follows: Commencing at a point on the line between sections 13 and 14, township 15 north, range 15 west of the 6th principal meridian, at a point 33 feet south of the corner of sections 11, 12, 13, and 14, township 15 north, range 15 west of the 6th principal meridian, and running thence east on a line parallel with the line between sections 12 and 13, township 15 north, range 15 west of the 6th principal meridian, and 33 feet distant, 995.94 feet, thence south 14 degrees, 15 minutes east 1252.35 feet, thence south 37 degrees east 488.06 feet, thence south 59 degrees, 45 minutes east 132.99 feet, thence south 86 degrees west 974.16 feet to the left bank of the Middle Loup River, thence in a northwesterly direction along the left bank of the stream, 1201.86 feet to a point on the line between sections 13 and 14 aforesaid 917.40 feet south of said corner of sections 11, 12, 13, and 14, thence north on the line between sections 13 and 14, 884.40 feet to the point of beginning, containing 43.06 acres, more or less; and

(2) A tract of land in the northwest quarter of section 13, township 15 north, range 15 west of the 6th principal meridian, in Sherman County, Nebraska, more particularly described as follows: Commencing at the east quarter corner of said section 13, township 15 north, range 15 west of the 6th principal meridian; thence southerly on said section line a distance of 910.56 feet; thence northwesterly with a deflection angle of 117 degrees, 42 minutes, a distance of 3492.39 feet to the point of beginning, this point of beginning being marked by an iron stake and being the southeast corner of a tract of land conveyed to the State of Nebraska by warranty deed from John Haesler and Bertha Haesler, husband and wife, dated October 30, 1930, and recorded April 29, 1931, in Book 43 at Page 151 of Deed Records; thence southwesterly with a bearing of south 46 degrees, 10 minutes, west 699.13 feet to a point on the left bank of the Middle Loup River; thence northwesterly along the left bank of said Middle Loup River with a bearing of north 46 degrees, 0 minutes, west 602.55 feet; thence easterly, on the south line of said tract, on a bearing north 86 degrees, 0

minutes, east a distance of 940 feet to the point of beginning; containing 4.83 acres, more or less.

Source: Laws 2011, LB207, § 1.

90-276 Game and Parks Commission; convey property to village of Brownville.

The Game and Parks Commission is authorized to convey to the village of Brownville, Nebraska, for public park purposes the following described real estate now known as Brownville State Recreation Area, situated in the county of Nemaha, in the State of Nebraska, to wit:

(1) From the southeast corner of Block 1 in the Original Town of Brownville, Nebraska, running east parallel to the center line of Main Street a distance of 237.1 feet to the place of beginning, said place of beginning being 90 feet east of the center line of the C.B. & Q. R.R. track; thence south 6 degrees, 26 minutes east, parallel to the C.B. & Q. R.R. track, a distance of 100 feet to a point; thence south 7 degrees, 11 minutes east, parallel to the C.B. & Q. R.R. track, a distance of 100 feet to a point; thence south 7 degrees, 24 minutes east, parallel to the C.B. & Q. R.R. track, a distance of 100 feet to a point; thence south 7 degrees, 16 minutes east, parallel to the C.B. & Q. R.R. track, a distance of 100 feet to a point; thence south 7 degrees, 12 minutes east, parallel to the C.B. & Q. R.R. track, a distance of 100 feet to a point; thence south 6 degrees, 35 minutes east, parallel to the C.B. & Q. R.R. track, a distance of 100 feet to a point; thence south 5 degrees, 00 minutes east, parallel to the C.B. & Q. R.R. track, a distance of 100 feet to a point; thence south 3 degrees, 58 minutes east, parallel to the C.B. & Q. R.R. track, a distance of 100 feet to a point; thence south 2 degrees, 26 minutes east, parallel to the C.B. & Q. R.R. track, a distance of 100 feet to a point; thence south 1 degree, 11 minutes east, parallel to the C.B. & Q. R.R. track, a distance of 100 feet to a point; thence south 0 degrees, 03 minutes east, parallel to the C.B. & Q. R.R. track, a distance of 100 feet to a point; thence south 0 degrees, 42 minutes west, parallel to the C.B. & Q. R.R. track, a distance of 60.3 feet to a point, said point being 90 feet east of the center line of the C.B. & Q. R.R. track; thence east 860.4 feet to a point on the right high mark of the Missouri River; thence north 27 degrees, 14 minutes west along the said high bank of the Missouri River, a distance of 199.9 feet to a point; thence north 21 degrees, 39 minutes west along the said high bank of the Missouri River a distance of 635.51 feet to a point; thence north 18 degrees, 50 minutes west along said high bank of the Missouri River a distance of 408.21 feet to a point; thence west 497.90 feet to the place of beginning, all in Nemaha County, Nebraska, containing 17.20 acres, more or less, plus all accretions thereto; and

(2) Commencing at the southeast corner of Block 1 in the Original Town of Brownville, Nebraska, running east parallel to the center line of Main Street a distance of 237.1 feet to a point, said point being 90 feet east of the center line of the C.B. & Q. R.R. track; thence south 6 degrees, 26 minutes east, parallel to the C.B. & Q. R.R. track, a distance of 100 feet to a point; thence south 7 degrees, 11 minutes east, parallel to the C.B. & Q. R.R. track, a distance of 100 feet to a point; thence south 7 degrees, 24 minutes east, parallel to the C.B. & Q. R.R. track, a distance of 100 feet to a point; thence south 7 degrees, 16 minutes east, parallel to the C.B. & Q. R.R. track, a distance of 100 feet to a point; thence south 7 degrees, 12 minutes east, parallel to the C.B. & Q. R.R.

track, a distance of 100 feet to a point; thence south 6 degrees, 35 minutes east, parallel to the C.B. & Q. R.R. track, a distance of 100 feet to a point; thence south 5 degrees, 00 minutes east, parallel to the C.B. & Q. R.R. track, a distance of 100 feet to a point; thence south 3 degrees, 58 minutes east, parallel to the C.B. & Q. R.R. track, a distance of 100 feet to a point; thence south 2 degrees, 26 minutes east, parallel to the C.B. & Q. R.R. track, a distance of 100 feet to a point; thence south 1 degree, 11 minutes east, parallel to the C.B. & Q. R.R. track, a distance of 100 feet to a point; thence south 0 degrees, 03 minutes east, parallel to the C.B. & Q. R.R. track, a distance of 100 feet to a point; thence south 0 degrees, 42 minutes west, parallel to the C.B. & Q. R.R. track, a distance of 60.3 feet to a point, said point being 90 feet east of the center line of the C.B. & Q. R.R. track, being the place of beginning; thence south 2 degrees, 04 minutes east, parallel to the C.B. & Q. R.R. track, a distance of 52.5 feet to a point; thence south 4 degrees, 46 minutes west, parallel to the C.B. & Q. R.R. track, a distance of 100 feet to a point; thence south 9 degrees, 48 minutes west, parallel to the C.B. & Q. R.R. track, a distance of 46.4 feet to a point; said point being 90 feet east of the center line of the C.B. & Q. R.R. track and on the section line between sections 18 and 19, township 5 north, range 16 east of the 6th principal meridian; thence north 88 degrees, 42 minutes east along the section line between sections 18 and 19, township 5 north, range 16 east, a distance of 906.9 feet to the corners of sections 17, 18, 19, and 20, township 5 north, range 16 east; thence continuing north 88 degrees, 42 minutes east along the section line between sections 17 and 20, township 5 north, range 16 east, a distance of 449.4 feet to a point on the right high bank of the Missouri River; thence north 34 degrees, 17 minutes west along said right high bank of the said Missouri River, a distance of 202.41 feet to a point; thence west a distance of 1,224.44 feet to the place of beginning, containing 5.41 acres, more or less, all in Nemaha County, Nebraska, plus all accretions thereto.

The above described tract being immediately south of the tract described and recorded in Book number 79, page 398 of the Deed records of Nemaha County, Nebraska.

Source: Laws 2011, LB621, § 1.

90-277 Property conveyed to Brownville; management.

Property conveyed by the Game and Parks Commission pursuant to section 90-276 is conveyed with the intent that the property continue to be managed for public access and for public outdoor recreation opportunities, in a safe and sanitary manner, and in compliance with all relevant provisions and responsibilities outlined within prior covenants, easements, and agreements hereby transferred, including continued maintenance of the federally funded public boating access facilities existing on the property, which is specifically assigned through 2013.

