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REISSUE REVISED STATUTES

REVISED STATUTES
OF
NEBRASKA

2024 CUMULATIVE SUPPLEMENT

EDITED, ANNOTATED, AND PUBLISHED
BY THE
REVISOR OF STATUTES

VOLUME 1
CHAPTERS 1 - 29, INCLUSIVE

CITE AS FOLLOWS

R.S.SUPP.,2024

Errata:

All errors so far discovered in the printing of the Reissue Revised Statutes of Nebraska, and the various supplements thereto, are corrected herein. The Revisor of Statutes would appreciate having reported to her any mistakes or errors of any kind in the Reissue Revised Statutes of Nebraska or in the various supplements thereto.

Reissue of Volumes 1 to 6

The laws enacted subsequent to 1943 which are included in the reissuance of Volumes 1 to 6 are not repeated and duplicated in this supplement. The dates of the latest reissue of such volumes are:

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CERTIFICATE OF AUTHENTICATION

I, Marcia M. McClurg, Revisor of Statutes, do hereby certify that the laws included in the 2024 Cumulative Supplement to the Revised Statutes of Nebraska are true and correct copies of the original acts enacted by the One Hundred Fifth Legislature, First Session, 2017, through the One Hundred Eighth Legislature, First Special Session, 2024, of the Nebraska State Legislature as shown by the enrolled bills on file in the office of the Secretary of State, save and except such compilation changes and omissions as are specifically authorized by sections 49-705 and 49-769.

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Lincoln, Nebraska
November 1, 2024

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ANNOTATIONS

CONSTITUTION OF THE STATE OF NEBRASKA

Article I, sec. 3.

For the issue involving specialized knowledge to be a significant factor, the issue must be one likely to make a difference as to the outcome if the defendant is successful in contesting it. State v. Wood, 310 Neb. 391, 966 N.W.2d 825 (2021).

There is a reasonable necessity for appointed expert assistance if the defendant shows some basis for believing the issue can only be strongly contested with the assistance of an appointed expert. State v. Wood, 310 Neb. 391, 966 N.W.2d 825 (2021).

There is no principled way to distinguish between psychiatric and nonpsychiatric experts; an expert in any field of expertise may, under the circumstances, be a basic tool of an adequate defense or appeal. State v. Wood, 310 Neb. 391, 966 N.W.2d 825 (2021).

To show a constitutional right to appointment of an independent expert at the State's expense, the accused must timely make a preliminary, particularized showing (1) that an issue involving specialized knowledge is likely to be a significant factor in the accused's defense and (2) that there is a reasonable necessity for the defense to have expert assistance in contesting that issue. State v. Wood, 310 Neb. 391, 966 N.W.2d 825 (2021).

Under this provision, in a criminal prosecution, the State must prove every ingredient of an offense beyond a reasonable doubt and may not shift the burden of proof to the defendant by presuming an ingredient upon proof of the other elements of the offense. Because the burden of proof always remains with the State, it cannot comment on a defendant's failure to produce evidence to refute an element of the crime, because doing so could erroneously lead the jury to believe that the defendant carried the burden of introducing evidence. The exception to this rule is when the defendant voluntarily assumes some burden of proof by asserting the defenses of alibi, of self-defense, and of others, relying on facts that could be elicited only from a witness who is not equally available to the State. While a defendant may invite the State to explain why it chose not to submit certain items for testing, a defendant in a criminal case can never open the door to shift the burden of proof. A defendant is entitled to inquire about weaknesses in the State's case, but this does not open the door for the State to point out that the defendant has not proved his or her innocence. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

A look-back provision of a natural resources district's rules governing land irrigation, which allowed acres that had been actually irrigated any year during a particular 10-year period to be certified, did not violate the substantive due process rights of a farmer who began irrigation after the 10-year period, because the provision had a substantial relation to the general welfare, in that it ensured an adequate supply of ground water and the window of time was reasonable due to the existence of limitations on "New Groundwater Irrigated Acres" in the district after that time. Lingenfelter v. Lower Elkhorn NRD, 294 Neb. 46, 881 N.W.2d 892 (2016).

A look-back provision of a natural resources district's rules governing land irrigation, which allowed acres that had been actually irrigated any year during a particular 10-year period to be certified, did not, under a rational basis test, violate the equal protection rights of a farmer who began irrigation after the 10-year period, because the provision was rationally related to the goal of ground water conservation. Lingenfelter v. Lower Elkhorn NRD, 294 Neb. 46, 881 N.W.2d 892 (2016).

Limitations on ex post facto judicial decisionmaking are inherent in the notion of due process, and retroactive judicial decisionmaking may be analyzed in accordance with the more basic and general principle of fair warning under the Due Process Clause; the question is whether the judicial decision being applied retroactively is both unexpected and indefensible by reference to the law which had been expressed prior to the conduct in issue. Caton v. State, 291 Neb. 939, 869 N.W.2d 911 (2015).

Article I, sec. 6.

Nebraska's sentencing scheme does not violate article I, sec. 6, of the Nebraska Constitution by leaving to the three-judge panel the ultimate life-or-death decision upon making the selection decisions of whether the aggravating circumstances justify the death penalty and whether sufficient mitigating circumstances exist that approach or exceed the weight given to the aggravating circumstances. State v. Trail, 312 Neb. 843, 981 N.W.2d 269 (2022).

Hurst v. Florida, 577 U.S. 92, 136 S. Ct. 616, 193 L. Ed. 2d 504 (2016), did not hold that a jury must find beyond

a reasonable doubt that the aggravating circumstances outweighed the mitigating circumstances. State v. Jenkins, 303 Neb. 676, 931 N.W.2d 851 (2019).

Article I, sec. 7.

Under most circumstances, it is unreasonable to expect an officer to question the validity of the law the officer is charged with enforcing. State v. Albarenga, 313 Neb. 72, 892 N.W.2d 799 (2022).

Probable cause existed for a warrant to search a cell phone for evidence of unlawful intrusion after a male was observed looking into the window of a bathroom, and the cell phone was located on the path the male took when he fled. State v. McGovern, 311 Neb. 705, 974 N.W.2d 595 (2022).

Viewing of cell phone videos by police, which led to the observation of a possible sexual assault, was reasonable and within the scope of the warrant. State v. McGovern, 311 Neb. 705, 974 N.W.2d 595 (2022).

Misstatements within a search warrant and application may still produce a valid warrant issued with the requisite probable cause if the rest of the warrant and attached application cures any defect resulting from the scrivener's error when read together. A search warrant and application's indicating incorrect dates of the drafting and signing is not per se fatal to the validity of a warrant. State v. Benson, 305 Neb. 949, 943 N.W.2d 426 (2020).

A warrant must be sufficiently particular to prevent an officer from having unlimited or unreasonably broad discretion in determining what items to seize. State v. Jennings, 305 Neb. 809, 942 N.W.2d 753 (2020).

In determining whether a warrant is sufficiently particular, several factors are to be considered: (1) Whether the warrant communicates objective standards for an officer to identify which items may be seized, (2) whether there is probable cause to support the seizure of the items listed, (3) whether the items in the warrant could be more particularly described based on the information available at the time the warrant was issued, and (4) the nature of the activity under investigation. State v. Jennings, 305 Neb. 809, 942 N.W.2d 753 (2020).

In reviewing the strength of an affidavit submitted as a basis for finding probable cause to issue a search warrant, the question is whether, under the totality of the circumstances illustrated by the affidavit, the issuing magistrate had a substantial basis for finding that the affidavit established probable cause. State v. Jennings, 305 Neb. 809, 942 N.W.2d 753 (2020).

Although the accuracy of radar equipment must be demonstrated to support a conviction for speeding based on radar readings, reasonable proof of the accuracy of the radar equipment is not necessary to support the minimal level of objective justification for the belief that speeding occurred for purposes of an investigatory stop. State v. Montoya, 305 Neb. 581, 941 N.W.2d 474 (2020).

An officer has reasonable suspicion to stop a defendant's vehicle for speeding following radar detection of speeding, even if the police report lacked a memorialization of the officer's visual estimation of the traveling speed, where the officer checked the police cruiser's radar device at the beginning of the officer's shift to ensure it was working properly, the officer waited until the best moment to take the radar reading, there was good Doppler tone, and the radar read that the defendant was driving 50 miles per hour in a 35-mile-per-hour zone. State v. Montoya, 305 Neb. 581, 941 N.W.2d 474 (2020).

A seizure that is lawful at its inception can violate the Fourth Amendment's and the Nebraska Constitution's guarantees against unreasonable searches and seizures by its manner of execution. State v. Ferguson, 301 Neb. 697, 919 N.W.2d 863 (2018).

Judicial probable cause determinations must be made promptly after a warrantless arrest, and unreasonable delays in such judicial determinations of probable cause include delays for the purpose of gathering additional evidence to justify the arrest. However, the arrested individual bears the burden of proving the delay was unreasonable when the probable cause determination occurs within 48 hours. State v. Ferguson, 301 Neb. 697, 919 N.W.2d 863 (2018).

The fact that a dog sniff is conducted after the time reasonably required to complete the initial mission of a traffic stop is not, in and of itself, a Fourth Amendment violation; a Fourth Amendment violation arises only when the dog sniff is conducted after the initial mission of the stop is completed and the officer lacks probable cause or reasonable suspicion to investigate further. State v. Ferguson, 301 Neb. 697, 919 N.W.2d 863 (2018).

A search warrant authorizing the search of a murder suspect's residence for "any and all firearms" sufficiently described the things to be seized with particularity; even though the particular caliber of the firearm was not specified, the warrant still told police with reasonable clarity which items to search for and seize and did not give police open-ended discretion. State v. Baker, 298 Neb. 216, 903 N.W.2d 469 (2017).

The particularity requirement of this provision demands that a warrant describe with particularity (1) the place to be searched and (2) the persons or things to be seized. State v. Baker, 298 Neb. 216, 903 N.W.2d 469 (2017).

The particularity requirement of this provision is distinct from, but closely related to, the requirement that a warrant be supported by probable cause. A warrant may be sufficiently particular even though it describes the items to be seized in broad or generic terms if the description is as particular as the supporting evidence will allow; but the broader the scope of a warrant, the stronger the evidentiary showing must be to establish probable cause. State v. Baker, 298 Neb. 216, 903 N.W.2d 469 (2017).

Section 60-6,197.04 is constitutionally valid and does not conflict with the 4th, 5th, and 14th Amendments to the U.S. Constitution, and this provision or Neb. Const. Art. I, sec. 12, as section 60-6,197.04 mandates a preliminary breath test, rather than a search incident to lawful arrest addressed in Birchfield v. North Dakota, 579 U.S. 438, 136 S. Ct. 2160, 195 L. Ed. 2d 560 (2016), and where the arresting officer cited specific articulable facts to support administering the preliminary breath test. State v. McCumber, 295 Neb. 941, 893 N.W.2d 411 (2017).

The Nebraska Supreme Court typically construes the enumerated rights in the Nebraska Constitution consistently with their counterparts in the U.S. Constitution as construed by the U.S. Supreme Court. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

The requirement of ready mobility for the automobile exception to the warrant requirement of this provision is met whenever a vehicle that is not located on private property is capable or apparently capable of being driven on the roads or highways. This inquiry does not focus on the likelihood of the vehicle's being moved under the particular circumstances and is generally satisfied by the inherent mobility of all operational vehicles. It does not depend on whether the defendant has access to the vehicle at the time of the search or is in custody, nor on whether the vehicle has been impounded. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

The ultimate determination of probable cause to perform a warrantless search is reviewed de novo, and findings of fact are reviewed for clear error, giving due weight to the inferences drawn from those facts by the trial judge. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

The ultimate touchstone of this provision is reasonableness. Searches and seizures must not be unreasonable. Searches without a valid warrant are per se unreasonable, subject only to a few specifically established and well-delineated exceptions. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

An officer's request that an individual step out of a parked vehicle does not amount to a seizure when the totality of the circumstances surrounding the officer's request would not have made a reasonable person believe that he or she was not free to leave. State v. Milos, 294 Neb. 375, 882 N.W.2d 696 (2016).

When an individual places his or her hand in the same pocket that an officer is trying to search, thereby interfering with the officer's ability to search, the individual sufficiently demonstrates a withdrawal of consent to search. State v. Milos, 294 Neb. 375, 882 N.W.2d 696 (2016).

A seizure subject to constitutional protections did not occur where a police officer activated the patrol unit's overhead lights and merely questioned the defendant in a public place; there was no evidence that the officer displayed his weapon, used a forceful tone of voice, touched the defendant, or otherwise told the defendant that he was not free to leave. State v. Gilliam, 292 Neb. 770, 874 N.W.2d 48 (2016).

Provision in a warrant authorizing the police to search for "[a]ny and all firearms" was sufficiently particular. State v. Tyler, 291 Neb. 920, 870 N.W.2d 119 (2015).

The consent to search a cell phone was given voluntarily where the defendant had been released from the squad car and handcuffs and had participated in the search by helping the officers unlock the cell phone's lock code. State v. Tyler, 291 Neb. 920, 870 N.W.2d 119 (2015).

Article I, sec. 9.

Delegation of the selection criteria and ultimate life-or-death decision to a three-judge panel does not violate article I, sec. 9, of the Nebraska Constitution, because it does not create an unacceptable risk that persons will be executed without the constitutionally required consideration of character, record of the individual offender, and the circumstances of the particular offense. State v. Trail, 312 Neb. 843, 981 N.W.2d 269 (2022).

A sentence of 25 to 30 years' imprisonment was not cruel and unusual punishment for a defendant who was convicted of first degree sexual assault of a young aspiring Olympian who trained at his gym, because the sentence reflected the seriousness of the crime committed and was proportionate for the offense and the offender. State v. Anders, 311 Neb. 958, 977 N.W.2d 234 (2022).

The death penalty is cruel and unusual punishment when imposed on a prisoner whose mental illness makes him or her unable to reach a rational understanding of the reason for his or her execution. State v. Jenkins, 303 Neb. 676, 931 N.W.2d 851 (2019).

A juvenile offender's sentence did not constitute cruel and unusual punishment where it allowed for release 17 years before his life expectancy. State v. Smith, 295 Neb. 957, 892 N.W.2d 52 (2017).

It is unconstitutional for a state to impose a sentence of life imprisonment without parole on a juvenile convicted of a nonhomicide offense. State v. Smith, 295 Neb. 957, 892 N.W.2d 52 (2017).