Source: Laws 2011, LB621, § 2.

90-278 Game and Parks Commission; convey property to county of Chase.

(1) The Game and Parks Commission is authorized to convey to the county of Chase for public purposes the following described real estate, now known as Champion Mill State Historical Park, situated in the county of Chase, in the State of Nebraska, to wit: All of block 4, original town of Champion, Nebraska, and lots 1, 2, and 3, lot 4 except beginning at the southwest corner of lot 4 in

block 5 of the original town of Champion, Nebraska, said point of beginning being at the point of intersection of the north property line of Second Street and the east line of the alley in said block 5; thence running north along the west line of said lot 4 a distance of 70 feet; thence running east 75 feet parallel with the south line of said lot 4; thence south parallel with the west line of lot 4 a distance of 70 feet to intersect the south line of said lot 4; thence west along the south line of said lot 4 a distance of 75 feet to the place of beginning, the north half of lot 9, and all of lots 10, 11, 12, and 13, all in block 5, original town of Champion, Nebraska.

(2) The Game and Parks Commission is authorized to convey to the county of Chase for public purposes the following described real estate, now known as Champion Lake State Recreation Area, situated in the county of Chase, in the State of Nebraska, to wit:

(a) The following described portion of the southwest quarter of section 21, township 6 north, range 39 west of the 6th principal meridian in Chase County, Nebraska, to wit: Beginning at the northeast corner of said quarter section; thence west on the north line of said quarter section 1,017 feet to a stone; thence southeasterly 992 feet in a straight line to a point on the west line of the west side of block 23, West Champion, which is 102.5 feet south of the northwest corner of said block 23; thence north 102.5 feet to the northwest corner of said block 23, in West Champion; thence east along the north side of said block 23 and along a line which is the north side of said block 23 produced eastward to the east line of said quarter section; thence north along the east line of said quarter section 644 feet to the northeast corner of said quarter section; and

(b) The following described property, same being a part of the northwest quarter of the southeast quarter of section 21, township 6 north, range 39 west of the 6th principal meridian in Chase County, Nebraska, to wit: Beginning at the northwest corner of the southeast quarter of section 21, township 6 north, range 39 west of the 6th principal meridian in Chase County, Nebraska, and running thence east 1,080 feet; thence south 100 feet to the north line of Fourth Street of the original town of Champion, Nebraska; thence west along the said north line of Fourth Street aforesaid 1,080 feet; thence north 100 feet to the place of beginning, said land being also described as Lots 3, 4, 5, 6, 7, 8, 9, 10, and 11, Champion subdivision of the northwest quarter of the southeast quarter of section 21, township 6 north, range 39 west of the 6th principal meridian in Chase County, Nebraska.

(3) Title to the property described in subsections (1) and (2) of this section shall remain with Chase County unless (a) Chase County ceases to operate the property as a public park and recreation area or (b) a financial need arises pertaining to the park that is detrimental to the county. In either case title to such property shall revert to the Game and Parks Commission.

Source: Laws 2012, LB739, § 1; Laws 2013, LB16, § 1.

90-279 Game and Parks Commission; convey property to Lower Loup Natural Resources District.

The Game and Parks Commission is authorized to convey to the Lower Loup Natural Resources District for public purposes the following described real estate, now known as Pibel Lake State Recreation Area, situated in the county of Wheeler, in the State of Nebraska, to wit: A tract of land in the southeast

quarter of section 25, township 21 north, range 11 west of the 6th principal meridian, Wheeler County, Nebraska, more fully described as follows: Commencing at the southeast corner of section 25, township 21 north, range 11 west of the 6th principal meridian, (the east side of said section having an assumed bearing of north 0 degrees, 00 minutes east and the south side of said section an assumed bearing of south 89 degrees, 25 minutes west); thence south 89 degrees, 25 minutes west a distance of 440 feet to the point of beginning; thence south 89 degrees, 25 minutes west a distance of 1409.85 feet; thence north 0 degrees, 53 minutes east a distance of 890.25 feet; thence north 89 degrees, 25 minutes east a distance of 396 feet; thence north 0 degrees, 00 minutes east a distance of 160 feet; thence north 89 degrees, 25 minutes east a distance of 160 feet; thence north 0 degrees, 00 minutes east a distance of 930 feet; thence south 89 degrees, 25 minutes west a distance of 480 feet; thence north 9 degrees, 18 minutes west a distance of 367.51 feet; thence south 79 degrees, 13 minutes east a distance of 1017.65 feet; thence south 42 degrees, 54 minutes east a distance of 220 feet; thence south 17 degrees, 13 minutes east a distance of 580.15 feet; thence south 0 degrees, 58 minutes west a distance of 586.0 feet; thence south 37 degrees, 44 minutes east a distance of 111.0 feet; thence south 0 degrees, 00 minutes west a distance of 750 feet to the point of beginning; excepting lots 49, 50, 77 and 78 in the plat of Pibel Lake, a total of 53.4 acres.

Source: Laws 2012, LB849, § 1.

90-280 Property conveyed to Lower Loup Natural Resources District; operation and maintenance.

(1) Property conveyed by the Game and Parks Commission pursuant to section 90-279 shall be operated and maintained as follows:

(a) The property shall be maintained so as to appear attractive and inviting to the public;

(b) Sanitation and sanitary facilities shall be maintained in accordance with applicable health standards;

(c) The property shall be kept reasonably open, accessible, and safe for public use. Fire prevention and similar activities shall be maintained for proper public safety;

(d) Buildings, roads, trails, and other structures and improvements shall be kept in reasonable repair throughout their estimated lifetime to prevent undue deterioration and to encourage public use, including the maintenance of the area's federally funded public boating access facilities existing on the property, which is specially assigned and required through 2024; and

(e) The facility shall be kept open for public use at reasonable hours and times of the year, according to the type of area or facility.

(2) The Lower Loup Natural Resources District shall be responsible for compliance and enforcement of the requirements set forth in subsection (1) of this section.

Source: Laws 2012, LB849, § 2.

**ARTICLE 3
CAPITOL ENVIRONS**

Cross References

Nebraska Capitol Commission, see section 81-1108.32.

Office of the Nebraska Capitol Commission, see section 72-2204.

Section

- 90-301. Act, how cited.
- 90-302. Legislative intent.
- 90-303. Nebraska State Capitol Environs District; maximum height restrictions; enforcement; exemptions; city of Lincoln; powers and duties.
- 90-304. Nebraska State Capitol Environs District; beautification projects; participation; procedure.
- 90-305. Nebraska State Capitol Environs District; beautification projects; financing.
- 90-306. Governor; appoint board or commission members.
- 90-307. Nebraska State Capitol Environs Commission; decision or action; appeal.
- 90-308. City of Lincoln; duties.
- 90-309. Nebraska State Capitol Environs Commission; annual meeting; report.

90-301 Act, how cited.

Sections 90-301 to 90-309 shall be known and may be cited as the Nebraska State Capitol Environs Act.

Source: Laws 1977, LB 172, § 1; Laws 1988, LB 962, § 1; Laws 1993, LB 271, § 1.

90-302 Legislative intent.

The Legislature hereby finds that the Nebraska State Capitol and its environs are a source of pride and inspiration to the citizens of the state. It recognizes that the State Capitol, designated as a National Historic Landmark and regarded as one of the architectural masterpieces in the world, owes a major part of its recognition, esteem, and value to the inspiring manner in which its high tower physically dominates neighboring buildings and to the fact that it serves as a prominent landmark and focal point for inspiring vistas in the capital city of the state and for many miles beyond. The Legislature further finds that the preservation of the dominant height of the State Capitol in relation to surrounding structures should be a concern not only for the citizens of the city of Lincoln but for all of the citizens of the state, for the State Capitol is a financial, cultural, and aesthetic investment and resource of the entire citizenry. The Legislature further finds that the structures and improvements in the State Capitol environs directly affect the ability of citizens to enjoy the historical, cultural, and aesthetic treasure they have in their State Capitol. Therefore, the Legislature declares and explains its intention to reclaim certain regulatory powers that it has delegated to municipalities, in this case to the city of Lincoln, by directly imposing maximum height restrictions in the State Capitol environs. The Legislature implements these restrictions for the benefit of all the citizens of Nebraska with the further explanation that the maximum height restrictions being required by section 90-303 are those which were in effect at the time this legislation was introduced, that the value of real estate in the State Capitol environs has been increased substantially by the proximity of such real estate to the State Capitol and by the investment of state resources in the construction, maintenance, and protection of the State Capitol, that the value of such real estate will undoubtedly continue to increase because of state maintenance and protection of the State Capitol despite, and in part because of, the height restrictions imposed by the city of Lincoln or such section, and that the involvement of the State of Nebraska in the regulation of structure height in the State Capitol environs through such section, in conjunction with the regulatory power of the city of Lincoln, will inject a greater degree of stability in the

governmental process for regulating heights in the State Capitol environs, which will in turn benefit all Nebraska citizens. The Legislature further declares its intention to exercise certain regulatory powers for the benefit of the citizens of Nebraska by delegating to the city of Lincoln the authority to review and approve or disapprove plans and proposals for demolition, exterior alteration, and construction of structures and other improvements in the Nebraska State Capitol Environs District.

Source: Laws 1977, LB 172, § 2; Laws 1993, LB 271, § 2.

90-303 Nebraska State Capitol Environs District; maximum height restrictions; enforcement; exemptions; city of Lincoln; powers and duties.

(1) The maximum height of any buildings and structures built after March 8, 1977, shall be restricted as follows:

(a) The maximum height of buildings and structures shall be forty-five feet or National Geodetic Survey elevation 1235.0 feet, whichever is lower, within an area bounded on the west by Seventeenth Street, on the north by K Street, on the east by a boundary formed by a line extending in a true south direction as an extension of the east property line of Twenty-fourth Street, and on the south by a boundary formed by a line extending directly in a true east direction to the east property line of Twenty-fourth Street from the centerpoint of the intersection of Seventeenth and H Streets, all streets in the city of Lincoln, Lancaster County, Nebraska;

(b) The maximum height of buildings and structures shall be forty-five feet or National Geodetic Survey elevation 1235.0 feet, whichever is lower, within an area bounded on the west by Fourteenth Street, on the north by G Street, on the east by Sixteenth Street, and on the south by Washington Street, all streets in the city of Lincoln, Lancaster County, Nebraska;

(c) The maximum height of the buildings and structures shall be fifty-seven feet or National Geodetic Survey elevation 1247.0 feet, whichever is lower, within an area bounded on the west by Thirteenth Street, on the north by L Street, on the east by Seventeenth Street, and on the south by G Street, all streets in the city of Lincoln, Lancaster County, Nebraska;

(d) The maximum height of the buildings and structures shall be fifty-seven feet or National Geodetic Survey elevation 1247.0 feet, whichever is lower, within an area bounded on the west by Fourteenth Street, on the north by S Street, on the east by Sixteenth Street, and on the south by L Street, all streets in the city of Lincoln, Lancaster County, Nebraska; and

(e) The maximum height of the buildings and structures shall be fifty-seven feet or National Geodetic Survey elevation 1247.0 feet, whichever is lower, within an area bounded on the west by Fifth Street, on the north by K Street, on the east by Thirteenth Street, and on the south by H Street, all streets in the city of Lincoln, Lancaster County, Nebraska.

(2) For the purposes of the Nebraska State Capitol Environs Act, the areas and the full width of the right-of-way boundary streets described in subsections (1) and (3) of this section shall together constitute and be defined as the Nebraska State Capitol Environs District.

(3) Design approval shall be required for all aboveground utility, construction, and landscape improvements in the public right-of-way bounded on the north and south by the property lines of J Street, on the west by a boundary

formed by a line extending in a true south direction as an extension of the east property line of Twenty-fourth Street, and on the east by a line extending in a true north direction as an extension of the east property line of Thirty-fifth Street.

(4) The city of Lincoln shall insure, through its inspection and permit procedures, that the maximum height restrictions and design review process prescribed by this section for the Nebraska State Capitol Environs District are enforced.

(5) The height restrictions and design review process required by this section shall apply, within the Nebraska State Capitol Environs District, to all real estate in private or quasi-public ownership and to real estate owned by the State of Nebraska and local governmental units of all types.

(6) The following appurtenances shall be exempt from the height restrictions required by this section, but such appurtenances shall not exceed twenty feet in height above the maximum height permitted in subsection (1) of this section and shall be set back a minimum of fifteen feet from all faces of a building when such faces are adjacent to a street: Church spires, cooling towers with approved screening, elevator bulkheads, fire towers, monuments, stage towers or scenery lofts, ornamental towers, and spires.

(7) Nothing in the act shall be construed as limiting the authority of the city of Lincoln to impose lower height restrictions than those maximum height limits established by subsection (1) of this section or in establishing lower height restrictions for appurtenances than those required by subsection (6) of this section.

(8) The city of Lincoln shall review and approve or disapprove plans and proposals for demolition, exterior alteration, and construction of structures and other improvements in the Nebraska State Capitol Environs District. The city of Lincoln shall adopt regulations within its zoning code vesting responsibility for review, approval, and disapproval of projects with the Nebraska State Capitol Environs Commission established by the city of Lincoln.

(9) The regulations of the city of Lincoln for design review in the Nebraska State Capitol Environs District shall emphasize the long-term enhancement of the State Capitol's setting and of enjoyment of the State Capitol by the citizens while respecting the interests of property owners, including economic interests and the desirability of predictable, expeditious review.

Source: Laws 1977, LB 172, § 3; Laws 1993, LB 271, § 3; Laws 2002, LB 729, § 13; Laws 2009, LB450, § 1.

90-304 Nebraska State Capitol Environs District; beautification projects; participation; procedure.

(1) The State of Nebraska, acting through the Department of Administrative Services, is hereby empowered to expend appropriations authorized by the Legislature and to otherwise participate fully in the planning, construction, and maintenance of all manner of special lighting, landscaping, decorative walkway, fountain, and any other beautification projects in the Nebraska State Capitol Environs District as an individual governmental entity, or in similar projects which are jointly initiated and financed with the city of Lincoln or the county of Lancaster or both governmental bodies in the Nebraska State Capitol Environs District.

(2) The city of Lincoln and the county of Lancaster are hereby empowered to expend their respective funds to participate singly, with each other, and with the State of Nebraska, in the planning, construction, and maintenance of all manner of special lighting, landscaping, decorative walkway, fountain, and any other beautification projects in the Nebraska State Capitol Environs District. Construction and maintenance projects authorized in this section shall only be implemented on the street and alley rights-of-way in the Nebraska State Capitol Environs District, as such district is defined by subsection (2) of section 90-303, and on real estate within the Nebraska State Capitol Environs District which is owned singly by the State of Nebraska, the city of Lincoln, the county of Lancaster, by these three governmental bodies jointly or by any two of such governmental bodies.

(3) Neither the State of Nebraska, city of Lincoln, or county of Lancaster is authorized to utilize eminent domain powers to accomplish the purposes of sections 90-301 to 90-305; *Provided*, that nothing in sections 90-301 to 90-305 shall prevent the exercise of eminent domain by any governmental entity so empowered to acquire public rights-of-way; *and provided further*, that this prohibition shall not be construed as deterring any one of the three governmental bodies from utilizing any existing powers it has on projects it undertakes singly.

Source: Laws 1977, LB 172, § 4.

90-305 Nebraska State Capitol Environs District; beautification projects; financing.

The State of Nebraska, city of Lincoln, and county of Lancaster may share in financing such activities in any proportions which are mutually agreeable on a three-party basis, or in any combination of two parties. Such entities are also, jointly, singly, or in any combination, empowered to enter into contracts and to receive and expend funds from any private sources or public body, including the federal government, for the purposes described in section 90-304. The State of Nebraska, city of Lincoln, or county of Lancaster may act as a financial agent, project manager, and maintenance agency for one or both of the other governmental bodies in implementing the purposes described in section 90-304.

Source: Laws 1977, LB 172, § 5.

90-306 Governor; appoint board or commission members.

The Governor may appoint members to a board or commission which is formed by the city of Lincoln or the county of Lancaster or both governmental bodies to protect and improve the Nebraska State Capitol environs.

Source: Laws 1988, LB 962, § 2.

90-307 Nebraska State Capitol Environs Commission; decision or action; appeal.