Nebraska's sentence of life imprisonment is effectively life imprisonment without parole under the rationale of Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), because it provides no meaningful opportunity to obtain release. State v. Thieszen, 295 Neb. 293, 887 N.W.2d 871 (2016).

The mere existence of a remote possibility of parole does not keep Nebraska's sentencing scheme from falling within the dictates of Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012). State v. Thieszen, 295 Neb. 293, 887 N.W.2d 871 (2016).

In determining whether a criminal fine is so excessive as to violate this provision prohibiting excessive fines, the test is whether the penalty is grossly disproportional to the gravity of the defendant's offense. State v. Newcomer, 23 Neb. App. 761, 875 N.W.2d 914 (2016).

In order to determine whether a fine challenged under this provision is grossly disproportional, the claimant must first make a prima facie showing of gross disproportionality, and if the claimant does so, the court then considers whether the disproportionality reaches such a level of excessiveness that the punishment is more criminal than the crime. State v. Newcomer, 23 Neb. App. 761, 875 N.W.2d 914 (2016).

Article I, sec. 11.

A defendant cannot claim the loss of the fundamental right to a speedy trial through the inherent delays of a process the defendant called upon, even if that process was to vindicate another fundamental right. State v. Short, 310 Neb. 81, 964 N.W.2d 272 (2021).

A waiver of the right to be present at trial is the voluntary and intentional relinquishment of a known right, privilege, or claim, and may be demonstrated by or inferred from a person's conduct. State v. Warlick, 308 Neb. 656, 956 N.W.2d 269 (2021).

An appellate court applies to a defendant, who was out on bail and has failed without explanation to be present at trial, the fundamental proposition that the burden to produce evidence will rest upon the party who possesses positive and complete knowledge concerning the existence of facts which the other party would otherwise be called upon to negative, or if the evidence to prove a fact is chiefly within the party's control. State v. Warlick, 308 Neb. 656, 956 N.W.2d 269 (2021).

In determining on direct appeal whether a defendant has waived the right to be present, an appellate court does not merely look to the evidence available at the moment the court pronounced the defendant's absence to be voluntary, but at the entirety of the evidence in the record. State v. Warlick, 308 Neb. 656, 956 N.W.2d 269 (2021).

It is the duty of a defendant out on bail to continue to be present after a trial recess, and the defendant's failure to do so constitutes voluntary absence on the defendant's part and a waiver of the defendant's right to be present. State v. Warlick, 308 Neb. 656, 956 N.W.2d 269 (2021).

The right to self-representation plainly encompasses certain specific rights of the defendant to have his or her voice heard, including that the pro se defendant must be allowed to control the organization and content of his or her own defense. This control may include a waiver of the right to present mitigating evidence during sentencing in a death penalty case. State v. Schroeder, 305 Neb. 527, 941 N.W.2d 445 (2020).

The competence that is required of a defendant seeking to waive his or her right to counsel is the competence to waive the right, not the competence to represent himself or herself. State v. Jenkins, 303 Neb. 676, 931 N.W.2d 851 (2019).

Article I, sec. 12.

Under the Double Jeopardy Clauses of the U.S. and Nebraska Constitutions, a successive prosecution for a greater offense after a prosecution for a lesser-included offense is not barred if the State is unable to proceed on the more

serious charge at the outset because additional facts necessary to sustain that charge have not occurred. State v. Lewis, 313 Neb. 879, 986 N.W.2d 739 (2023).

The protection granted by the Nebraska Constitution against double jeopardy is coextensive to the protection granted by the U.S. Constitution. State v. Sierra, 305 Neb. 249, 939 N.W.2d 808 (2020).

When a court sua sponte suggests a mistrial, it is not too onerous to require defense counsel to clearly and timely state whether he or she objects to the court's consideration of a mistrial when given an opportunity to do so. State v. Leon-Simaj, 300 Neb. 317, 913 N.W.2d 722 (2018).

Section 60-6,197.04 is constitutionally valid and does not conflict with the 4th, 5th, and 14th Amendments to the U.S. Constitution, and this provision or Neb. Const. Art. I, sec. 7, as section 60-6,197.04 mandates a preliminary breath test, rather than a search incident to lawful arrest addressed in Birchfield v. North Dakota, 579 U.S. 438, 136 S. Ct. 2160, 195 L. Ed. 2d 560 (2016), and where the arresting officer cited specific articulable facts to support administering the preliminary breath test. State v. McCumber, 295 Neb. 941, 893 N.W.2d 411 (2017).

Article I, sec. 16.

Where the death penalty was in effect at the time of the crimes and was also in effect at the time of sentencing, the repeal of the death penalty did not inflict a greater punishment than that available when the crimes were committed. State v. Jenkins, 303 Neb. 676, 931 N.W.2d 851 (2019).

The Ex Post Facto Clauses are a limitation upon the powers of the Legislature and do not concern judicial decisions. Caton v. State, 291 Neb. 939, 869 N.W.2d 911 (2015).

Article I, sec. 20.

"Debt," as stated in state constitutional prohibitions of imprisonment for debt, is generally viewed as an obligation to pay money from the debtor's own resources, which arose out of a consensual transaction between the creditor and the debtor. Sickler v. Sickler, 293 Neb. 521, 878 N.W.2d 549 (2016).

Imprisonment for contempt for the failure to comply with the order of property division in a dissolution decree does not violate this provision. Sickler v. Sickler, 293 Neb. 521, 878 N.W.2d 549 (2016).

Whether an obligation is a "debt" depends on the origin and nature of the obligation and not on the manner of its enforcement. Sickler v. Sickler, 293 Neb. 521, 878 N.W.2d 549 (2016).

Article II, sec. 1.

The constitutional principle of separation of powers demands that in the course of any overlapping exercise of the three branches' powers, no branch may significantly impair the ability of any other in its performance of its essential functions. State ex rel. Veskrna v. Steel, 296 Neb. 581, 894 N.W.2d 788 (2017).

Article III, sec. 1.

Statutory provisions authorizing initiative petitions should be construed in such a manner that the legislative power reserved in the people is effectual and should not be circumscribed by restrictive legislation or narrow and strict interpretation of the statutes pertaining to its exercise. Christensen v. Gale, 301 Neb. 19, 917 N.W.2d 145 (2018).

Article III, sec. 2.

A preelection mandamus action claiming that a voter ballot initiative violates the single subject rule is a claim based on the initiative's procedural, not substantive, requirements and is thus ripe for resolution before the election. State ex rel. Wagner v. Evnen, 307 Neb. 142, 948 N.W.2d 244 (2020).

A voter ballot initiative violates the single subject rule when the initiative's first two subsections would enshrine a constitutional right of certain persons to produce and medicinally use cannabis, while later subsections would enshrine a constitutional right and immunity for entities to grow and sell cannabis and would regulate the role of cannabis in at least six areas of public life. State ex rel. Wagner v. Evnen, 307 Neb. 142, 948 N.W.2d 244 (2020).

Because the voter ballot initiative power is precious to the people, the Nebraska Supreme Court construes statutory and constitutional provisions dealing with voters' power of initiative liberally to promote the democratic process. State ex rel. Wagner v. Evnen, 307 Neb. 142, 948 N.W.2d 244 (2020).

Logrolling is the practice of combining dissimilar propositions into one voter ballot initiative so that voters must vote for or against the whole package, even though they only support certain of the initiative's propositions. State ex rel. Wagner v. Evnen, 307 Neb. 142, 948 N.W.2d 244 (2020).

The people's reserved power of the initiative and their self-imposed requirements of procedure in exercising that power are of equal constitutional significance. State ex rel. Wagner v. Evnen, 307 Neb. 142, 948 N.W.2d 244 (2020).

The single subject requirement may not be circumvented by selecting a general subject so broad that the rule is evaded as a meaningful constitutional check on the initiative process. State ex rel. Wagner v. Evnen, 307 Neb. 142, 948 N.W.2d 244 (2020).

The single subject requirement was adopted by voters to protect against voter ballot initiatives that failed to give voters an option to clearly express their policy preference. State ex rel. Wagner v. Evnen, 307 Neb. 142, 948 N.W.2d 244 (2020).

To meet the single subject requirement, a voter ballot initiative must satisfy the natural and necessary connection test, which examines the initiative's singleness of purpose and the relationship of other details to its general subject. An initiative's general subject is defined by its primary purpose. State ex rel. Wagner v. Evnen, 307 Neb. 142, 948 N.W.2d 244 (2020).

For purposes of the single subject requirement for voter initiatives under the Nebraska Constitution, the general subject is defined by its primary purpose. Christensen v. Gale, 301 Neb. 19, 917 N.W.2d 145 (2018).

Statutory provisions authorizing initiative petitions should be construed in such a manner that the legislative power reserved in the people is effectual and should not be circumscribed by restrictive legislation or narrow and strict interpretation of the statutes pertaining to its exercise. Christensen v. Gale, 301 Neb. 19, 917 N.W.2d 145 (2018).

The controlling consideration in determining the singleness of a subject, for purposes of the single subject requirement for voter initiatives under this provision of the Nebraska Constitution, is its singleness of purpose and relationship of the details to the general subject, not the strict necessity of any given detail to carry out the general subject. Christensen v. Gale, 301 Neb. 19, 917 N.W.2d 145 (2018).

Where the limits of a proposed law, having natural and necessary connection with each other, and, together, are a part of one general subject, the proposal is a single and not a dual proposition, and thus does not violate the single subject requirement for voter initiatives under the Nebraska Constitution. Christensen v. Gale, 301 Neb. 19, 917 N.W.2d 145 (2018).

Whether the elements of complex statutory amendments can be characterized as presenting different policy issues for purposes of the single subject requirement for voter initiatives under this provision of the Nebraska Constitution, the crux of the question is the extent of the differences and how the elements relate to the primary purpose. Christensen v. Gale, 301 Neb. 19, 917 N.W.2d 145 (2018).

Article III, sec. 3.

Upon the filing of a referendum petition appearing to have a sufficient number of signatures, operation of the legislative act is suspended so long as the verification and certification process ultimately determines that the petition had the required number of valid signatures. State v. Mata, 304 Neb. 326, 934 N.W.2d 475 (2019).

Upon the filing of a referendum petition appearing to have a sufficient number of signatures, operation of the legislative act is suspended so long as the verification and certification process ultimately determines that the petition had the required number of valid signatures. State v. Jenkins, 303 Neb. 676, 931 N.W.2d 851 (2019).

Article III, sec. 18.

The prohibition in this provision against the Legislature's granting divorces is not implicated by a statutory scheme of general application to all persons seeking dissolution decrees. Dycus v. Dycus, 307 Neb. 426, 949 N.W.2d 357 (2020).

A zoning ordinance's exemption for property in a fixed geographic area was not special legislation, because it did not create a closed class nor did it create an arbitrary and unreasonable method of classification. Dowd Grain Co. v. County of Sarpy, 291 Neb. 620, 867 N.W.2d 599 (2015).

Generally, a class of property owners in a certain geographic area cannot form a closed class. Dowd Grain Co. v.

County of Sarpy, 291 Neb. 620, 867 N.W.2d 599 (2015).

Article IV, sec. 13.

The "conditions clause" permits the Legislature to enact laws placing conditions on when a committed offender is eligible for parole. Adams v. State, 293 Neb. 612, 879 N.W.2d 18 (2016).

Article IV, sec. 20.

The constitutional provision creating the Public Service Commission must be liberally construed to effectuate the purpose for which the commission was created, which is to serve the public interest. In re Application No. OP-0003, 303 Neb. 872, 932 N.W.2d 653 (2019).

The Public Service Commission is an independent regulatory body created by the Nebraska Constitution under this provision. In re Application No. OP-0003, 303 Neb. 872, 932 N.W.2d 653 (2019).

Article V, sec. 1.

By creating and regulating Judicial Branch Education, the Nebraska Supreme Court is exercising a power constitutionally committed to it. State ex rel. Veskrna v. Steel, 296 Neb. 581, 894 N.W.2d 788 (2017).

Article V, sec. 2.

An appeal challenging a Bar Commission order does not invoke the Supreme Court's original jurisdiction, and, as such, the Supreme Court lacks jurisdiction to award costs, damages, and other relief. In re Appeal of Z.H., 311 Neb. 746, 975 N.W.2d 142 (2022).

The Nebraska Constitution allocates the regulation of appellate jurisdiction to the Legislature, not to the Nebraska Supreme Court. State v. Blake, 310 Neb. 769, 969 N.W.2d 399 (2022).

Under this provision, the Nebraska Supreme Court has only such appellate jurisdiction as may be provided by law, meaning that in order for it to have jurisdiction over an appeal, appellate jurisdiction must be specifically provided by the Legislature. Boyd v. Cook, 298 Neb. 819, 906 N.W.2d 31 (2018).

The Nebraska Constitution allocates the regulation of appellate jurisdiction to the Legislature, not to the Nebraska Supreme Court. Heckman v. Marchio, 296 Neb. 458, 894 N.W.2d 296 (2017).

Article IX, sec. 4.

County election commissioners and chief deputies are not considered as classed with "county officers." State ex rel. Peterson v. Shively, 310 Neb. 1, 963 N.W.2d 508 (2021).

Article XI, sec. 2.

Highway control, which includes traffic control of city streets, is a preeminently state affair that affects the whole state. State v. Albarenga, 313 Neb. 72, 892 N.W.2d 799 (2022).

Where a municipality has constitutionally conferred powers to form a charter and enact ordinances, the state law is the superior law only as to matters of statewide concern. State v. Albarenga, 313 Neb. 72, 892 N.W.2d 799 (2022).

Article XI, sec. 5.

Highway control, which includes traffic control of city streets, is a preeminently state affair that affects the whole state. State v. Albarenga, 313 Neb. 72, 892 N.W.2d 799 (2022).

Where a municipality has constitutionally conferred powers to form a charter and enact ordinances, the state law is the superior law only as to matters of statewide concern. State v. Albarenga, 313 Neb. 72, 892 N.W.2d 799 (2022).

STATUTES OF THE STATE OF NEBRASKA

13-903.

A county board of equalization is not a political subdivision "other than a county," and service upon a county board of equalization must be accomplished pursuant to the requirements of subsection (2) of section 25-510.02 governing service upon a county, rather than subsection (3), governing service upon political subdivision of this state other than a county. Hilt v. Douglas Cty. Bd. of Equal., 30 Neb. App. 425, 970 N.W.2d 113 (2021).

13-910.

If recovery for the injury in question depends upon an intentional, harmful, or offensive contact's being unprivileged, then it depends also upon a battery and is "arising from" it for purposes of subdivision (7) of this section. Dion v. City of Omaha, 311 Neb. 522, 973 N.W.2d 666 (2022).

The intentional tort exemption reflects public policy determinations against allowing government employees to engage, at the government's expense, in lawless activities that are practically, if not legally, outside the scope of their proper functions and which are contrary to the promotion of high standards of performance by a sovereign's employees. Dion v. City of Omaha, 311 Neb. 522, 973 N.W.2d 666 (2022).

To determine the gravamen of a complaint, a court looks to whether the plaintiff has alleged an injury independent of that caused by the excluded acts, i.e., that the injury is linked to a duty to act that is entirely separate from the acts expressly excluded from the statutory waiver of sovereign immunity. Dion v. City of Omaha, 311 Neb. 522, 973 N.W.2d 666 (2022).

The principles of law governing whether a statute creates a private right of action have no direct bearing on whether the statute prescribes a course of conduct for purposes of the discretionary function inquiry. Clark v. Sargent Irr. Dist., 311 Neb. 123, 971 N.W.2d 298 (2022).

When an employee of a political subdivision has no choice but to adhere to a statutorily prescribed course of conduct, the discretionary function exemption does not apply. Clark v. Sargent Irr. Dist., 311 Neb. 123, 971 N.W.2d 298 (2022).

13-919.

For purposes of subsection (1) of this section, a cause of action accrues, thereby starting the period of limitations, when a potential plaintiff discovers, or in the exercise of reasonable diligence should discover, the political subdivision's negligence. Weyers v. Community Memorial Hosp., 30 Neb. App. 520, 971 N.W.2d 155 (2022).

The operation of the Nebraska Hospital-Medical Liability Act does not excuse compliance with the requirement under the Political Subdivisions Tort Claims Act that a claim be presented to the political subdivision prior to filing suit. Weyers v. Community Memorial Hosp., 30 Neb. App. 520, 971 N.W.2d 155 (2022).

While not a jurisdictional prerequisite, the filing or presentment of a claim to the appropriate political subdivision is a condition precedent to commencement of a suit under the Political Subdivisions Tort Claims Act. Weyers v. Community Memorial Hosp., 30 Neb. App. 520, 971 N.W.2d 155 (2022).

20-209.

The single publication rule applies to internet postings and publications. Timothy L. Ashford, PC LLO v. Roses, 313 Neb. 302, 984 N.W.2d 596 (2023).

This section adopts the single publication rule. Under that rule, there is just one cause of action for tort damages founded upon a single publication, and that cause of action accrues at the moment of the initial publication. Timothy L. Ashford, PC LLO v. Roses, 313 Neb. 302, 984 N.W.2d 596 (2023).

21-104.

Because a limited liability company is an entity distinct from its members, any personal injuries suffered by a member of such a company are not personal injuries suffered by the company. Alpha Wealth Advisors v. Cook, 313 Neb. 237, 983 N.W.2d 526 (2023).

21-148.

The judicial supervision of the winding up of a limited liability company is a multifaceted special proceeding, and an order that ends a discrete phase of the proceeding affects a substantial right because it finally resolves the issues raised in that phase. Schreiber Bros. Hog Co. v. Schreiber, 312 Neb. 707, 980 N.W.2d 890 (2022).

21-168.

Derivative actions brought pursuant to the Nebraska Uniform Liability Company Act are not special proceedings, and any proceedings under this section are merely a step in the underlying derivative action. Tegra Corp. v. Boeshart, 311 Neb. 783, 976 N.W.2d 165 (2022).

21-2,171.

The determination of fair value for purposes of an elect-to-purchase action under part 14 shall be defined using the definition of fair value, in its entirety, as provided within part 13 at subdivision (3) of this section, which precludes the use discounting for lack of marketability or minority status. Bohac v. Benes Service Co., 310 Neb. 722, 969 N.W.2d 103 (2022).

21-2,201.

Expenses under subsection (e) of this section do not include attorney fees. Bohac v. Benes Service Co., 310 Neb. 722, 969 N.W.2d 103 (2022).

"Fair value" as used within this section and applied to a closely held corporation shall be determined using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal. Bohac v. Benes Service Co., 310 Neb. 722, 969 N.W.2d 103 (2022).

23-114.01.

Because this section creates a statutory right to appeal a decision related to a conditional use permit to the district court but does not specify the procedure for perfecting such appeal, the general procedure from section 25-1937 applies. Preserve the Sandhills v. Cherry County, 313 Neb. 668, 986 N.W.2d 265 (2023).

The right to appeal conferred by this section does not apply to the extension of a conditional use permit. Preserve the Sandhills v. Cherry County, 310 Neb. 184, 964 N.W.2d 721 (2021).

23-114.05.

This section confers standing to challenge an alleged zoning violation; it does not confer standing to challenge the issuance of a conditional use permit when that issuance did not involve a zoning violation. Preserve the Sandhills v. Cherry County, 313 Neb. 668, 986 N.W.2d 265 (2023).

23-135.

A Nebraska county is not required to comply with the county claims statute when seeking reimbursement from another Nebraska county under the general assistance statutes, sections 68-104 to 68-158. County of Lancaster v. County of Custer, 313 Neb. 622, 985 N.W.2d 612 (2023).

23-1114.01.

Through its omission of election commissioners and chief deputy election commissioners from the language contained in this section through section 23-1114.07, the Legislature did not intend for election commissioners or the chief deputies to be classified as county officers. State ex rel. Peterson v. Shively, 310 Neb. 1, 963 N.W.2d 508 (2021).

23-1201.02.

An attorney's providing legal advice to an organization on a routine basis regarding various matters satisfies the "practiced law actively" requirement. Nebraska Republican Party v. Shively, 311 Neb. 160, 971 N.W.2d 128 (2022).

"Practiced law actively" means engaged in giving advice or rendering such service as requires the use of any degree of legal knowledge or skill and doing so on a daily or routine basis. Nebraska Republican Party v. Shively, 311 Neb. 160, 971 N.W.2d 128 (2022).

23-1703.

Prisoners who are lawfully arrested without a warrant on a felony charge are lawfully committed to jail for purposes of this section. State v. Dailey, 314 Neb. 325, 990 N.W.2d 523 (2023).

24-205.01.

Under subsection (1) of section 84-712.01, the Judicial Branch Education advisory committee's unwritten policy of keeping its records confidential did not, in light of this section, 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 section 84-712.01, although subdivision (2)(a) of this section 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).

24-302.

A district court's jurisdiction over a 42 U.S.C. 1983 claim flows from the Legislature's grant of general jurisdiction to that court, over and above the district court's jurisdiction conferred by the Nebraska Constitution. Webb v. Nebraska Dept. of Health & Human Servs., 301 Neb. 810, 920 N.W.2d 268 (2018).

In a court of general jurisdiction, jurisdiction may be presumed absent a record showing the contrary. Webb v. Nebraska Dept. of Health & Human Servs., 301 Neb. 810, 920 N.W.2d 268 (2018).

Section 30-810 provides special procedures for settling wrongful death claims, but it is silent on wrongful death actions and subrogation. Accordingly, under section 48-118.01, wrongful death actions and, under section 48-118.04, proceedings for the fair and equitable distribution of wrongful death action proceeds subject to subrogation in workers' compensation cases must be brought in the district court. In re Estate of Evertson, 295 Neb. 301, 889 N.W.2d 73 (2016).

Even though a court has subject matter jurisdiction to hear a request for a domestic abuse protection order, the defendant may file to transfer the action to a more appropriate venue pursuant to section 25-403.01. Jacobo v. Zoltenko, 30 Neb. App. 44, 965 N.W.2d 32 (2021).

24-303.

A district court possesses jurisdiction only so long as it is holding court in conformity with the law; and when, without excuse, it disregards the law and attempts to hold court in any other place than that prescribed by statute, its acts become coram non judice. Burns v. Burns, 296 Neb. 184, 892 N.W.2d 135 (2017).

All nonjury trials and hearings, except those conducted pursuant to subsection (2) of this section, must take place in the county in which the cause is pending. Burns v. Burns, 296 Neb. 184, 892 N.W.2d 135 (2017).

24-517.

Although county courts lack general equity jurisdiction, they may apply equitable principles to matters that are within their exclusive jurisdiction, and subsection (3) of this section empowers county courts to apply equitable principles in matters related to a conservatorship of a person. In re Guardianship & Conservatorship of Maronica B., 314 Neb. 597, 992 N.W.2d 457 (2023).

The purpose of subdivision (11) of this section is to vest jurisdiction over adoption proceedings—including paternity determinations—with the county court or the separate juvenile court. Peterson v. Jacobitz, 309 Neb. 486, 961 N.W.2d 258 (2021).

A county court has jurisdiction to construe a power of attorney or review an agent's conduct and grant appropriate relief. In re Estate of Adelung, 306 Neb. 646, 947 N.W.2d 269 (2020).

County courts have not been given authority to decide motions to transfer to juvenile court in cases in which they lack jurisdiction to try the case. State v. A.D., 305 Neb. 154, 939 N.W.2d 484 (2020).

The county courts have the power to construe wills. Brinkman v. Brinkman, 302 Neb. 315, 923 N.W.2d 380 (2019).

A parent can challenge the legality of an adoption by objecting to the proceeding in county court. But seeking a writ of habeas corpus is an equally available remedy for a parent's claim that his or her child is being illegally detained for an adoption. Jesse B. v. Tylee H., 293 Neb. 973, 883 N.W.2d 1 (2016).

Despite the Legislature's grant of exclusive jurisdiction over adoption matters to county or juvenile courts under subsection (11) of this section, the privilege of the writ of habeas corpus is part of Nebraska's organic law. Thus, district courts have general, overlapping jurisdiction over an adoption challenge when a parent claims his or her child is being illegally detained for an adoption in a habeas proceeding. Jesse B. v. Tylee H., 293 Neb. 973, 883 N.W.2d 1 (2016).

The Legislature cannot limit or take away the broad and general jurisdiction of the district courts, as conferred by the Nebraska Constitution. But it can give county courts concurrent original jurisdiction over the same subject matter. Jesse B. v. Tylee H., 293 Neb. 973, 883 N.W.2d 1 (2016).

When a district court has exercised jurisdiction over a habeas proceeding to challenge the legality of an adoption before an adoption proceeding is filed in county court, the doctrine of jurisdictional priority requires the district court to retain jurisdiction over the matter to the exclusion of the county court until it determines whether the child is being legally detained for an adoption. Jesse B. v. Tylee H., 293 Neb. 973, 883 N.W.2d 1 (2016).

Subdivision (11) of this section vests exclusive original jurisdiction over adoption proceedings in the county courts. Peterson v. Jacobitz, 29 Neb. App. 486, 955 N.W.2d 329 (2021).

Subdivision (1) of this section gives county courts exclusive original jurisdiction of all matters relating to decedents' estates. In re Estate of Stretesky, 29 Neb. App. 338, 955 N.W.2d 1 (2021).

24-734.

Subsection (4) of this section only pertains to allowing a witness to be examined telephonically with the consent of the parties. It does not address permitting a party to appear and participate at trial telephonically. In re Estate of Newman, 25 Neb. App. 771, 913 N.W.2d 744 (2018).

24-1104.

The district court is not obligated to follow a Nebraska Court of Appeals' opinion that was not designated for permanent publication and is not related to the parties before the district court. Kauk v. Kauk, 310 Neb. 329, 966 N.W.2d 45 (2021).

25-201.01.

The savings clause in this section does not apply to an action under the State Tort Claims Act. Saylor v. State, 304 Neb. 779, 936 N.W.2d 924 (2020).

25-201.02.

Pursuant to subdivision (2)(b)(ii) of this section, while the mistaken identity inquiry of relation back is appropriately focused on what the defendant knew or should have known, the question is what the defendant knew or should have known about the plaintiff's intent when filing the original complaint. Davis v. Ridder, 309 Neb. 865, 963 N.W.2d 23 (2021).

Amended pleading to identify intended defendant and to plead that intended defendant had constructive notice of lawsuit would not relate back to original complaint which was served on defendant's father who bore same name, for purposes of 4-year limitations period; name of defendant was same in both original and proposed amended complaint, and thus, there was nothing to amend, and summary judgment evidence indicated that intended defendant did not know about lawsuit before limitations period expired. Rudd v. Debora, 20 Neb. App. 850, 835 N.W.2d 765 (2013).

25-202.

A seller under a land installment contract who has received a distinct and unequivocal repudiation of the contract by the buyer cannot wait more than 10 years after the repudiation to commence an ejectment action. Beckner v. Urban, 309 Neb. 677, 962 N.W.2d 497 (2021).

This section is a general statute of limitations that must yield to the more specific limitation provided in section 25-218 regarding inverse condemnation actions brought against the State. Hike v. State, 297 Neb. 212, 899 N.W.2d 614 (2017).

In the context of a regulatory taking, a cause of action for inverse condemnation begins to accrue when the injured

party has the right to institute and maintain a lawsuit due to a city's infringement, or an attempt at infringement, of a landowner's legal rights in the property. Strode v. City of Ashland, 295 Neb. 44, 886 N.W.2d 293 (2016).

25-205.

The statute of limitations on a deferred compensation agreement did not begin to run until the work was fully performed, which in this case was when the employer died and the claimant ceased to work for him. In re Estate of Lakin, 310 Neb. 271, 965 N.W.2d 365 (2021).

Although this section provides a 5-year statute of limitations on breach of contract claims, 28 U.S.C. 1367(d) tolls the state statute of limitations during the time the claim is being litigated in federal court. Ryan v. Streck, Inc., 309 Neb. 98, 958 N.W.2d 703 (2021).

A claim for indemnification filed after the applicable statute of limitations for the underlying breach of contract does not preserve a separate cause of action for breach of contract. Keith v. Data Enters., 27 Neb. App. 23, 925 N.W.2d 723 (2019).

A claim for indemnification filed after the applicable statute of limitations for the underlying negligence or negligent misrepresentation claims does not preserve separate causes of action for negligence or negligent misrepresentation. Keith v. Data Enters., 27 Neb. App. 23, 925 N.W.2d 723 (2019).

25-206.

The time limitations provided for in this section and section 25-218 do not infringe upon the Department of Labor's ability to collect an overpayment by setoff under section 48-665. McCoy v. Albin, 298 Neb. 297, 903 N.W.2d 902 (2017).