Any decision or action of the Nebraska State Capitol Environs Commission may be appealed to the city council of the city of Lincoln by filing an appeal with the city clerk within thirty days of the date of the commission's action, except that governmental units may opt to appeal actions of the commission to

the Department of Administrative Services by so indicating at the time of filing the appeal with the city clerk.

Source: Laws 1993, LB 271, § 4.

90-308 City of Lincoln; duties.

Within six months after September 9, 1993, the city of Lincoln shall prepare for preliminary review regulations implementing the design review process in accordance with the Nebraska State Capitol Environs Act and shall adopt such regulations as an amendment to its zoning code within twelve months after September 9, 1993.

Source: Laws 1993, LB 271, § 5.

90-309 Nebraska State Capitol Environs Commission; annual meeting; report.

(1) The Nebraska State Capitol Environs Commission shall meet at least annually with the Nebraska Capitol Commission to discuss and coordinate projects that may impact the capitol and its surrounding environs pursuant to section 81-1108.38.

(2) The Nebraska State Capitol Environs Commission shall report each January to the city council and mayor of the city of Lincoln, to the Legislature, and to the Governor. The report submitted to the Legislature shall be submitted electronically. The report shall review the major decisions rendered during the preceding year and outline the rationale for the decisions. The report may also survey the status of the Nebraska State Capitol Environs District and make recommendations for its enhancement and protection.

Source: Laws 1993, LB 271, § 6; Laws 1999, LB 297, § 3; Laws 2012, LB782, § 249.

**ARTICLE 4
SPECIFIC PROJECTS**

Section

- 90-401. Game and Parks Commission; Red Willow and Strunk Lake State Recreation Areas; construct campgrounds and other recreation developments.
- 90-402. Game and Parks Commission; Rock Creek Fish Hatchery; modernize.
- 90-403. Eugene T. Mahoney State Park.
- 90-404. Game and Parks Commission; additions to Arbor Lodge State Historical Park; purchase of property in the city of Bassett.
- 90-405. Repealed. Laws 2000, LB 1135, § 34.

90-401 Game and Parks Commission; Red Willow and Strunk Lake State Recreation Areas; construct campgrounds and other recreation developments.

The Game and Parks Commission is hereby authorized to construct campgrounds and other recreation developments at Red Willow State Recreation Area and Strunk Lake State Recreation Area pursuant to the 1978 Strunk Lake State Recreation Area and Red Willow State Recreation Area Development Program prepared by such commission.

Source: Laws 1978, LB 108, § 1.

90-402 Game and Parks Commission; Rock Creek Fish Hatchery; modernize.

The Game and Parks Commission is hereby authorized to modernize the Rock Creek Fish Hatchery pursuant to the 1974 Study of the Nebraska State Fish Hatchery System and Addendums prepared by such commission.

Source: Laws 1978, LB 586, § 1.

90-403 Eugene T. Mahoney State Park.

The land acquired by the Game and Parks Commission located in township 12 north, range 10 east of the sixth principal meridian, Cass County, is hereby named the Eugene T. Mahoney State Park.

Source: Laws 1985, LB 606A, § 1.

90-404 Game and Parks Commission; additions to Arbor Lodge State Historical Park; purchase of property in the city of Bassett.

(1) The Game and Parks Commission may enter into an agreement to accept as a gift from the Nebraska Game and Parks Foundation all of the real estate described as Lot 1 in the northwest quarter of the northwest quarter of section 8, township 8 north, range 14 east, Otoe County, Nebraska, except that part of Lot 1, commencing at the northwest corner of Lot 1, thence east 265 feet, thence south 462 feet, thence west 265 feet to a point on the west line of Lot 1, thence north 462 feet to the place of beginning, also described as the east 678.14 feet of Lot 1, all located in Otoe County, Nebraska, containing 7.1 acres more or less and including all gas, oil, and mineral rights.

(2) The Game and Parks Commission may enter into an agreement to accept as a gift from the United States Government all of the real estate described as a tract of land situated in the southwest quarter of section 8, township 8 north, range 14 east of the 6th principal meridian, Otoe County, Nebraska, more particularly described as follows: Commencing at the northeast corner of said southwest quarter of section 8; thence west 990.00 feet; thence south to a point that intersects the north right-of-way line of State Highway No. 2, said intersection being the point of beginning; thence easterly along said north right-of-way line of State Highway No. 2, for a distance of 200 feet; thence north 400 feet; thence west 200 feet; thence south to the point of beginning, all located in Otoe County, Nebraska, containing 1.84 acres, more or less, or 80,000 square feet.

(3) In consideration of such conveyances, the commission agrees that the land shall be designated and utilized as additions to Arbor Lodge State Historical Park.

(4) The Game and Parks Commission may purchase from a willing seller, when funds on hand are sufficient, or acquire by gift, devise, or otherwise title in the name of the State of Nebraska to property within Block 27, Pierce's Addition, and adjacent previous railroad right-of-way, all located within the city of Bassett, Nebraska.

Source: Laws 1993, LB 235, § 47; Laws 2000, LB 1410, § 3; Laws 2006, LB 792, § 1.

90-405 Repealed. Laws 2000, LB 1135, § 34.

APPROPRIATIONS

ARTICLE 5

APPROPRIATIONS

Section

- 90-501. Repealed. Laws 2013, LB 2, § 1.
- 90-502. Repealed. Laws 2013, LB 2, § 1.
- 90-503. Repealed. Laws 2013, LB 2, § 1.
- 90-504. Repealed. Laws 2013, LB 2, § 1.
- 90-505. Repealed. Laws 2009, First Spec. Sess., LB 2, § 9.
- 90-506. Repealed. Laws 2013, LB 2, § 1.
- 90-507. Repealed. Laws 2013, LB 2, § 1.
- 90-508. Repealed. Laws 2013, LB 2, § 1.
- 90-509. Repealed. Laws 2013, LB 2, § 1.
- 90-510. Repealed. Laws 2013, LB 2, § 1.
- 90-511. Repealed. Laws 2013, LB 2, § 1.
- 90-512. Repealed. Laws 2013, LB 2, § 1.
- 90-513. Repealed. Laws 2013, LB 2, § 1.
- 90-514. Repealed. Laws 2013, LB 2, § 1.
- 90-515. Repealed. Laws 2013, LB 2, § 1.
- 90-516. Repealed. Laws 2013, LB 2, § 1.
- 90-517. Repealed. Laws 2019, LB3, § 5.
- 90-518. Repealed. Laws 2013, LB 2, § 1.
- 90-519. Repealed. Laws 2013, LB 2, § 1.
- 90-520. Repealed. Laws 2013, LB 2, § 1.
- 90-521. Repealed. Laws 1999, LB 12, § 1.
- 90-522. Repealed. Laws 1999, LB 12, § 1.
- 90-523. Repealed. Laws 1999, LB 12, § 1.
- 90-524. Repealed. Laws 1999, LB 12, § 1.
- 90-525. Repealed. Laws 1999, LB 12, § 1.
- 90-526. Repealed. Laws 2013, LB 2, § 1.
- 90-527. Repealed. Laws 2005, LB 90, § 21.
- 90-528. Repealed. Laws 2007, LB 2, § 1.
- 90-529. Repealed. Laws 2007, LB 2, § 1.
- 90-530. Repealed. Laws 2007, LB 2, § 1.
- 90-531. Repealed. Laws 2013, LB 2, § 1.
- 90-532. Repealed. Laws 2013, LB 2, § 1.
- 90-533. Repealed. Laws 2013, LB 2, § 1.
- 90-534. Repealed. Laws 2013, LB 2, § 1.
- 90-535. Repealed. Laws 2019, LB3, § 5.
- 90-536. Repealed. Laws 2019, LB3, § 5.
- 90-537. Repealed. Laws 2019, LB3, § 5.
- 90-538. Repealed. Laws 2019, LB3, § 5.
- 90-539. Repealed. Laws 2019, LB3, § 5.
- 90-540. Appropriations for probation, Department of Correctional Services, legal education, and Consortium for Crime and Justice Research; legislative intent.
- 90-541. Repealed. Laws 2019, LB3, § 5.
- 90-542. Repealed. Laws 2019, LB3, § 5.
- 90-543. Repealed. Laws 2019, LB3, § 5.
- 90-544. Repealed. Laws 2019, LB3, § 5.
- 90-545. Repealed. Laws 2019, LB3, § 5.
- 90-546. Repealed. Laws 2019, LB3, § 5.
- 90-547. Repealed. Laws 2019, LB3, § 5.
- 90-548. Repealed. Laws 2019, LB3, § 5.
- 90-549. Repealed. Laws 2019, LB3, § 5.
- 90-550. Repealed. Laws 2019, LB3, § 5.
- 90-551. Repealed. Laws 2019, LB3, § 5.
- 90-552. Repealed. Laws 2019, LB3, § 5.
- 90-553. Repealed. Laws 2019, LB3, § 5.
- 90-554. Repealed. Laws 2019, LB3, § 5.
- 90-555. Repealed. Laws 2019, LB3, § 5.