The 4-year statute of limitations for oral contracts provided in this section applies where, although there is a written contract between the parties, parol evidence is necessary in order to establish the terms of the agreement; in other words, the statute of limitations in this section, rather than that provided by section 25-205, applies where a contract is partly oral and partly written. Aurora Technology v. Labedz, 30 Neb. App. 33, 964 N.W.2d 474 (2021).

25-207.

The statute of limitations for ordinary negligence does not begin to accrue until the plaintiff becomes an aggrieved party with a right to institute and maintain suit, which requires that none of the elements of the claim depend upon abstract questions or issues that might arise in a hypothetical or fictitious situation or setting and may never come to pass. Susman v. Kearney Towing & Repair Ctr., 310 Neb. 910, 970 N.W.2d 82 (2022).

In order to toll the statute of limitations, allegations of fraudulent concealment must be pleaded with particularity. Chafin v. Wisconsin Province Society of Jesus, 301 Neb. 94, 917 N.W.2d 821 (2018).

Amended pleading to identify intended defendant and to plead that intended defendant had constructive notice of lawsuit would not relate back to original complaint which was served on defendant's father who bore same name, for purposes of 4-year limitations period; name of defendant was same in both original and proposed amended complaint, and thus, there was nothing to amend, and summary judgment evidence indicated that intended defendant did not know about lawsuit before limitations period expired. Rudd v. Debora, 20 Neb. App. 850, 835 N.W.2d 765 (2013).

The discovery provision in this section relates to when an action must be instituted and does not depend upon the eventual success of a fraud claim. Kalkowski v. Nebraska Nat. Trails Museum Found., 20 Neb. App. 541, 826 N.W.2d 589 (2013).

25-216.

A judgment is not a contract for purposes of the tolling provision of this section. Nelssen v. Ritchie, 304 Neb. 346, 934 N.W.2d 377 (2019).

25-217.

The service and automatic dismissal provisions of this section do not apply to habeas corpus proceedings. Childs v. Frakes, 312 Neb. 925, 981 N.W.2d 598 (2022).

"Appearance of Counsel" filed by the defendant's attorneys was not a voluntary appearance which waived service

of the complaint because it did not request general relief from the court on an issue other than sufficiency of service or process or personal jurisdiction. Stone Land & Livestock Co. v. HBE, 309 Neb. 970, 962 N.W.2d 903 (2021).

Nothing in this section states that the action is dismissed against all the defendants or that the action stands dismissed as a whole. Davis v. Moats, 308 Neb. 757, 956 N.W.2d 682 (2021).

An action is dismissed by operation of law, without any action by either the defendant or the court, as to any defendant who is named in the action and not served with process within 6 months after the complaint is filed. Rudd v. Debora, 20 Neb. App. 850, 835 N.W.2d 765 (2013).

In Nebraska, a defendant must be served within 6 months from the date the complaint was filed, regardless of whether the plaintiff falsely believed he had served the correct defendant. Rudd v. Debora, 20 Neb. App. 850, 835 N.W.2d 765 (2013).

This section, requiring that complaint be dismissed if not served on defendant within 6 months of filing, was self-executing and mandatory, and did not authorize trial court to extend time for filing service of summons and complaint on intended defendant after 6-month deadline expired based on injured plaintiff's having erroneously served summons and complaint on intended defendant's father, who bore same name as defendant. Rudd v. Debora, 20 Neb. App. 850, 835 N.W.2d 765 (2013).

Six months after the date a complaint is filed, the action is dismissed, without prejudice, as to any defendant not served, without predicate action by the trial court. If service is effected after this date, such service does not negate the dismissal. Old Home Enterprise v. Fleming, 20 Neb. App. 705, 831 N.W.2d 46 (2013).

25-218.

The time limitations provided for in section 25-206 and this section do not infringe upon the Department of Labor's ability to collect an overpayment by setoff under section 48-665. McCoy v. Albin, 298 Neb. 297, 903 N.W.2d 902 (2017).

Inverse condemnation actions against the State must be commenced 2 years from the time of taking or damaging. Hike v. State, 297 Neb. 212, 899 N.W.2d 614 (2017).

Section 25-202 is a general statute of limitations that must yield to the more specific limitation provided in this section regarding inverse condemnation actions brought against the State. Hike v. State, 297 Neb. 212, 899 N.W.2d 614 (2017).

25-222.

Abstracters' performing title searches render "professional services" and are subject to the limitations periods in this section for claims arising from these functions. Mai v. German, 313 Neb. 187, 983 N.W.2d 114 (2023).

The continuous treatment doctrine for limitations in a malpractice action applies only for incorrect treatment based on misdiagnosis or other continuing course of negligent treatment. Bogue v. Gillis, 311 Neb. 445, 973 N.W.2d 338 (2022).

In a professional negligence action, a physician did not waive and was not estopped from asserting as a defense the statute of limitations set forth in this section, where the physician engaged in discovery after a complaint was filed rather than immediately moving to dismiss the complaint on statute of limitations grounds. Bonness v. Armitage, 305 Neb. 747, 942 N.W.2d 238 (2020).

A massage therapist is not a "professional" for the purpose of application of the professional negligence statute of limitations; while a massage therapist is required to be licensed, the licensing requirements do not require long and intensive training or preparation, including instruction in skills and methods as well as in the scientific, historical, or scholarly principles underlying such skills and methods, which would be comparable to that of a college degree, and the standards for membership in the occupation of massage therapy did not include high standards of achievement. Wehrer v. Dynamic Life Therapy & Wellness, 302 Neb. 1025, 926 N.W.2d 107 (2019).

Each of the elements set forth in the *Tylle* definition of "profession" are considered to be necessary and not merely possible factors for consideration; therefore, to constitute a "profession" within the meaning of this section, a particular type of endeavor must meet all of the principal elements. Wehrer v. Dynamic Life Therapy & Wellness, 302 Neb. 1025, 926 N.W.2d 107 (2019).

Great emphasis is placed on college degrees in considering whether a particular occupation is a "profession" for the purpose of applying this section. Wehrer v. Dynamic Life Therapy & Wellness, 302 Neb. 1025, 926 N.W.2d

107 (2019).

In analyzing whether a particular group or organization meets the definition of a "profession" for purposes of the professional negligence statute of limitations, each of the following principal elements must be demonstrated, as an occupation is not a "profession" unless: (1) The profession requires specialized knowledge; (2) the profession requires long and intensive preparation; (3) preparation must include instruction in skills and methods of the profession; (4) preparation must include scientific, historical, or scholarly principles underlying the skills and methods of the profession; (5) membership in a professional organization is required; (6) a professional organization or concerted opinion within an organization regulates and enforces standards for membership; (7) the standards for membership include high standards of achievement; (8) the standards for membership include high standards of conduct; (9) its members are committed to continued study; (10) its members are committed to a specific kind of work; and (11) the specific kind of work has for its primary purpose the rendering of a public service. Wehrer v. Dynamic Life Therapy & Wellness, 302 Neb. 1025, 926 N.W.2d 107 (2019).

The 1-year discovery exception in this section is a tolling provision, but it applies only in those cases in which the plaintiff did not discover, and could not have reasonably discovered, the existence of the cause of action within the applicable statute of limitations. Walz v. Harvey, 28 Neb. App. 7, 938 N.W.2d 110 (2020).

25-223.

When homeowners contract with individual contractors for separate construction projects, the 4-year statute of limitations begins to run against each contractor on the date it substantially completes its project. McCaulley v. C L Enters., 309 Neb. 141, 959 N.W.2d 225 (2021).

If a contract is divisible, breaches of its severable parts give rise to separate causes of action, and the statute of limitations will generally begin to run at the time of each breach. If, however, a contract is indivisible, an action can be maintained on it only when a breach occurs or the contract is in some way terminated, and the statute of limitations will begin to run from that time only. Fuelberth v. Heartland Heating & Air Conditioning, 307 Neb. 1002, 951 N.W.2d 758 (2020).

Where there is no claim that a builder failed to make repairs when requested to do so pursuant to an express warranty and the claim is based on the defective construction itself, the express warranty does not extend the statute of limitations. Adams v. Manchester Park, 291 Neb. 978, 871 N.W.2d 215 (2015).

25-224.

Because the repose provisions in this section apply to "product liability actions," they necessarily apply to claims against manufacturers, sellers, and lessors of products. Ag Valley Co-op v. Servinsky Engr., 311 Neb. 665, 974 N.W.2d 324 (2022).

"The product," as used in this section, refers to the completed product that is placed on the market and sold or leased for consumer use, and necessarily includes all of the product's original component parts. Ag Valley Co-op v. Servinsky Engr., 311 Neb. 665, 974 N.W.2d 324 (2022).

25-228.

This section does not apply to an action that was already barred under the existing statutes of limitations at the time this section was enacted in 2012. Doe v. McCoy, 297 Neb. 321, 899 N.W.2d 899 (2017).

25-301.

Because a sanitary and improvement district cannot hold private property for purposes of a takings claim against its own parent state, it cannot be the real party in interest to such a takings claim. SID No. 67 v. State, 309 Neb. 600, 961 N.W.2d 796 (2021).

The purpose of the real party in interest requirement is to ensure that actions are prosecuted only by persons who have some real interest in the cause of action or a legal or equitable right, title, or interest in the subject matter of a controversy. SID No. 67 v. State, 309 Neb. 600, 961 N.W.2d 796 (2021).

Third-party-beneficiary theory is a common-law doctrine that allows a nonparty to a contract to enforce an interest owed by a promisor under the contract, provided the nonparty was an intended beneficiary whose rights and interest were apparently contemplated by the contract's language itself. Equestrian Ridge v. Equestrian Ridge Estates II, 308 Neb. 128, 953 N.W.2d 16 (2021).

The plaintiff was the real party in interest where the defendant's legal malpractice caused harm to the plaintiff's company and where throughout litigation, the parties acknowledged and recognized the plaintiff's interest in the judgment. LeRette v. Howard, 300 Neb. 128, 912 N.W.2d 706 (2018).

The assignee of a chose in action is the proper and only party who can maintain the suit thereon; the assignor loses all right to control or enforce the assigned right against the obligor. Midwest Renewable Energy v. American Engr. Testing, 296 Neb. 73, 894 N.W.2d 221 (2017).

The purpose of the "real party in interest" statute is to prevent the prosecution of actions by persons who have no right, title, or interest in the cause. Cattle Nat. Bank & Trust Co. v. Watson, 293 Neb. 943, 880 N.W.2d 906 (2016).

Under this section, an amendment joining the real parties in interest relates back to the date of the original pleading. Fisher v. Heirs & Devisees of T.D. Lovercheck, 291 Neb. 9, 864 N.W.2d 212 (2015).

The court has continuing jurisdiction when the real party in interest is substituted for another party. Walker v. Probandt, 29 Neb. App. 704, 958 N.W.2d 459 (2021).

25-302.

A written assignment must be proved by a preponderance of the evidence. Hawley v. Skradski, 304 Neb. 488, 935 N.W.2d 212 (2019).

An assignee of a chose in action may maintain an action thereon in the assignee's own name when the assignment being sued upon is in writing. Hawley v. Skradski, 304 Neb. 488, 935 N.W.2d 212 (2019).

25-303.

The assignee of a chose in action acquires no greater rights than those of the assignor, and takes it subject to all the defenses existent at the time. Midwest Renewable Energy v. American Engr. Testing, 296 Neb. 73, 894 N.W.2d 221 (2017).

25-304.

An assignee can establish standing to bring an action in its own name, and thus show the court had subject matter jurisdiction, if it proves by a preponderance of the evidence the existence of a written assignment. Western Ethanol Co. v. Midwest Renewable Energy, 305 Neb. 1, 938 N.W.2d 329 (2020).

A written assignment must be proved by a preponderance of the evidence. Hawley v. Skradski, 304 Neb. 488, 935 N.W.2d 212 (2019).

An assignee of a chose in action may maintain an action thereon in the assignee's own name when the assignment being sued upon is in writing. Hawley v. Skradski, 304 Neb. 488, 935 N.W.2d 212 (2019).

25-319.

A prison inmate, who sought to bring class action claims for declaratory and injunctive relief alleging that conditions at the Nebraska State Penitentiary, including overcrowding, cell assignments, flooding, and inadequate showering conditions, violated his rights, lacked commonality with members of the purported class, and thus the inmate was unqualified to represent the class, where claims became moot after he was transferred to another correctional facility. Nesbitt v. Frakes, 300 Neb. 1, 911 N.W.2d 598 (2018).

25-322.

Statutory provisions regarding revivor of actions apply to cases in which a party dies pending an appeal, and any order of revivor or substitution must be had in the court having jurisdiction at the time of the party's death. Muller v. Weeder, 313 Neb. 639, 986 N.W.2d 38 (2023).

Although an attorney of a deceased client may have a duty to protect the client's interests by alerting a legal representative of his or her pending claim, absent a contractual agreement to the contrary, an attorney's representation of a client generally ends upon the death of that client. A deceased party's representative or successor in interest must either seek a conditional order of revival under Chapter 25, article 14, of the Nebraska Revised Statutes or seek a court's substitution order under this section before an action or proceeding can continue. In re Conservatorship of Franke, 292 Neb. 912, 875 N.W.2d 408 (2016).

An attorney's unauthorized actions on the part of a deceased client are a nullity. So, unless a deceased client's legal representative or the client's contractual agreement authorizes the attorney to take or continue an action for the client, an attorney cannot take any further valid action in the matter. In re Conservatorship of Franke, 292 Neb. 912, 875 N.W.2d 408 (2016).

In this section, the Legislature anticipated that a substitution of a legal representative or successor in interest is required when a party dies before the action can continue. This substitution is required because a deceased person cannot maintain a right of action against another or defend a legal interest in an action or proceeding. In re Conservatorship of Franke, 292 Neb. 912, 875 N.W.2d 408 (2016).

25-323.

When an indispensable party is absent, the court has a duty under this section to require that the indispensable party be brought into the action. Williams v. Williams, 311 Neb. 772, 973 N.W.2d 523 (2022).

The lis pendens statute set forth at section 25-531 controls over this more general statute requiring the joinder of necessary and indispensable parties. Wilkinson Development v. Ford & Ford Investments, 311 Neb. 476, 973 N.W.2d 349 (2022).

In an action for grandparent visitation, the district court lacked subject matter jurisdiction to make a determination as to grandparent visitation rights where the noncustodial father was not made a party to the action and not given an opportunity to participate in the proceedings. Davis v. Moats, 308 Neb. 757, 956 N.W.2d 682 (2021).