Section

- 90-556. Repealed. Laws 2019, LB3, § 5.
- 90-557. Repealed. Laws 2019, LB3, § 5.
- 90-558. Republican River Compact Litigation Contingency Cash Fund; created; use; investment.
- 90-559. Repealed. Laws 2019, LB3, § 5.
- 90-560. Repealed. Laws 2019, LB3, § 5.
- 90-561. Repealed. Laws 2022, LB685, § 1.
- 90-562. Department of Health and Human Services; Medical Assistance.
- 90-563. Cash Funds.

- 90-501 Repealed. Laws 2013, LB 2, § 1.**
- 90-502 Repealed. Laws 2013, LB 2, § 1.**
- 90-503 Repealed. Laws 2013, LB 2, § 1.**
- 90-504 Repealed. Laws 2013, LB 2, § 1.**
- 90-505 Repealed. Laws 2009, First Spec. Sess., LB 2, § 9.**
- 90-506 Repealed. Laws 2013, LB 2, § 1.**
- 90-507 Repealed. Laws 2013, LB 2, § 1.**
- 90-508 Repealed. Laws 2013, LB 2, § 1.**
- 90-509 Repealed. Laws 2013, LB 2, § 1.**
- 90-510 Repealed. Laws 2013, LB 2, § 1.**
- 90-511 Repealed. Laws 2013, LB 2, § 1.**
- 90-512 Repealed. Laws 2013, LB 2, § 1.**
- 90-513 Repealed. Laws 2013, LB 2, § 1.**
- 90-514 Repealed. Laws 2013, LB 2, § 1.**
- 90-515 Repealed. Laws 2013, LB 2, § 1.**
- 90-516 Repealed. Laws 2013, LB 2, § 1.**
- 90-517 Repealed. Laws 2019, LB3, § 5.**
- 90-518 Repealed. Laws 2013, LB 2, § 1.**
- 90-519 Repealed. Laws 2013, LB 2, § 1.**
- 90-520 Repealed. Laws 2013, LB 2, § 1.**
- 90-521 Repealed. Laws 1999, LB 12, § 1.**
- 90-522 Repealed. Laws 1999, LB 12, § 1.**
- 90-523 Repealed. Laws 1999, LB 12, § 1.**
- 90-524 Repealed. Laws 1999, LB 12, § 1.**
- 90-525 Repealed. Laws 1999, LB 12, § 1.**
- 90-526 Repealed. Laws 2013, LB 2, § 1.**

90-527 Repealed. Laws 2005, LB 90, § 21.

90-528 Repealed. Laws 2007, LB 2, § 1.

90-529 Repealed. Laws 2007, LB 2, § 1.

90-530 Repealed. Laws 2007, LB 2, § 1.

90-531 Repealed. Laws 2013, LB 2, § 1.

90-532 Repealed. Laws 2013, LB 2, § 1.

90-533 Repealed. Laws 2013, LB 2, § 1.

90-534 Repealed. Laws 2013, LB 2, § 1.

90-535 Repealed. Laws 2019, LB3, § 5.

90-536 Repealed. Laws 2019, LB3, § 5.

90-537 Repealed. Laws 2019, LB3, § 5.

90-538 Repealed. Laws 2019, LB3, § 5.

90-539 Repealed. Laws 2019, LB3, § 5.

90-540 Appropriations for probation, Department of Correctional Services, legal education, and Consortium for Crime and Justice Research; legislative intent.

It is the intent of the Legislature to appropriate:

(1) To the Office of Probation Administration:

(a) Five million dollars to expand mental health services with priority population being participants in the specialized substance abuse supervision program and problem-solving courts; and

(b) Three million eight hundred thousand dollars for new reporting centers and expanded services;

(2) To the Vocational and Life Skills Program under the Department of Correctional Services, five million dollars to carry out the program;

(3) To the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Fund, five hundred thousand dollars from the General Fund; and

(4) To the Consortium for Crime and Justice Research at the University of Nebraska at Omaha, two hundred thousand dollars to facilitate the establishment of the Nebraska Center for Justice Research at the University of Nebraska at Omaha. The mission of the center shall be to develop and sustain research capacity internal to the State of Nebraska to assist the Legislature in research, evaluation, and policymaking to reduce recidivism, promote the use of evidence-based practices in corrections, and improve public safety.

Source: Laws 2014, LB907, § 19.

90-541 Repealed. Laws 2019, LB3, § 5.

90-542 Repealed. Laws 2019, LB3, § 5.

90-543 Repealed. Laws 2019, LB3, § 5.

90-544 Repealed. Laws 2019, LB3, § 5.

90-545 Repealed. Laws 2019, LB3, § 5.

90-546 Repealed. Laws 2019, LB3, § 5.

90-547 Repealed. Laws 2019, LB3, § 5.

90-548 Repealed. Laws 2019, LB3, § 5.

90-549 Repealed. Laws 2019, LB3, § 5.

90-550 Repealed. Laws 2019, LB3, § 5.

90-551 Repealed. Laws 2019, LB3, § 5.

90-552 Repealed. Laws 2019, LB3, § 5.

90-553 Repealed. Laws 2019, LB3, § 5.

90-554 Repealed. Laws 2019, LB3, § 5.

90-555 Repealed. Laws 2019, LB3, § 5.

90-556 Repealed. Laws 2019, LB3, § 5.

90-557 Repealed. Laws 2019, LB3, § 5.

90-558 Republican River Compact Litigation Contingency Cash Fund; created; use; investment.

The Republican River Compact Litigation Contingency Cash Fund is created. The Director of Administrative Services shall use the fund to make payments in an amount up to \$5,500,000 in accordance with any court order pursuant to *Kansas v. Nebraska*, No. 126 Original. Such payment or payments shall only be made by the Department of Administrative Services upon written certification by the Attorney General of the amount necessary to satisfy the court-ordered amount. The fund shall receive revenue from fund transfers as authorized by the Legislature and from fees, charges, and any other revenue source specifically designated by the Legislature for deposit in the fund. Further, upon the written certification of the Attorney General to the Director of Administrative Services that the State of Nebraska has satisfied in full its payment requirements ordered by the court pursuant to *Kansas v. Nebraska*, No. 126 Original, the fund shall be terminated and any remaining balance shall be transferred to the Cash Reserve Fund. Any money in the Republican River Compact Litigation Contingency 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 2015, LB661, § 17.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

90-559 Repealed. Laws 2019, LB3, § 5.

90-560 Repealed. Laws 2019, LB3, § 5.

90-561 Repealed. Laws 2022, LB685, § 1.

90-562 Department of Health and Human Services; Medical Assistance.

AGENCY NO. 25 — DEPARTMENT OF HEALTH AND HUMAN SERVICES

Program No. 348 - Medical Assistance

	FY2023-24	FY2024-25
GENERAL FUND	1,000,583,595	1,004,665,399
CASH FUND	133,894,141	72,117,244
FEDERAL FUND est	2,429,949,804	2,075,656,145
PROGRAM TOTAL	3,564,427,540	3,152,438,788

The Department of Administrative Services shall monitor the appropriations and expenditures for this program according to the following program classification:

No. 348 - Medical Assistance

No. 349 - Medicaid Expansion Aid

There is included in the appropriation to this program for FY2023-24 \$1,000,583,595 General Funds, \$133,894,141 Cash Funds, and \$2,429,949,804 Federal Funds estimate for state aid, which shall only be used for such purpose. There is included in the appropriation to this program for FY2024-25 \$1,004,665,399 General Funds, \$72,117,244 Cash Funds, and \$2,075,656,145 Federal Funds estimate for state aid, which shall only be used for such purpose.

There is included in the amount shown as aid for this program for FY2023-24 \$450,000 Cash Funds from the Nebraska Health Care Cash Fund for a state plan amendment covering tobacco-use cessation in compliance with Title XIX of the federal Social Security Act. There is included in the amount shown as aid for this program for FY2024-25 \$450,000 Cash Funds from the Nebraska Health Care Cash Fund for a state plan amendment covering tobacco-use cessation in compliance with Title XIX of the federal Social Security Act. The smoking cessation funding for FY2023-24 and FY2024-25 is for the costs of tobacco-use cessation counseling and tobacco-use cessation pharmaceuticals approved by the federal Food and Drug Administration for such purpose.

There is included in the amount shown as aid for this program for FY2023-24 \$-0- General Funds and \$-0- Federal Funds and for FY2024-25 \$2,510,597 General Funds and \$4,466,385 Federal Funds for pharmacy dispensing fees for independent pharmacies.

There is included in the amount shown as aid for this program for FY2023-24 \$-0- General Funds and \$-0- Federal Funds and for FY2024-25 \$3,054,187 General Funds and \$5,611,661 Federal Funds to increase reimbursement rates for dental services provided under the Medical Assistance Act by twelve and one-half percent for fiscal year 2024-25.

It is the intent of the Legislature that phased-down state contributions to the federal government as defined and required by the federal Medicare Prescription Drug, Improvement, and Modernization Act of 2003 may be made from appropriations to this program.

The chief executive officer of the Department of Health and Human Services may certify to the budget administrator of the budget division of the Department of Administrative Services FY2023-24 and FY2024-25 unexpended appro-

priation balances for Medical Assistance, Program No. 348, available to transfer to Developmental Disability Aid, Program No. 424, to be used only to maintain individuals with an intellectual or developmental disability in a medicaid program that best serves their needs at a cost that does not exceed the cost of services provided in an institution. The budget administrator of the budget division of the Department of Administrative Services shall administratively transfer during FY2023-24 and FY2024-25 available appropriations as certified by the chief executive officer of the Department of Health and Human Services from Medical Assistance, Program No. 348, to Developmental Disability Aid, Program No. 424.

It is the intent of the Legislature that the Department of Health and Human Services provide monthly status reports electronically to the Clerk of the Legislature and the Legislative Fiscal Analyst on medicaid expansion. The department shall include in the report information on policy decisions on services, community engagement, wellness requirements, and rate setting.

It is the intent of the Legislature that the total amount appropriated for medicaid nursing facility rates for Program No. 348, specified as \$449,351,518 for FY2023-24 (\$186,851,595 General Funds and \$262,499,923 Federal Funds) and \$449,351,518 for FY2024-25 (\$186,031,528 General Funds and \$263,319,990 Federal Funds), shall be used in the medicaid nursing facility rate calculation for Program No. 348, including the calculation of the annual inflation factor.

The total amount appropriated for medicaid nursing facility rates for Program No. 348 includes amounts for rate enhancement and any other purpose related to medicaid nursing facility services. The department shall file a report electronically with the Legislative Fiscal Analyst and the Clerk of the Legislature no later than August 1, 2023, on how the inflation factor was calculated for FY2023-24 rates and no later than August 1, 2024, on how the inflation factor was calculated for FY2024-25 rates.

The department shall file a report electronically with the Legislative Fiscal Analyst and the Clerk of the Legislature between December 15 and December 31 of each year of the biennium ending June 30, 2025, identifying the amount of any unspent remaining appropriation from the prior fiscal year's appropriations earmarked for nursing facility payments. The report shall include an identification of encumbrances and retroactive payments.

Source: Laws 2024, LB204A, § 2; Laws 2024, LB358A, § 2; Laws 2024, LB1412, § 70.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB204A, section 2, with LB358A, section 2, to reflect all amendments.

Note: Changes made by LB204A became effective April 17, 2024. Changes made by LB358A became effective April 17, 2024. Changes made by LB1412 became effective April 2, 2024.

Cross References

Medical Assistance Act, see section 68-901.

90-563 Cash Funds.

CASH FUNDS.

The receipts for FY2023-24 and FY2024-25 inuring to the several Cash Funds, together with any amounts held in account by the State Treasurer on June 30, 2023, are hereby credited to each of the funds respectively.

Expenditure of Cash Funds appropriated in this act shall be limited to the amount shown by program except when specific exceptions are made. The amounts appropriated in this act include the following funds:

(1) Legislative Council: Nebraska Legislative Shared Information System Cash Fund, Donations/Contributions Cash Fund, Nebraska Statutes Cash Fund, Clerk of the Legislature Cash Fund, Biotechnology Development Cash Fund, Nebraska Health Care Cash Fund;

(2) Supreme Court: Supreme Court Reports Cash Fund, Court Appointed Special Advocate Fund, Nebraska Statutes Distribution Cash Fund, Supreme Court Attorney Services Cash Fund, Probation Program Cash Fund, Probation Cash Fund, State Probation Contractual Services Cash Fund, Dispute Resolution Cash Fund, Counsel for Discipline Cash Fund, Supreme Court Education Fund, Supreme Court Automation Cash Fund, Parenting Act Fund, Public Guardianship Cash Fund, Administrative Office of the Courts Cash Fund, Bar Commission Cash Fund;

(3) Governor: Governor’s Policy Research Cash Fund;

(4) Secretary of State: Records Management Cash Fund, Secretary of State Cash Fund, Election Administration Fund;

(5) Auditor of Public Accounts: Cooperative Audit Cash Fund;

(6) Attorney General: Motor Vehicle Fraud Cash Fund, Department of Justice Natural Resources Enforcement Fund, State Settlement Cash Fund, Nebraska Health Care Cash Fund, State Medicaid Fraud Control Unit Cash Fund;

(7) State Treasurer: State Treasurer Administrative Fund, Unclaimed Property Cash Fund, Mutual Finance Assistance Fund, College Savings Plan Administrative Fund, College Savings Plan Expense Fund, Convention Center Support Fund, State Disbursement Unit Cash Fund, Treasury Management Cash Fund, Sports Arena Facility Support Fund, Political Subdivision Recapture Cash Fund;

(8) State Department of Education: State Department of Education Cash Fund, Certification Fund, Professional Practices Commission Fund, School Technology Fund, Tuition Recovery Cash Fund, Private Postsecondary Career Schools Cash Fund, Excellence in Teaching Cash Fund, School District Reorganization Fund, Early Childhood Education Endowment Cash Fund, Nebraska Education Improvement Fund, High School Equivalency Grant Fund, Expanded Learning Opportunity Grant Fund, Education Future Fund, Behavioral Training Cash Fund, Mental Health Training Cash Fund, College Pathway Program Cash Fund, School Safety and Security Fund, State Department of Education Improvement Grant Fund;

(9) Public Service Commission: Nebraska Grain Warehouse Surveillance Cash Fund, Nebraska Telecommunications Relay System Fund, Public Service Commission Housing and Recreational Vehicle Cash Fund, Nebraska Telecommunications Universal Service Fund, Moisture Testing Examination Fund, Grain Warehouse Auditing Fund, Municipal Rate Negotiations Revolving Loan Fund, Public Service Commission Pipeline Regulation Fund, 911 Service System Fund, Transportation Network Company Regulation Cash Fund, 211 Cash Fund;

(10) Board of Parole: Board of Parole Grant Awards Cash Fund;

(11) Department of Revenue: Department of Revenue Enforcement Fund, State Lottery Operation Cash Fund, Marijuana and Controlled Substances Tax

Administration Cash Fund, Waste Reduction and Recycling Incentive Fees Collection Fund, Petroleum Release Remedial Action Collection Fund, Litter Fee Collection Fund, Severance Tax Administration Fund, Department of Revenue Miscellaneous Receipts Fund, Charitable Gaming Operations Fund, Tobacco Products Administration Cash Fund, Nebraska Incentives Fund, Motor Fuel Tax Enforcement and Collection Cash Fund, Nebraska Health Care Cash Fund, State Athletic Commissioner's Cash Fund, Department of Revenue Property Assessment Division Cash Fund, Property Tax Credit Cash Fund, Nebraska Advantage Transformational Tourism and Redevelopment Act Cash Fund, Airline and Carline Cash Fund, Compulsive Gamblers Assistance Fund;