Necessary parties are parties who have an interest in the controversy, and should ordinarily be joined unless their interests are separable so that the court can, without injustice, proceed in their absence. Indispensable parties are parties whose interest is such that a final decree cannot be entered without affecting them, or that termination of controversy in their absence would be inconsistent with equity. Midwest Renewable Energy v. American Engr. Testing, 296 Neb. 73, 894 N.W.2d 221 (2017).

This section imposes a duty on the court to require an indispensable party be added to the litigation sua sponte when one is absent and statutorily deprives the court of subject matter jurisdiction over the controversy absent the presence of all indispensable parties. Midwest Renewable Energy v. American Engr. Testing, 296 Neb. 73, 894 N.W.2d 221 (2017).

The language of this section tracks the traditional distinction between the necessary and indispensable parties. Panhandle Collections v. Singh, 28 Neb. App. 924, 949 N.W.2d 554 (2020).

The first clause of this section makes the inclusion of necessary parties discretionary when a controversy of interest to them is severable from their rights. The second clause, however, mandates that the district court order indispensable parties to be brought into the controversy. All persons interested in the contract or property involved in an action are necessary parties, whereas all persons whose interests therein may be affected by a decree in equity are indispensable parties. The absence of an indispensable party to a controversy deprives the court of subject matter jurisdiction to determine the controversy and cannot be waived. When it appears that all indispensable parties to a proper and complete determination of an equity cause were not before the court, an appellate court will remand the cause for the purpose of having such parties brought in. In re Trust Created by Augustin, 27 Neb. App. 593, 935 N.W.2d 493 (2019).

25-328.

A temporary guardian has standing to intervene in adoption proceedings concerning the child. In re Adoption of Faith F., 313 Neb. 491, 984 N.W.2d 640 (2023).

For a court as a preliminary matter to permit intervention as a matter of right, the intervenor must plead some interest in the subject matter of the litigation to give him or her standing in court, describing the ultimate facts evidencing the intervenor's interest in the matter of litigation; otherwise, the intervenor is a mere interloper and wholly incompetent to challenge the contentions of the opposing parties. Carroll v. Gould, 308 Neb. 12, 952 N.W.2d 1 (2020).

Where no motion is filed under Neb. Ct. R. Pldg. § 6-1112, a hearing and ruling on a complaint to intervene is not required any more than it would be for any other complaint, though the Supreme Court has indicated that a court may exercise sua sponte its authority to exclude from the case an intervenor whose pleadings do not disclose a direct interest in the matter in litigation. Carroll v. Gould, 308 Neb. 12, 952 N.W.2d 1 (2020).

While intervention under this section is a matter of right, the court may make a preliminary determination whether the complaint in intervention sufficiently alleges the requisite interest, assuming the allegations set forth in the

complaint are true. Carroll v. Gould, 308 Neb. 12, 952 N.W.2d 1 (2020).

A parent in a juvenile action does not need to follow the intervention procedures set forth in this section and sections 25-329 and 25-330 in order to participate in juvenile proceedings involving the parent's child. In re Interest of Sloane O., 291 Neb. 892, 870 N.W.2d 110 (2015).

Alleged father's petition to intervene in child dependency proceeding was timely filed; the petition was filed less than 1 month after adjudication, prior to the first disposition and placement hearing. In re Interest of Sarah H., 21 Neb. App. 441, 838 N.W.2d 389 (2013).

25-329.

Only after a motion to dismiss or judgment on the pleadings attacking a complaint in intervention has been overruled on the grounds that the complaint met the requirements of section 25-328 will the question later be determined, when the action is finally decided, whether the allegations in the pleadings are true and that the proof establishes the party seeking to intervene has an actual interest in the subject of the controversy. Carroll v. Gould, 308 Neb. 12, 952 N.W.2d 1 (2020).

A parent in a juvenile action does not need to follow the intervention procedures set forth in this section and sections 25-328 and 25-330 in order to participate in juvenile proceedings involving the parent's child. In re Interest of Sloane O., 291 Neb. 892, 870 N.W.2d 110 (2015).

25-330.

A parent in a juvenile action does not need to follow the intervention procedures set forth in this section and sections 25-328 and 25-329 in order to participate in juvenile proceedings involving the parent's child. In re Interest of Sloane O., 291 Neb. 892, 870 N.W.2d 110 (2015).

25-505.01.

Although this section does not require service to be sent to the defendant's residence or restrict delivery to the addressee, due process requires notice to be reasonably calculated to apprise interested parties of the pendency of the action and to afford them the opportunity to present their objections. Capital One Bank v. Lehmann, 23 Neb. App. 292, 869 N.W.2d 917 (2015).

25-510.02.

In analyzing the service of an agency, as when analyzing the option to serve an individual through certified mail under section 25-508.01, appellate courts look to section 25-505.01(1)(c) for the requirements of service by certified mail. Omaha Expo. & Racing v. Nebraska State Racing Comm., 307 Neb. 172, 949 N.W.2d 183 (2020).

A county board of equalization is not a political subdivision "other than" a county, and service upon a county board of equalization must be accomplished pursuant to the requirements of subsection (2) rather than subsection (3) of this section. Hilt v. Douglas Cty. Bd. of Equal., 30 Neb. App. 425, 970 N.W.2d 113 (2021).

This section provides that the plain meaning of the phrase "may be served," when viewed in the context of the service statutes, modifies the method of acceptable service, not the entity to be served. Hilt v. Douglas Cty. Bd. of Equal., 30 Neb. App. 425, 970 N.W.2d 113 (2021).

25-516.01.

"Appearance of Counsel" filed by the defendant's attorneys was not a voluntary appearance which waived service of the complaint because it did not request general relief from the court on an issue other than sufficiency of service or process or personal jurisdiction. Stone Land & Livestock Co. v. HBE, 309 Neb. 970, 962 N.W.2d 903 (2021).

The voluntary appearance of a party is equivalent to service of process for purposes of personal jurisdiction; parties cannot confer subject matter jurisdiction on a court by waiving statutory requirements for a court to obtain jurisdiction through a voluntary appearance. J.S. v. Grand Island Public Schools, 297 Neb. 347, 899 N.W.2d 893 (2017).

Judicially noticed filings and the bill of exceptions in a prior modification proceeding between the parties showed that the defendant made a general appearance in the subsequent modification proceeding by asking the trial court to vacate an order, to disqualify the plaintiff's counsel, and to strike the complaint. Burns v. Burns, 293 Neb. 633, 879 N.W.2d 375 (2016).

By filing a suggestion in bankruptcy and an amended suggestion in bankruptcy, the party asked the court to bring its powers into action on a matter other than the question of jurisdiction, thus making a general appearance and waiving any defects in the service of process. Bayliss v. Clason, 26 Neb. App. 195, 918 N.W.2d 612 (2018).

Intended defendant's father, who bore same name as defendant without distinction of "Sr." or "Jr.," had no obligation to assert affirmative defense of lack of jurisdiction or insufficient service either in answer or by motion, in plaintiff's action for personal injuries, as grounds for permitting plaintiff to serve intended defendant rather than dismissing complaint with prejudice; trial court acquired personal jurisdiction over father when father was served, and there was no objection to service of summons on father. Rudd v. Debora, 20 Neb. App. 850, 835 N.W.2d 765 (2013).

25-520.01.

A personal representative must prove that it complied with the requirement that it mail published notice to reasonably ascertainable creditors by showing that the personal representative made a reasonably diligent search, such as a reasonably prudent person would make in view of the circumstances and must extend to those places where information is likely to be obtained and to those persons who would be likely to have information regarding a decedent's creditors. In re Estate of Loder, 308 Neb. 210, 953 N.W.2d 541 (2021).

Because the appellant did not file an affidavit that complied with this section, the appellant's constructive service was improper and the district court lacked personal jurisdiction over the appellee. Francisco v. Gonzalez, 301 Neb. 1045, 921 N.W.2d 350 (2019).

25-531.

The lis pendens statute is a specific statute that controls over section 25-323, which is the more general statute requiring the joinder of necessary and indispensable parties. Wilkinson Development v. Ford & Ford Investments, 311 Neb. 476, 973 N.W.2d 349 (2022).

The lis pendens statute does not operate to prevent a subsequent purchaser from fully participating as a party in a quiet title action affecting the subject property. Brown v. Jacobsen Land & Cattle Co., 297 Neb. 541, 900 N.W.2d 765 (2017).

25-536.

An appellate court generally finds minimum contacts supporting specific personal jurisdiction where there has been protracted business related to the action involving substantial and numerous purchases and communications, but a single contract may be sufficient to support specific personal jurisdiction where it creates a substantial ongoing relationship or where the nonresident defendant acts as a guarantor for the transaction. Wheelbarger v. Detroit Diesel, 313 Neb. 135, 983 N.W.2d 134 (2023).

Because minimum contacts depend on the activities of the defendant related to the operative facts of the litigation and not on the unilateral actions taken by someone else, direct contacts between the independent contracting parties, which the intermediary is not involved in, do not create minimum contacts for the intermediary. Wheelbarger v. Detroit Diesel, 313 Neb. 135, 983 N.W.2d 134 (2023).

A Nebraska-based client will not provide a sufficient basis for specific personal jurisdiction over a nonresident attorney absent the solicitation of Nebraska-based clients or something else linking the attorney to the state. Central States Dev. v. Friedgut, 312 Neb. 909, 981 N.W.2d 573 (2022).

Nebraska courts lacked personal jurisdiction over a nonresident attorney and out-of-state law firm where the attorney sought a federal agency's approval of a federal program for a Nebraska-based client. Central States Dev. v. Friedgut, 312 Neb. 909, 981 N.W.2d 573 (2022).

Nebraska's long-arm statute extends Nebraska's jurisdiction over nonresidents having any contact with or maintaining any relation to this state as far as the U.S. Constitution permits. It was the intention of the Legislature to provide for the broadest allowable jurisdiction over nonresidents under Nebraska's long-arm statute, and when a state construes its long-arm statute to confer jurisdiction to the fullest extent constitutionally permitted, the inquiry collapses into the single question of whether jurisdiction comports with due process. Yeransian v. Willkie Farr, 305 Neb. 693, 942 N.W.2d 226 (2020).

Nebraska's long-arm statute extends Nebraska's jurisdiction over nonresidents having any contact with or maintaining any relation to this state as far as the U.S. Constitution permits. Thus, courts need only look to the Due

Process Clause when determining personal jurisdiction. Lanham v. BNSF Railway Co., 305 Neb. 124, 939 N.W.2d 363 (2020).

If a Nebraska court's exercise of personal jurisdiction would comport with the Due Process Clause of the 14th Amendment to the U.S. Constitution, it is authorized by subsection (2) of this section. Hand Cut Steaks Acquisitions v. Lone Star Steakhouse, 298 Neb. 705, 905 N.W.2d 644 (2018).

An ongoing relationship, by itself, is not sufficient to establish personal jurisdiction. The quality and nature of the ongoing business relationship is important, not just the fact that a business relationship exists. Roth Grading v. Martin Bros. Constr., 25 Neb. App. 928, 916 N.W.2d 70 (2018).

The existence of a contract with a party in a forum state or the mere use of interstate facilities, such as telephones and mail, does not, in and of itself, provide the necessary contacts for personal jurisdiction. Roth Grading v. Martin Bros. Constr., 25 Neb. App. 928, 916 N.W.2d 70 (2018).

To determine whether a defendant's contract supplies the contacts necessary for personal jurisdiction in a forum state, a court is to consider the parties' prior negotiations and future contemplated consequences, along with the terms of the contract and the parties' actual course of dealing. Roth Grading v. Martin Bros. Constr., 25 Neb. App. 928, 916 N.W.2d 70 (2018).

Nebraska courts lacked personal jurisdiction over a wife to adjudicate personal matters that were incidences of the parties' marriage, such as child custody, parenting time, child support, and division of property and debts, where the wife and children never had contact with Nebraska, and the parties were married, had children, and separated in Canada. Metzler v. Metzler, 25 Neb. App. 757, 913 N.W.2d 733 (2018).

25-538.

The district court considered the public interest factors of forum non conveniens and dismissed the plaintiff's action, concluding that New York was a better forum. However, the district court failed to also consider the unique circumstances of the case, namely, that a New York court had already dismissed the plaintiff's case because it determined that the case should be heard in Nebraska pursuant to a forum selection clause in the parties' contract; the New York court did not address the public interest factors of forum non conveniens in its decision. Given the unique circumstances, rather than dismissing the action, the district court should have stayed the action on the condition that the case is filed in and accepted by the New York courts. Milmar Food Group II v. Applied Underwriters, 29 Neb. App. 714, 958 N.W.2d 920 (2021).

25-601.

A will contest is an in rem proceeding and is not an action for purposes of civil procedure statutes governing voluntary dismissal, including this section and section 25-602. In re Estate of Ryan, 313 Neb. 970, 987 N.W.2d 634 (2023).

After one of several claims has been finally submitted, a plaintiff retains the right to voluntarily dismiss other claims that have not yet been finally submitted, but the plaintiff loses the statutory right to voluntarily dismiss the entire action. Schaaf v. Schaaf, 312 Neb. 1, 978 N.W.2d 1 (2022).

The district court's authority to reinstate a case following its grant of partial summary judgment on one of several claims was unaffected by the plaintiffs' voluntary dismissal of the entire action, to which the plaintiffs were not statutorily entitled. Schaaf v. Schaaf, 312 Neb. 1, 978 N.W.2d 1 (2022).

Under this section, a plaintiff has the right to dismiss an action without prejudice any time before final submission of the case, so long as no counterclaim or setoff has been filed by an opposing party. HBI, L.L.C. v. Barnette, 305 Neb. 457, 941 N.W.2d 158 (2020).

A motion for summary judgment can be a final submission that will prevent voluntary dismissal under this section. Millard Gutter Co. v. American Family Ins. Co., 300 Neb. 466, 915 N.W.2d 58 (2018).

25-602.

A will contest is an in rem proceeding and is not an action for purposes of civil procedure statutes governing voluntary dismissal, including section 25-601 and this section. In re Estate of Ryan, 313 Neb. 970, 987 N.W.2d 634 (2023).

25-824.

Arguments to vacate an arbitrator's award, although not meritorious, were not frivolous when the district court had not explored what a party must show to demonstrate that an arbitrator exceeded his or her powers under the Nebraska Uniform Arbitration Act or whether an arbitration award governed by the Nebraska Uniform Arbitration Act could be vacated on the grounds that the arbitrator manifestly disregarded the law. City of Omaha v. Professional Firefighters Assn., 309 Neb. 918, 963 N.W.2d 1 (2021).

A claim or defense that was not frivolous at its commencement may become frivolous over the course of discovery and in light of pretrial rulings. McGill Restoration v. Lion Place Condo. Assn., 309 Neb. 202, 959 N.W.2d 251 (2021).

A cognizable claim brought with a reasonable belief that discovery would support its allegations is not frivolous. George Clift Enters. v. Oshkosh Feedyard Corp., 306 Neb. 775, 947 N.W.2d 510 (2020).

Attorney fees may be assessed when a party persists in asserting a claim after it knows or reasonably should know it would not prevail on the claim. George Clift Enters. v. Oshkosh Feedyard Corp., 306 Neb. 775, 947 N.W.2d 510 (2020).

A trial court's decision awarding or denying attorney fees under this section will be upheld absent an abuse of discretion. Seldin v. Estate of Silverman, 305 Neb. 185, 939 N.W.2d 768 (2020).

Under subsection (2) of this section, attorney fees shall be awarded against a party who alleged a claim or defense that the court determined was frivolous, interposed any part of the action solely for delay or harassment, or unnecessarily expanded the proceeding by other improper conduct. Seldin v. Estate of Silverman, 305 Neb. 185, 939 N.W.2d 768 (2020).

Where an attorney pursues a motion for recusal that is frivolous or made in bad faith, the district court has jurisdiction to enter a sanction under this statute when it is timely requested, regardless of whether the district court lacked jurisdiction to adjudicate the merits of the underlying dispute. State of Florida v. Countrywide Truck Ins. Agency, 294 Neb. 400, 883 N.W.2d 69 (2016).

When a motion for attorney fees under this section is made prior to the judgment of the court in which the attorney's services were rendered, the judgment will not become final and appealable until the court has ruled upon that motion. Murray v. Stine, 291 Neb. 125, 864 N.W.2d 386 (2015).

Subsection (2) of this section provides generally that a court can award reasonable attorney fees and court costs against any attorney or party who has brought or defended a civil action that alleges a claim or defense that a court determines is frivolous or made in bad faith. In re Guardianship of Aimee S., 26 Neb. App. 380, 920 N.W.2d 18 (2018).

The term "frivolous," as used in this section, providing for the award of attorney fees for the bringing of a frivolous claim, connotes an improper motive or legal position so wholly without merit as to be ridiculous. Shandera v. Schultz, 23 Neb. App. 521, 876 N.W.2d 667 (2016).

25-824.01.

In determining whether to assess attorney fees and costs and the amount to be assessed against offending attorneys and parties, the court considers a number of factors, including, but not limited to, the 10 factors listed in this section. In re Guardianship of Aimee S., 26 Neb. App. 380, 920 N.W.2d 18 (2018).

25-840.

A defendant's allegedly defamatory statement being true is a complete defense to a claim of defamation unless the plaintiff proves the statement was made with actual malice. Choice Homes v. Donner, 311 Neb. 835, 976 N.W.2d 187 (2022).

25-840.01.

The plaintiff's failure to request a retraction under this section constitutes an affirmative defense which must be raised by the defendant prior to trial. Funk v. Lincoln-Lancaster Cty. Crime Stoppers, 294 Neb. 715, 885 N.W.2d 1 (2016).

25-914.

A docket entry/journal entry contained in the "Judges Notes" constituted an interlocutory order disposing of the party's motion to alter or amend; it did not need to be a separate file-stamped document. Pearce v. Mutual of Omaha Ins. Co., 28 Neb. App. 410, 945 N.W.2d 516 (2020).

An unsigned journal entry without a file stamp can constitute an interlocutory order; but it cannot constitute a final, appealable order, particularly when it does not dispose of all issues. Pearce v. Mutual of Omaha Ins. Co., 28 Neb. App. 410, 945 N.W.2d 516 (2020).

25-1011.

No substantial right was affected where the judgment debtor unsuccessfully objected to a garnishment pursuant to this section. Shawn E. on behalf of Grace E. v. Diane S., 300 Neb. 289, 912 N.W.2d 920 (2018).

25-1026.

A garnishee who serves as the plan administrator for a judgment debtor's employee benefit plan must comply with this section and disclose any property of the judgment debtor that it possesses or controls, regardless of whether the property is subject to garnishment. Florence Lake Investments v. Berg, 312 Neb. 183, 978 N.W.2d 308 (2022).

25-1030.

A garnishee who serves as the plan administrator for a judgment debtor's employee benefit plan cannot be found personally liable for the judgment debtor's debt for failing to disclose the plan pursuant to section 25-1026, because the Employee Retirement Income Security Act bars the assignment or alienation of pension benefits. Florence Lake Investments v. Berg, 312 Neb. 183, 978 N.W.2d 308 (2022).

If a garnishor fails to file an application to determine the garnishee's liability within 20 days of when the garnishee's answers to interrogatories are filed, this section prescribes an unequivocal and mandatory conclusion that the garnishee shall be released and discharged. Huntington v. Pedersen, 294 Neb. 294, 883 N.W.2d 48 (2016).

25-1030.02.

In determining the liability of a garnishee to a garnishor, the test is whether, as of the time the summons in garnishment was served, the facts would support a recovery by the garnishor's judgment debtor against the garnishee. Florence Lake Investments v. Berg, 312 Neb. 183, 978 N.W.2d 308 (2022).

25-1056.

The Employee Retirement Income Security Act's anti-alienation statute bars creditors from collecting undistributed funds in a judgment debtor's employee benefit plan through postjudgment garnishment in aid of execution proceedings. Florence Lake Investments v. Berg, 312 Neb. 183, 978 N.W.2d 308 (2022).

25-1081.

An order that issues further directions to a previously appointed receiver that was never discharged is not an order appointing a receiver. Seid v. Seid, 310 Neb. 626, 967 N.W.2d 253 (2021).

25-1087.

A court may consider a party's oral request for interim relief, which requires further action by a previously appointed receiver, as an application for further directions. Seid v. Seid, 310 Neb. 626, 967 N.W.2d 253 (2021).

25-1089.

An order that issues further directions to an appointed receiver is not within this section. Seid v. Seid, 310 Neb. 626, 967 N.W.2d 253 (2021).

25-1090.

An order confirming a public sale is a final order, because it both is an order disposing of receivership property and gives the receiver directions. Priesner v. Starry, 300 Neb. 81, 912 N.W.2d 249 (2018).

An order of further direction to the receiver to release liens before continuing with the public sale is a final order.

Priesner v. Starry, 300 Neb. 81, 912 N.W.2d 249 (2018).

A summary judgment in a receiver's favor finding that he is not liable to an intervenor for a claim is a "direction" to a receiver from which an appeal is allowable; such summary judgment is "final" because it fully and completely determines the dispute between the intervenor and the receiver. Sutton v. Killham, 19 Neb. App. 842, 820 N.W.2d 292 (2012).

25-1104.

A commercial tenant and its personal guarantors did not waive their right to a jury trial on a landlord's causes of action for breach of contract, breach of guaranty, and unjust enrichment by failing to demand a jury trial for a previously and separately tried cause of action for forcible entry and detainer. 132 Ventures v. Active Spine Physical Therapy, 313 Neb. 45, 982 N.W.2d 778 (2022).

A landlord's causes of action for breach of contract, breach of guaranty, and unjust enrichment against a commercial tenant and its personal guarantors raised issues of fact arising in actions for recovery of money, and as such, they were legal in nature, entitling tenant and guarantors to a jury trial unless waived. 132 Ventures v. Active Spine Physical Therapy, 313 Neb. 45, 982 N.W.2d 778 (2022).

25-1111.

Whether requested to do so or not, a trial court has the duty to instruct the jury on issues presented by the pleadings and the evidence, and it must, on its own motion, correctly instruct on the law. State v. Brennauer, 314 Neb. 782, 993 N.W.2d 305 (2023).

25-1113.

A trial court's failure to mark a jury instruction as "given" or "refused" pursuant to this section is not available as error on appeal in the absence of an objection made on these statutory grounds at trial. Schuemann v. Menard, Inc., 27 Neb. App. 977, 938 N.W.2d 378 (2020).

25-1114.

An objection that jury instructions were not filed by the clerk before being read to the jury as required by this section must be made when or before the instructions are read, or the objection is waived. Schuemann v. Menard, Inc., 27 Neb. App. 977, 938 N.W.2d 378 (2020).

25-1116.

The failure of the court to notify counsel of a jury's question is reversible error only if prejudice results. Facilities Cost Mgmt. Group v. Otoe Cty. Sch. Dist., 298 Neb. 777, 906 N.W.2d 1 (2018).

25-1126.

The rule that when parties try issues of fact to the court without objection or ask for a directed verdict it should be construed as a waiver of jury trial by "oral consent" applies individually to bifurcated trials. 132 Ventures v. Active Spine Physical Therapy, 313 Neb. 45, 982 N.W.2d 778 (2022).

Where the parties agreed that a hearing to set trial was not conducted on the record and no record was available for review on appeal, and where a commercial tenant and its guarantors opted not to present their own case in chief or move for a directed verdict at trial on damages, instead continuing their objection to the trial going forward without a jury, there was no "oral consent in open court entered upon the record" operating to waive commercial tenant's and guarantors' right to a jury trial. 132 Ventures v. Active Spine Physical Therapy, 313 Neb. 45, 982 N.W.2d 778 (2022).

The client is bound by the attorney's choice to waive a jury trial in a civil action. McGill Restoration v. Lion Place Condo. Assn., 309 Neb. 202, 959 N.W.2d 251 (2021).

25-1127.

Under this section, in the absence of a request by a party for specific findings, a trial court is not required to make detailed findings of fact and need only make its findings generally for the prevailing party. Cullinane v. Beverly Enters. - Neb., 300 Neb. 210, 912 N.W.2d 774 (2018).

In the absence of a request by a party for specific findings, a trial court is not required to make detailed findings of fact and need only make its findings generally for the prevailing party. Lesser v. Eagle Hills Homeowners' Assn., 20 Neb. App. 423, 824 N.W.2d 77 (2012).

25-1129.

A referee's factual findings are entitled to some deference, but no such deference is owed to the referee's conclusions or recommendations. Becher v. Becher, 299 Neb. 206, 908 N.W.2d 12 (2018).

25-1131.

A district court is not required to make specific findings that a referee's factual findings are against the clear weight of the evidence. Becher v. Becher, 299 Neb. 206, 908 N.W.2d 12 (2018).

25-1140.

In order for the appellate court to consider evidence, the evidence must be marked, identified, and made a part of the bill of exceptions at the trial court. Bohling v. Bohling, 304 Neb. 968, 937 N.W.2d 855 (2020).

The party appealing has the responsibility of including within the bill of exceptions matters from the record which the party believes are material to the issues presented for review. State v. Saylor, 294 Neb. 492, 883 N.W.2d 334 (2016).

25-1141.

This section does not apply to testimony given by a different witness when no objection is made to that witness' testimony. State v. Pope, 305 Neb. 912, 943 N.W.2d 294 (2020).

This section applies to objections made to the testimony of the same nature by the same witness and therefore does not apply to objections made to a demonstrative exhibit and/or statements made by the prosecutor during closing arguments. State v. Howard, 26 Neb. App. 628, 921 N.W.2d 869 (2018).

25-1142.

A motion for new trial, under this section, is not an effective motion to terminate the running of time to file notice of an appeal when the court grants a motion for summary judgement. Clarke v. First Nat. Bank of Omaha, 296 Neb. 632, 895 N.W.2d 284 (2017).

In a trial to establish custody of a child born out of wedlock, a mother's rights were not substantially affected as a result of the father's failure to answer interrogatories. State on behalf of Keegan M. v. Joshua M., 20 Neb. App. 411, 824 N.W.2d 383 (2012).

25-1144.01.

A motion for new trial filed after the court announced the jury verdict but before the entry of judgment is treated as filed after the entry of judgment and on the day thereof and is an effective terminating motion. Lindsay Internat. Sales & Serv. v. Wegener, 297 Neb. 788, 901 N.W.2d 278 (2017).

The trial court's unsigned journal entry that was sent to both parties was the court's announcement of its decision, and thus, the defendant's motion for new trial, which was filed after the court sent the unsigned journal entry to the parties but before the court entered the marital dissolution decree, was effective under this section. Despain v. Despain, 290 Neb. 32, 858 N.W.2d 566 (2015).

25-1146.

Public perceptions of a defect when the evidence demonstrates there is none is an improper basis for recovery. de Vries v. L & L Custom Builders, 310 Neb. 543, 968 N.W.2d 64 (2021).

25-1148.

Sua sponte judicial delays might be characterized as continuances by the court, but they are not "applications for continuances" as described by section 29-1206 and, accordingly, need not be in conformance with the requirements

of this section, which describes a hearing on the application and the necessary form of support for applications for continuances or adjournment "made by a party or parties." State v. Chase, 310 Neb. 160, 964 N.W.2d 254 (2021).

An appellate court will assess motions to continue a trial that do not fully comply with the rule governing requests for continuance in the broader context of the parties' substantial rights. State on behalf of Keegan M. v. Joshua M., 20 Neb. App. 411, 824 N.W.2d 383 (2012).

An application for continuance shall state the grounds upon which the application is made and be supported by affidavits of persons competent to testify as witnesses in proof of and setting forth the facts upon which such continuance is asked. State v. Vela-Montes, 19 Neb. App. 378, 807 N.W.2d 544 (2011).

Noncompliance with the clear mandates of this section is merely a factor to be considered in determining whether the trial court abused its discretion in ruling upon a motion for continuance. State v. Vela-Montes, 19 Neb. App. 378, 807 N.W.2d 544 (2011).

25-1240.

A statement made in an unsworn letter is not testimony and cannot be used to support the theory that one has, without reasonable explanation, changed testimony to meet the exigencies of pending litigation. Timothy L. Ashford, PC LLO v. Roses, 313 Neb. 302, 984 N.W.2d 596 (2023).

25-1241.

In connection with an affidavit, a notary public completes a certificate, known as a jurat, which confirms that the affiant appeared before the notary, attested to the truth of his or her statements, and signed the affidavit. AVG Partners I v. Genesis Health Clubs, 307 Neb. 47, 948 N.W.2d 212 (2020).

Unless required by statute, an omission in a jurat that an affidavit was sworn to will not be fatal if the fact otherwise appears. AVG Partners I v. Genesis Health Clubs, 307 Neb. 47, 948 N.W.2d 212 (2020).

25-12,125.