(12) Department of Agriculture: Fertilizers and Soil Conditioners Administrative Fund, Commercial Feed Administration Cash Fund, Pure Milk Cash Fund, Soil and Plant Analysis Laboratory Cash Fund, Livestock Auction Market Fund, Nebraska Potato Development Fund, Weights and Measures Administrative Fund, Nebraska Poultry and Egg Development, Utilization, and Marketing Fund, Agricultural Products Marketing Information Cash Fund, Pure Food Cash Fund, Nebraska Agricultural Products Marketing Cash Fund, State Apiary Cash Fund, Weed Book Cash Fund, Pesticide Administrative Cash Fund, Nebraska Seed Administrative Cash Fund, Plant Protection and Plant Pest Cash Fund, Tractor Permit Cash Fund, Nebraska Origin and Premium Quality Grain Cash Fund, Animal Damage Control Cash Fund, Noxious Weed Cash Fund, Buffer Strip Incentive Fund, Winery and Grape Producers Promotional Fund, Commercial Dog and Cat Operator Inspection Program Cash Fund, Domesticated Cervine Animal Cash Fund, Agricultural Laboratory Testing Services Cash Fund, Agricultural Suppliers Lease Protection Cash Fund, Nebraska Beer Industry Promotional Fund, Animal Health and Disease Control Act Cash Fund, Nebraska Hemp Program Fund;

(13) Department of Banking and Finance: Financial Institution Assessment Cash Fund, Securities Act Cash Fund, Department of Banking and Finance Settlement Cash Fund;

(14) State Fire Marshal: Nebraska Natural Gas Pipeline Safety Cash Fund, State Fire Marshal Cash Fund, Underground Storage Tank Fund, Training Division Cash Fund, Reduced Cigarette Ignition Propensity Fund, Boiler Inspection Cash Fund, Mechanical Safety Inspection Fund;

(15) Department of Insurance: Department of Insurance Cash Fund;

(16) Department of Labor: Employment Security Special Contingent Fund, Nebraska Training and Support Cash Fund, Contractor and Professional Employer Organization Registration Cash Fund, Sector Partnership Program Fund, Workforce Development Program Cash Fund;

(17) Department of Motor Vehicles: Motor Carrier Division Cash Fund, Department of Motor Vehicles Cash Fund, Department of Motor Vehicles Ignition Interlock Fund, License Plate Cash Fund, Vehicle Title and Registration System Replacement and Maintenance Cash Fund, Operator's License Services Fund, System Replacement and Maintenance Fund, Highway Tax Fund, Motor Carrier Services System Replacement and Maintenance Fund;

(18) Department of Health and Human Services: Health and Human Services Cash Fund, School District Reimbursement Fund, Nebraska Child Abuse Prevention Fund, Nebraska Health Care Cash Fund, Childhood Care Cash Fund, University of Nebraska Medical Center Medical Education Revolving Fund, Behavioral Health Services Fund, Professional and Occupational Credentialing

Cash Fund, Rural Health Professional Incentive Fund, Organ and Tissue Donor Awareness and Education Fund, Prescription Drug Monitoring Program Fund, ICF/DD Reimbursement Protection Fund, Nebraska Emergency Medical System Operations Fund, Radiation Transportation Emergency Response Cash Fund, Nursing Facility Quality Assurance Fund, Health Care Homes for the Medically Underserved Fund, Nursing Faculty Student Loan Cash Fund, Nursing Facility Penalty Cash Fund, Homeless Shelter Assistance Trust Fund, Patient Safety Cash Fund, Medicaid Managed Care Excess Profit Fund, HCBS Enhanced FMAP Fund, Opioid Prevention and Treatment Cash Fund, Opioid Treatment Infrastructure Cash Fund;

(19) Department of Transportation: Highway Cash Fund, Grade Crossing Protection Fund, State Recreation Road Fund, Roads Operations Cash Fund, State Highway Capital Improvement Fund, Transportation Infrastructure Bank Fund, Aeronautics Cash Fund, Department of Transportation Aeronautics Capital Improvement Fund;

(20) Department of Veterans' Affairs: Veteran Cemetery Construction Fund, Nebraska Veteran Cemetery System Operation Fund, Department of Veterans' Affairs Cash Fund, Veterans' Home Building Fund, Pets for Vets Cash Fund, Veterans Employment Program Fund, Military Installation Development and Support Fund;

(21) Department of Natural Resources: Water Resources Cash Fund, Small Watersheds Flood Control Fund, Nebraska Resources Development Fund, Nebraska Soil and Water Conservation Fund, Natural Resources Water Quality Fund, Water Well Decommissioning Fund, Water Resources Trust Fund, Department of Natural Resources Cash Fund, Water Sustainability Fund, Critical Infrastructure Facilities Cash Fund, Dam Safety Cash Fund, Perkins County Canal Project Fund, Jobs and Economic Development Initiative Fund, Surface Water Irrigation Infrastructure Fund;

(22) State Electrical Board: Electrical Division Fund;

(23) Military Department: Military Department Cash Fund, Governor's Emergency Cash Fund, Nebraska Emergency Management Agency Cash Fund, Nebraska Emergency Planning and Community Right to Know Cash Fund;

(24) Board of Educational Lands and Funds: Surveyors' Cash Fund, Board of Educational Lands and Funds Cash Fund, Survey Record Repository Fund;

(25) Game and Parks Commission: State Game Fund, State Park Cash Revolving Fund, Nebraska Habitat Fund, Nebraska Aquatic Habitat Fund, Nebraska Snowmobile Trail Cash Fund, Nebraska Outdoor Recreation Development Cash Fund, Wildlife Conservation Fund, Nebraska Environmental Trust Fund, Cowboy Trail Fund, Game Law Investigation Cash Fund, Niobrara Council Fund, Nebraska Environmental Endowment Fund, Ferguson House Fund, Hunters Helping the Hungry Cash Fund, Game and Parks Commission Capital Maintenance Fund, Game and Parks State Park Improvement and Maintenance Fund, Game and Parks Commission Educational Fund, Josh the Otter-Be Safe Around Water Cash Fund, Trail Development and Maintenance Fund, Water Recreation Enhancement Fund, Museum Construction and Maintenance Fund;

(26) Nebraska Library Commission: Nebraska Library Commission Cash Fund;

(27) Nebraska Liquor Control Commission: Nebraska Liquor Control Commission Rule and Regulation Cash Fund;

(28) State Racing and Gaming Commission: Racing and Gaming Commission's Racing Cash Fund, Racing and Gaming Commission's Racetrack Gaming Fund, Track Distribution Fund;

(29) Nebraska Workers' Compensation Court: Compensation Court Cash Fund;

(30) Nebraska Brand Committee: Nebraska Brand Inspection and Theft Prevention Fund;

(31) Nebraska Motor Vehicle Industry Licensing Board: Nebraska Motor Vehicle Industry Licensing Fund;

(32) State Real Estate Commission: State Real Estate Commission's Fund;

(33) Board of Barber Examiners: Board of Barber Examiners Fund;

(34) Department of Correctional Services: Department of Correctional Services Facility Cash Fund, Reentry Cash Fund, Vocational and Life Skills Programming Fund, Prison Overcrowding Contingency Fund, Parole Program Cash Fund;

(35) Nebraska Educational Telecommunications Commission: State Educational Telecommunications Fund, NEB*SAT Cash Fund;

(36) Coordinating Commission for Postsecondary Education: Coordinating Commission for Postsecondary Education Cash Fund, Nebraska Opportunity Grant Fund, Guaranty Recovery Cash Fund, Excellence in Teaching Cash Fund, Door to College Scholarship Fund, Community College Gap Assistance Program Fund;

(37) Nebraska State Colleges: Chadron Cash Fund, Peru Cash Fund, Wayne Cash Fund, Chadron State College Designated Cash Fund, Peru State College Designated Cash Fund, Wayne State College Designated Cash Fund, Board of Trustees Cash Fund, State Colleges Sport Facilities Cash Fund;

(38) University of Nebraska: Financial Literacy Cash Fund, University Cash Fund, Temporary University Fund, University of Nebraska at Omaha Cash Fund, University of Nebraska Medical Center Cash Fund, University of Nebraska at Kearney Cash Fund, University of Nebraska Central Administration Designated Cash Fund, University of Nebraska-Lincoln Designated Cash Fund, University of Nebraska at Omaha Designated Cash Fund, University of Nebraska Medical Center Designated Cash Fund, University of Nebraska at Kearney Designated Cash Fund, State Anatomical Board Cash Fund;