Under this section, the presumption that a statement was taken under duress may be rebutted by evidence that the statement was not made under duress. Schuemann v. Menard, Inc., 27 Neb. App. 977, 938 N.W.2d 378 (2020).

25-1301.

A criminal judgment is not final for purposes of appeal until a file-stamped sentencing order is entered by the clerk. State v. Melton, 308 Neb. 159, 953 N.W.2d 246 (2021).

A final judgment is one that disposes of the case either by dismissing it before hearing is had upon the merits, or after trial by rendition of judgment for the plaintiff or defendant. Conversely, every direction of a court or judge, made or entered in writing and not included in a judgment, is an order. Boyd v. Cook, 298 Neb. 819, 906 N.W.2d 31 (2018).

A docket entry that is neither signed nor file stamped is not a final order. State v. Meints, 291 Neb. 869, 869 N.W.2d 343 (2015).

A docket entry/journal entry contained in the "Judges Notes" constituted an interlocutory order disposing of the party's motion to alter or amend; it did not need to be a separate file-stamped document. Pearce v. Mutual of Omaha Ins. Co., 28 Neb. App. 410, 945 N.W.2d 516 (2020).

An unsigned journal entry without a file stamp can constitute an interlocutory order; but it cannot constitute a final, appealable order, particularly when it does not dispose of all issues. Pearce v. Mutual of Omaha Ins. Co., 28 Neb. App. 410, 945 N.W.2d 516 (2020).

25-1315.

This section is implicated when a case involves multiple parties or multiple claims, and can be implicated in civil actions, special proceedings, and civil actions joined with special proceedings. McPherson v. Walgreens Boot Alliance, 314 Neb. 875, 993 N.W.2d 679 (2023).

When a court enters an order dismissing all but one claim and does not expressly direct entry of judgment under this section, the order is interlocutory and an appeal cannot be taken until the court disposes of all claims. Bohling v. Tecumseh Poultry, 314 Neb. 129, 988 N.W.2d 529 (2023).

The term "action" in this section broadly references civil cases that present multiple claims for relief or involve multiple parties. Mann v. Mann, 312 Neb. 275, 978 N.W.2d 606 (2022).

This section can be implicated in civil actions, special proceedings, and civil actions joined with special proceedings. Mann v. Mann, 312 Neb. 275, 978 N.W.2d 606 (2022).

To be appealable, an order must meet the final order requirements of both this section and section 25-1902. Mann v. Mann, 312 Neb. 275, 978 N.W.2d 606 (2022).

This section is inapplicable to a final order regarding a postjudgment garnishment in aid of execution directed to specific property where all rights of all parties claiming an interest in the specific property garnished have been adjudicated. Florence Lake Investments v. Berg, 312 Neb. 183, 978 N.W.2d 308 (2022).

This section is implicated where a habeas corpus petition is asserted in the same action as a petition in error, and therefore a party must wait to appeal until the court enters a "final order" within the meaning of section 25-1902 that addresses both petitions, or the court expressly directs the entry of a final order regarding the habeas corpus petition and determines that there is no just reason for delay of an immediate appeal. Tyrrell v. Frakes, 309 Neb. 85, 958 N.W.2d 673 (2021).

Absent a specific statute allowing an immediate appeal, when the proceedings below involve multiple claims for relief or multiple parties, and the court has adjudicated fewer than all the claims or the rights and liabilities of fewer than all the parties, this section controls. TDP Phase One v. The Club at the Yard, 307 Neb. 795, 950 N.W.2d 640 (2020).

In an action for forcible entry and detainer, the plain language of section 25-21,233 does not allow an immediate appeal of an order of restitution when the order implicates this section, meaning the order adjudicates fewer than all claims for relief or the rights and liabilities of fewer than all the parties, without being certified pursuant to subsection (1) of this section. TDP Phase One v. The Club at the Yard, 307 Neb. 795, 950 N.W.2d 640 (2020).

This section was implicated in a paternity action initiated for two children where (1) the presumptive father filed a cross-claim against the mother for custody and visitation as to one child and a counterclaim against the State for disestablishment of paternity as to the other child and (2) the district court granted disestablishment of paternity but did not determine the custody issues as to the other child. State on behalf of Marcelo K. & Rycki K. v. Ricky K., 300 Neb. 179, 912 N.W.2d 747 (2018).

This section provides that when a case involves multiple claims or multiple parties, a party may generally only appeal when all claims and the rights of all parties have been resolved. If a court issues an order that is final as to some, but not all, of the claims or parties, such an order is appealable only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such an entry of judgment, orders adjudicating fewer than all claims or the rights of fewer than all the parties are not final and are subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties. Thus, absent an entry of judgment under this section, no appeal will lie unless all claims have been disposed as to all parties in the case. Boyd v. Cook, 298 Neb. 819, 906 N.W.2d 31 (2018).

The trial court should not have certified as final its order resolving a claim against the trustee where the trustee's third-party claim for contribution was unresolved and nothing in the record suggested that a delay of a few months before the third-party complaint would be ready for trial would cause an unusual hardship for the parties. Rafert v. Meyer, 298 Neb. 461, 905 N.W.2d 30 (2017).

This section does not modify final order jurisprudence as it regards orders denying intervention. Streck, Inc. v. Ryan Family, 297 Neb. 773, 901 N.W.2d 284 (2017).

In enacting this section, the Legislature did not amend the partition statutes or attempt to change the effect of prior jurisprudence. Both before and after the adoption of this section, section 25-2179 characterized the settlement of all ownership rights as a "judgment" and Nebraska case law characterizes the order as a final order. Guardian Tax Partners v. Skrupa Invest. Co., 295 Neb. 639, 889 N.W.2d 825 (2017).

An order granting a lender's motions for summary judgment to enforce a guaranty, but failing to adjudicate a cross-claim and not directing the entry of final judgment under this section, is not a judgment sufficient to support execution or garnishment in aid of execution. Cattle Nat. Bank & Trust Co. v. Watson, 293 Neb. 943, 880 N.W.2d 906 (2016).

One may bring an appeal pursuant to subsection (1) of this section governing entry of a final judgment as to fewer than all of the claims or parties only when (1) multiple causes of action or multiple parties are present, (2) the court enters a "final order" as to one or more but fewer than all of the causes of action or parties, and (3) the trial court expressly directs the entry of such final order and expressly determines that there is no just reason for delay of an immediate appeal. Southwest Omaha Hospitality v. Werner-Robertson, 20 Neb. App. 930, 834 N.W.2d 617 (2013).

Without an express determination that there is no reason for delay and an express direction for the entry of final judgment from the trial court, an appellate court is without jurisdiction to hear an appeal from an order that does not dispose of all of the claims against all of the parties. Abante, LLC v. Premier Fighter, 19 Neb. App. 730, 814 N.W.2d 109 (2012).

25-1316.

Where offsetting claims and counterclaims were tried separately, the final judgment did not occur until all claims were adjudicated and both jury verdicts were accepted by the district court. VKGS v. Planet Bingo, 309 Neb. 950, 962 N.W.2d 909 (2021).

25-1329.

A judgment entered by the district court at the conclusion of an error proceeding pursuant to sections 25-1901 to 25-1908 is a judgment within the meaning of this section. McEwen v. Nebraska State College Sys., 303 Neb. 552, 931 N.W.2d 120 (2019).

A second motion to reconsider a final order entered 11 days earlier did not terminate the time for filing a notice of appeal, and because appellant did not appeal within 30 days of the overruling of his first motion to reconsider—which was properly construed as a motion to alter or amend—the appellate court lacked jurisdiction over the appeal. Bryson L. v. Izabella L., 302 Neb. 145, 921 N.W.2d 829 (2019).

A motion to alter or amend filed more than 10 days after the court's denial of a postconviction claim does not terminate or extend the time to appeal that denial. State v. Lotter, 301 Neb. 125, 917 N.W.2d 850 (2018).

A motion for reconsideration is the functional equivalent of a motion to alter or amend a judgment. Clarke v. First Nat. Bank of Omaha, 296 Neb. 632, 895 N.W.2d 284 (2017).

In order to qualify for treatment as a motion to alter or amend a judgment, a motion must be filed no later than ten days after the entry of judgment and must seek substantive alteration of the judgment. Kotas v. Barnett, 31 Neb. App. 799, 990 N.W.2d 37 (2023).

In order to qualify for treatment as a motion to alter or amend a judgment, the motion must be filed no later than 10 days after the entry of judgment, as required under this section, and must seek substantive alteration of the judgment. Bayliss v. Clason, 26 Neb. App. 195, 918 N.W.2d 612 (2018).

Under this section, a motion for reconsideration is the functional equivalent of a motion to alter or amend a judgment. Bayliss v. Clason, 26 Neb. App. 195, 918 N.W.2d 612 (2018).

Under this section, if a postjudgment motion seeks a substantive alteration of the judgment—as opposed to the correction of clerical errors or relief wholly collateral to the judgment—a court may treat the motion as one to alter or amend the judgment. Bayliss v. Clason, 26 Neb. App. 195, 918 N.W.2d 612 (2018).

25-1332.

Based on the plain text of this section, if the burden of proof at trial would be on the nonmoving party, then the party moving for summary judgment may satisfy its prima facie burden either by citing to materials in the record that affirmatively negate an essential element of the nonmoving party's claim, or by citing to materials in the record demonstrating that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. Clark v. Scheels All Sports, 314 Neb. 49, 989 N.W.2d 39 (2023).

Summary judgment is proper when the pleadings and the evidence admitted at the hearing disclose that there is no genuine issue as to any material fact or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law. Stackhouse v. Gaver, 19 Neb. App. 117, 801 N.W.2d 260 (2011).

25-1334.

The trial court's consideration of a nursing home director's affidavit, when deciding a motion for summary judgment, was not plain error in a negligence action arising from a nursing home resident's death after an alleged fall from bed, where the director had sufficient personal knowledge, the affidavit set forth facts that would be admissible, and the director was competent to testify to the matters stated. Apkan v. Life Care Centers of America, 26 Neb. App. 154, 918 N.W.2d 601 (2018).

The affidavit of a county's planning director, which attached the zoning regulations at issue, was material and relevant, even if the portion of the affidavit containing the affiant's interpretation of the regulation and its applicability was inadmissible. Dowd Grain Co. v. County of Sarpy, 19 Neb. App. 550, 810 N.W.2d 182 (2012).

25-1335.

This section provides a safeguard against an improvident or premature grant of summary judgment. George Clift Enters. v. Oshkosh Feedyard Corp., 306 Neb. 775, 947 N.W.2d 510 (2020).

25-1401.

The language of this section and section 25-1402 should not be read to suggest that all pending actions other than those specifically listed survive the death of a party; Nebraska case law has long limited the list of those actions that survive death to exclude those which involve purely personal rights. Muller v. Weeder, 313 Neb. 639, 986 N.W.2d 38 (2023).

A survival action is personal to the decedent for damages suffered by the decedent between the wrongful act and his or her death, and recovery for such damage belongs to the decedent's estate and is administered as an estate asset. In re Estate of McConnell, 28 Neb. App. 303, 943 N.W.2d 722 (2020).

A wrongful death action and a survival action are two distinct causes of action which may be brought by a decedent's personal representative. Although they are frequently joined in a single action, they are conceptually separate. In re Estate of McConnell, 28 Neb. App. 303, 943 N.W.2d 722 (2020).

Although damages for pain and suffering may be difficult to compute, that cannot preclude the entry of damages where they are appropriate as discernible by sufficient evidence. The amount of damages is a matter solely for the fact finder. In re Estate of McConnell, 28 Neb. App. 303, 943 N.W.2d 722 (2020).

An action under Nebraska's survival statute is the continuance of the decedent's own right of action, which he or she possessed prior to his or her death. The survival action is brought on behalf of the decedent's estate and encompasses the decedent's claim for predeath pain and suffering, medical expenses, funeral and burial expenses, and any loss of earnings sustained by the decedent, from the time of the injury up until his or her death. In re Estate of McConnell, 28 Neb. App. 303, 943 N.W.2d 722 (2020).

The same individuals may stand to recover in both a wrongful death and a survival action, as the decedent's next of kin may also be beneficiaries of a survival claim under the decedent's will or the laws of intestate succession. In re Estate of McConnell, 28 Neb. App. 303, 943 N.W.2d 722 (2020).

25-1402.

The language of this section and section 25-1401 should not be read to suggest that all pending actions other than those specifically listed survive the death of a party; Nebraska case law has long limited the list of those actions that survive death to exclude those which involve purely personal rights. Muller v. Weeder, 313 Neb. 639, 986 N.W.2d 38 (2023).

25-1403.

Statutory provisions regarding revivor of actions apply to cases in which a party dies pending an appeal, and any order of revivor or substitution must be had in the court having jurisdiction at the time of the party's death. Muller v. Weeder, 313 Neb. 639, 986 N.W.2d 38 (2023).

25-1420.

A judgment is not a contract for purposes of the tolling provision of section 25-216. Nelssen v. Ritchie, 304 Neb. 346, 934 N.W.2d 377 (2019).

If a defendant is personally served, even if the name is incorrect, the defendant must appear and call attention to the defect. Failing to do so waives the objection to the misnomer and allows a judgment to be rendered against the defendant by default. Capital One Bank v. Tafoya, 31 Neb. App. 875, 991 N.W.2d 306 (2023).

The intent of the plaintiff is a pivotal inquiry in the determination of whether a particular case involves a misnomer or mistaken identity; the objective manifestations of a plaintiff's intent which existed at the time of the lawsuit are the most reliable indicators of whom counsel intended to sue. Capital One Bank v. Tafoya, 31 Neb. App. 875, 991 N.W.2d 306 (2023).

The only defenses available against an action to revive are (1) there is no judgment to revive, (2) the purported judgment is void, and (3) the judgment was paid or otherwise discharged. When the revivor of a dormant judgment is sought, a defendant must show cause why the dormant judgment should not be revived. Capital One Bank v. Tafoya, 31 Neb. App. 875, 991 N.W.2d 306 (2023).

While a defendant in revival proceedings may not use extrinsic evidence to relitigate the merits of the case, the defendant can introduce extrinsic evidence to show that the original judgment was void because the court entered it without jurisdiction. Capital One Bank v. Tafoya, 31 Neb. App. 875, 991 N.W.2d 306 (2023).

25-1506.

When the party sought a stay more than 20 days after the initial foreclosure decree, but less than 20 days after the supplemental decree, the party was not entitled to a stay. Mutual of Omaha Bank v. Watson, 301 Neb. 833, 920 N.W.2d 284 (2018).

25-1558.