(39) Nebraska State Fair Board: Nebraska State Fair Support and Improvement Cash Fund;

(40) Real Property Appraiser Board: Real Property Appraiser Fund, Appraisal Management Company Fund;

(41) Nebraska State Historical Society: Historical Society Fund, Historical Landmark Cash Fund, Nebraska Job Creation and Mainstreet Revitalization Fund, Nebraska 150 Sesquicentennial Plate Proceeds Fund, Willa Cather National Statuary Hall Cash Fund, Willa Cather Historical Building Cash Fund, Semiquincentennial Commission Fund;

(42) Nebraska Wheat Development, Utilization, and Marketing Board: Nebraska Wheat Development, Utilization, and Marketing Fund;

(43) Nebraska Oil and Gas Conservation Commission: Oil and Gas Conservation Fund, Carbon Dioxide Storage Facility Administrative Fund;

(44) Board of Engineers and Architects: Engineers and Architects Regulation Fund;

(45) Board of Geologists: Geologists Regulation Fund;

(46) Nebraska Ethanol Board: Agricultural Alcohol Fuel Tax Fund, Ethanol Production Incentive Cash Fund;

(47) Nebraska Dairy Industry Development Board: Nebraska Dairy Industry Development Fund;

(48) State Board of Examiners for Land Surveyors: Land Surveyor Examiner's Fund;

(49) Nebraska State Board of Public Accountancy: Certified Public Accountants Fund;

(50) Nebraska State Patrol: Nebraska State Patrol Cash Fund, Investigation Petty Cash Fund, Carrier Enforcement Cash Fund, Nebraska State Patrol Drug Control and Education Cash Fund, Public Safety Cash Fund, Nebraska State Patrol Vehicle Replacement Cash Fund, Nebraska Public Safety Communication System Cash Fund, Combined Law Enforcement Information Network Cash Fund, State DNA Sample and Data Base Fund, Treasury Agency Forfeitures Cash Fund;

(51) Department of Administrative Services: Building Renewal Allocation Fund, State Building Renewal Assessment Fund, University Building Renewal Assessment Fund, State College Building Renewal Assessment Fund, Capitol Restoration Cash Fund, Vacant Building and Excess Land Cash Fund, Resource Recovery Fund, Tort Claims Fund, Information Technology Infrastructure Fund, Health and Life Benefit Administration Cash Fund, Rural Broadband Task Force Fund, Community College State Dependents Fund;

(52) Abstracters Board of Examiners: Abstracters Board of Examiners Cash Fund;

(53) Commission on Latino-Americans: Hispanic Awareness Cash Fund, Commission on Latino-Americans Cash Fund;

(54) Nebraska Arts Council: Nebraska Arts Council Cash Fund, Nebraska Arts and Humanities Cash Fund, Support the Arts Cash Fund;

(55) Foster Care Review Office: Foster Care Review Office Cash Fund, Nebraska Health Care Cash Fund;

(56) Department of Economic Development: Job Training Cash Fund, Administrative Cash Fund, Affordable Housing Trust Fund, Civic and Community Center Financing Fund, Lead-Based Paint Hazard Control Cash Fund, Intern Nebraska Cash Fund, Rural Workforce Housing Investment Fund, Bioscience Innovation Cash Fund, Nebraska Film Office Fund, Customized Job Training Cash Fund, ImagiNE Nebraska Cash Fund, Middle Income Workforce Housing Investment Fund, ImagiNE Nebraska Revolving Loan Fund, Nebraska Transformational Project Fund, Site and Building Development Fund, Economic Recovery Contingency Fund, Innovation Hub Cash Fund, Nebraska Rural Projects Fund, Shovel-Ready Capital Recovery and Investment Fund, Economic Development Cash Fund, Panhandle Improvement Project Cash Fund, Youth Outdoor Education Innovation Fund;

- (57) State Board of Landscape Architects: State Board of Landscape Architects Cash Fund;
- (58) Nebraska Power Review Board: Nebraska Power Review Fund;
- (59) Nebraska Investment Council: State Investment Officer's Cash Fund;
- (60) Nebraska Commission on Law Enforcement and Criminal Justice: Nebraska Law Enforcement Training Center Cash Fund, Law Enforcement Improvement Fund, Victim's Compensation Fund, Community Corrections Uniform Data Analysis Cash Fund, Violence Prevention Cash Fund;
- (61) Commission for the Blind and Visually Impaired: Commission for the Blind and Visually Impaired Cash Fund;
- (62) Commission for the Deaf and Hard of Hearing: Commission for the Deaf and Hard of Hearing Fund;
- (63) Community College Aid: Nebraska Community College Aid Cash Fund, Community College Future Fund;
- (64) Department of Environment and Energy: Integrated Solid Waste Management Cash Fund, Nebraska Litter Reduction and Recycling Fund, Environmental Cash Fund, Chemigation Costs Fund, Low-Level Radioactive Waste Cash Fund, Petroleum Release Remedial Action Cash Fund, Wastewater Treatment Operator Certification Cash Fund, Local Site Selection Cash Fund, Local Monitoring Committee Cash Fund, Waste Reduction and Recycling Incentive Fund, Wastewater Treatment Facilities Construction Loan Fund, Remedial Action Plan Monitoring Fund, Livestock Waste Management Cash Fund, Drinking Water Administration Fund, Clean Air Title V Cash Fund, Air Quality Permit Cash Fund, Superfund Cost Share Cash Fund, Private Onsite Wastewater Treatment System Certification and Registration Cash Fund, Solid Waste Landfill Closure Assistance Fund, Private Onsite Wastewater Treatment System Permit and Approval Cash Fund, State Energy Cash Fund, Clean-burning Motor Fuel Development Fund, Volkswagen Settlement Cash Fund, Renewable Fuel Infrastructure Fund, Engineering Plan Review Cash Fund, Environmental Safety Cash Fund, Nebraska Environmental Response Cash Fund, Water Well Standards and Contractors' Licensing Fund, Safe Drinking Water Act Cash Fund, Dredge and Fill Cash Fund, Lead Service Line Cash Fund;
- (65) Public Employees Retirement Board: School Expense Fund, Judges Expense Fund, State Patrol Expense Fund, Deferred Compensation Expense Fund, State Employees Retirement System Expense Fund, County Employees Retirement System Expense Fund, State Cash Balance Expense Fund, County Cash Balance Expense Fund, Class V School Employees Retirement System Management Work Plan Fund;
- (66) Dry Bean Commission: Dry Bean Development, Utilization, Promotion, and Education Fund;
- (67) Nebraska Accountability and Disclosure Commission: Nebraska Accountability and Disclosure Commission Cash Fund;
- (68) Corn Development, Utilization, and Marketing Board: Nebraska Corn Development, Utilization, and Marketing Fund;
- (69) Nebraska Hemp Commission: Hemp Promotion Fund;
- (70) Commission on Indian Affairs: Commission on Indian Affairs Cash Fund, Chief Standing Bear National Statuary Hall Cash Fund, Native American Scholarship and Leadership Fund;

APPROPRIATIONS

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(71) Nebraska Tourism Commission: State Visitors Promotion Cash Fund, Tourism Conference Cash Fund, Nebraska Tourism Commission Promotional Cash Fund;

(72) Grain Sorghum Development, Utilization, and Marketing Board: Grain Sorghum Development, Utilization, and Marketing Fund, Grain Sorghum National Checkoff Fund;

(73) Tax Equalization and Review Commission: Tax Equalization and Review Commission Cash Fund;

(74) Commission on Public Advocacy: Legal Education for Public Service and Rural Practice Loan Repayment Assistance Fund, Commission on Public Advocacy Operations Cash Fund, Legal Aid and Services Fund, Civil Legal Services Fund;

(75) Dry Pea and Lentil Commission: Dry Pea and Lentil Fund; and

(76) Commission on African American Affairs: Commission on African American Affairs Cash Fund.

Source: Laws 2024, LB631A, § 6; Laws 2024, LB1329A, § 5; Laws 2024, LB1355A, § 8; Laws 2024, LB1412, § 111.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB631A, section 6, with LB1329A, section 5, and LB1355A, section 8, to reflect all amendments.

Note: Changes made by LB631A became effective July 19, 2024. Changes made by LB1329A became effective July 19, 2024. Changes made by LB1355A became operative July 1, 2024. Changes made by LB1412 became effective April 2, 2024.