The basic subsistence limitation under the child support guidelines was not applicable to reduce the amount being withheld from the father's monthly Social Security benefits to pay his child support arrearages. Ybarra v. Ybarra, 28 Neb. App. 216, 943 N.W.2d 447 (2020).

25-1635.

Absent a reasonable ground for investigating jury misconduct or corruption, a party cannot use posttrial interviews with jurors as a "fishing expedition" to find some reason to attack a verdict. Golnick v. Callender, 290 Neb. 395, 860 N.W.2d 180 (2015).

Because there is no constitutional right to obtain information about a jury's deliberations, a court's discretion under this section to disclose juror information for good cause shown after a verdict should be tempered by the restrictions imposed under section 27-606(2). Golnick v. Callender, 290 Neb. 395, 860 N.W.2d 180 (2015).

25-1708.

This section does not apply to a discretionary award of reasonable litigation expenses under either 18 U.S.C. 2520 or section 86-297. Brumbaugh v. Bendorf, 306 Neb. 250, 945 N.W.2d 116 (2020).

The scope of the exception to this section is limited to a plaintiff's waiver or release of costs in writing. Credit Mgmt. Servs. v. Jefferson, 290 Neb. 664, 861 N.W.2d 432 (2015).

This section does not provide for an exception where the defendant voluntarily paid the plaintiff's claim after the action was filed but before a judgment was entered. Credit Mgmt. Servs. v. Jefferson, 290 Neb. 664, 861 N.W.2d 432 (2015).

25-1711.

This section governs the taxation of costs in equitable actions and does not require the court to tax costs to the unsuccessful party. Mock v. Neumeister, 296 Neb. 376, 892 N.W.2d 569 (2017).

25-1803.

The mere fact that the State has not been successful in an appellate court does not mean its position was not substantially justified. In re Interest of A.A. et al., 308 Neb. 749, 957 N.W.2d 138 (2021).

This section does not waive sovereign immunity regarding attorney fees and expenses incurred to defend against positions taken against particular parties on particular motions within an action that was, as a whole, substantially

justified. In re Interest of A.A. et al., 308 Neb. 749, 957 N.W.2d 138 (2021).

A judgment does not become final and appealable until the trial court has ruled upon a pending request for attorney fees made pursuant to state statute. Webb v. Nebraska Dept. of Health & Human Servs., 301 Neb. 810, 920 N.W.2d 268 (2018).

A party seeking fees authorized by state law must make a request for such fees prior to a judgment in the cause. Webb v. Nebraska Dept. of Health & Human Servs., 301 Neb. 810, 920 N.W.2d 268 (2018).

Attorney fees awarded pursuant to this section are generally treated as an element of court costs, and an award of costs in a judgment is considered a part of the judgment. Webb v. Nebraska Dept. of Health & Human Servs., 301 Neb. 810, 920 N.W.2d 268 (2018).

25-1901.

A board or tribunal exercises a judicial function if it decides a dispute of adjudicative fact or if a statute requires it to act in a judicial manner. But where a board or tribunal decides no question of adjudicative fact and no statute requires it to act in a judicial manner, the orders are not "judicial" and are not reviewable by error proceedings. Main St Properties v. City of Bellevue, 310 Neb. 669, 968 N.W.2d 625 (2022).

A zoning ordinance constitutes the exercise of a governmental and legislative function, and a city council adopting a rezoning ordinance, which amends a general zoning ordinance, acts in a legislative capacity. Main St Properties v. City of Bellevue, 310 Neb. 669, 968 N.W.2d 625 (2022).

An appeal or error proceeding does not lie from a purely legislative act by a public body to which legislative power has been delegated, and the only remedy in such cases is by collateral attack, that is, by injunction or other suitable action. Main St Properties v. City of Bellevue, 310 Neb. 669, 968 N.W.2d 625 (2022).

Petition-in-error jurisdiction is limited by statute to a review of a judgment rendered or final order made by any tribunal, board, or officer exercising judicial functions and inferior in jurisdiction to the district court. Main St Properties v. City of Bellevue, 310 Neb. 669, 968 N.W.2d 625 (2022).

When an entity such as a city council is exercising its judicial functions, the petition in error statute is the proper method for challenging such actions. Main St Properties v. City of Bellevue, 310 Neb. 669, 968 N.W.2d 625 (2022).

When viewed under the motion to dismiss standards for review, the allegations showed the city council adopted a rezoning ordinance based upon the recommendation of the planning commission. The allegations did not show the city council decided a dispute of adjudicative fact. Main St Properties v. City of Bellevue, 310 Neb. 669, 968 N.W.2d 625 (2022).

Regardless of whether collective bargaining is generally legislatively authorized, the adjudicatory procedures set forth in a collective bargaining agreement for a committee that was never expressly contemplated by the Legislature do not establish any tribunal, board, or officer inferior in jurisdiction to the district court, which is capable of rendering judgments and final orders in the exercise of judicial functions for purposes of review by a petition in error. Champion v. Hall County, 309 Neb. 55, 958 N.W.2d 396 (2021).

The mere act of deciding a question of adjudicative fact after an evidentiary hearing, when the law has not contemplated the entity and any power to exercise judicial functions, does not render any tribunal's, board's, or officer's decision reviewable in district court by a petition in error. Champion v. Hall County, 309 Neb. 55, 958 N.W.2d 396 (2021).

Sheriffs' merit commissions are considered "tribunals" under this section. Schaffer v. Cass County, 290 Neb. 892, 863 N.W.2d 143 (2015).

An action brought by a county employee alleging that administrative discipline imposed upon him by his employer was a breach of contract was, at its core, an appeal of the decision of an administrative body denying a grievance and must comply with the petition in error statutes. Turnbull v. County of Pawnee, 19 Neb. App. 43, 810 N.W.2d 172 (2011).

25-1902.

An order declaring a settlement agreement enforceable is not a final order, since further judicial action was required before all the terms of the settlement agreement could be effectuated and the cases dismissed. Paxton v. Paxton, 314 Neb. 197, 989 N.W.2d 420 (2023).

An order granting partial summary judgment on the issue of apportionment of inheritance tax obligations was not a final, appealable order where a discrete phase of probate proceedings regarding inheritance tax liability had not yet been completed in the county court. In re Hessler Living Trust, 313 Neb. 607, 985 N.W.2d 589 (2023).

The judicial supervision of the winding up of a limited liability company is a multifaceted special proceeding, and an order that ends a discrete phase of the proceeding affects a substantial right because it finally resolves the issues raised in that phase. Schreiber Bros. Hog Co. v. Schreiber, 312 Neb. 707, 980 N.W.2d 890 (2022).

To be appealable, an order must meet the final order requirements of both section 25-1315 and this section. Mann v. Mann, 312 Neb. 275, 978 N.W.2d 606 (2022).

An order denying temporary injunctive relief is not a "final order." Ramaekers v. Creighton University, 312 Neb. 248, 978 N.W.2d 298 (2022).

An order overruling an application to determine garnishee liability in a postjudgment garnishment in aid of an execution proceeding is a "final order" under this section, because it affects a substantial right made on a summary application in an action after a judgment is entered. Florence Lake Investments v. Berg, 312 Neb. 183, 978 N.W.2d 308 (2022).

An order to mediate does not affect any substantial right of the parties. Tegra Corp. v. Boeshart, 311 Neb. 783, 976 N.W.2d 165 (2022).

Derivative actions brought pursuant to the Nebraska Uniform Liability Company Act are not special proceedings, and any proceedings under section 21-168 are merely a step in the underlying derivative action. Tegra Corp. v. Boeshart, 311 Neb. 783, 976 N.W.2d 165 (2022).

An order denying a petition for a special administrator under section 30-2457 and concurrent request under section 30-2457 for an order restraining, during the pendency of a will contest, the personal representative of the decedent's estate is a final, appealable order. In re Estate of Anderson, 311 Neb. 758, 974 N.W.2d 847 (2022).

When a motion for summary judgment asserts that the plaintiff's claim falls within one or more of the statutory exemptions under the State Tort Claims Act or the Political Subdivisions Tort Claims Act, the motion is based on the assertion of sovereign immunity within the meaning of subdivision (1)(d) of this section. Clark v. Sargent Irr. Dist., 311 Neb. 123, 971 N.W.2d 298 (2022).

When a motion for summary judgment asserts the plaintiff failed to comply with the presuit claim procedures of the Political Subdivisions Tort Claims Act or the State Tort Claims Act, the motion is not based on the assertion of sovereign immunity within the meaning of subdivision (1)(d) of this section. Clark v. Sargent Irr. Dist., 311 Neb. 123, 971 N.W.2d 298 (2022).

The probate court's order appointing a personal representative was a final order; it ended a discrete phase of the probate proceeding and the appointment order, coupled with the issuance of letters of personal representative, imposed fiduciary duties on the appointee. In re Estate of Severson, 310 Neb. 982, 970 N.W.2d 94 (2022).

A defendant's appeal of a final order denying a pretrial motion for absolute discharge on statutory speedy trial grounds did not result in appellate jurisdiction to review a nonfinal order that denied the motion on constitutional speedy trial grounds. State v. Abernathy, 310 Neb. 880, 969 N.W.2d 871 (2022).

A court order dismissing a petition for the removal of the personal representatives of an estate and the appointment of a special administrator operates as a final, appealable order where the dismissal cannot be vindicated on appeal from any other potential final judgment or resolution of the case, and the order affected an essential legal right of the appellant. In re Estate of Lakin, 310 Neb. 271, 965 N.W.2d 365 (2021).

An order which set aside a default order of modification of child support and allowed the obligor an opportunity to answer and defend was not a final order, because it did not affect a substantial right of the parties in the subject action. Porter v. Porter, 309 Neb. 167, 959 N.W.2d 235 (2021).

Although requiring a probationer to live in a specific location might affect a substantial right in some cases, here the probationer was merely allowed to continue residing in Kansas instead of Nebraska. Thus, allowing her to continue living in Kansas did not affect the subject matter of the litigation by diminishing a claim or defense that was available to her. Therefore, because no substantial right was affected by the amended order of probation, the amended order was not a final, appealable order. State v. Reames, 308 Neb. 361, 953 N.W.2d 807 (2021).

An order ending a discrete phase of probate proceedings is a final, appealable order, but one that is merely preliminary to such an order is not. In re Estate of Larson, 308 Neb. 240, 953 N.W.2d 535 (2021).

An order denying a biological father's motion for placement is not a mere continuation of a prior order of temporary physical custody when the court's order was its first adjudication of the father's parental right to temporary custody. In re Interest of A.A. et al., 307 Neb. 817, 951 N.W.2d 144 (2020).

An order which changed a parenting time schedule on a temporary basis and was set for a review hearing in 4 1/2 months did not affect a substantial right and, thus, was not a final order. Yori v. Helms, 307 Neb. 375, 949 N.W.2d 325 (2020).

A trial court's order denying a judgment debtor's motion to quash and vacate a foreign judgment affected a substantial right, and thus, the order was a final, appealable order; once the court ordered garnishment of the debtor's bank account, forcing him to postpone his appeal from such an order would have significantly undermined his right to the use and enjoyment of his property. Gem City Bone & Joint v. Meister, 306 Neb. 710, 947 N.W.2d 302 (2020).

The order granting an application to proceed in forma pauperis is not a final, appealable order because it does not affect a substantial right. State v. Fredrickson, 306 Neb. 81, 943 N.W.2d 701 (2020).

When there has been an amendment to the final order statute to make a previously interlocutory order a final order, it is a procedural change and not a substantive change and is therefore binding upon a tribunal upon the effective date of the amendment; this allows a party to file an appeal if the amendment took place within 30 days of the interlocutory order. Great Northern Ins. Co. v. Transit Auth. of Omaha, 305 Neb. 609, 941 N.W.2d 497 (2020).

An order overruling a plea in bar was not a final, appealable order, where the defendant's plea in bar did not present a colorable double jeopardy claim. State v. Kelley, 305 Neb. 409, 940 N.W.2d 568 (2020).

An order finding a defendant to be indigent and appointing appellate counsel at the county's expense did not affect a substantial right of the parties and was not a final order for purposes of appeal, where the order did not obligate the county to pay any specific amount or set a deadline for payment, such determinations were to be the subject of future proceedings addressing the question of reasonable attorney fees, and the State had the ability to challenge the findings of indigency and recoup any subsequently expended funds from the defendant. State v. Fredrickson, 305 Neb. 165, 939 N.W.2d 385 (2020).

An order denying a motion to modify or eliminate a probation condition is a final, appealable order. State v. Paulsen, 304 Neb. 21, 932 N.W.2d 849 (2019).

An order reinstating a case does not affect a substantial right merely because reinstatement would affect a defense in a future hypothetical action. Fidler v. Life Care Centers of America, 301 Neb. 724, 919 N.W.2d 903 (2018).

Not every order vacating a dismissal and reinstating a case is final and appealable; rather, the statutory criteria of this section must be applied to determine whether the order appealed from is final. Fidler v. Life Care Centers of America, 301 Neb. 724, 919 N.W.2d 903 (2018).

Under this section, the denial of a motion to compel arbitration is a final, appealable order, because it affects a substantial right and is made in a special proceeding. Cullinane v. Beverly Enters. - Neb., 300 Neb. 210, 912 N.W.2d 774 (2018).

An order affecting a substantial right that is issued upon a summary application in an action after judgment is an order ruling on a postjudgment motion in an action. State v. Coble, 299 Neb. 434, 908 N.W.2d 646 (2018).

An order on a motion seeking to remove the record of a criminal citation from the public record under section 29-3523 affects a substantial right for purposes of this section. State v. Coble, 299 Neb. 434, 908 N.W.2d 646 (2018).

Final orders and judgments issued by a county court may be appealed to district court. A district court order affirming, reversing, or remanding an order or judgment of the county court is itself a final order that an appellate court has jurisdiction to review. State v. Coble, 299 Neb. 434, 908 N.W.2d 646 (2018).

An order issuing a stay within an action is generally not appealable. But a stay that is tantamount to a dismissal of an action or has the effect of a permanent denial of the requested relief is a final order. Boyd v. Cook, 298 Neb. 819, 906 N.W.2d 31 (2018).

Generally, an order of dismissal is a final, appealable order. Boyd v. Cook, 298 Neb. 819, 906 N.W.2d 31 (2018).

The only three types of final orders which may be reviewed on appeal are (1) an order which affects a substantial right and which determines the action and prevents a judgment, (2) an order affecting a substantial right made during

a special proceeding, and (3) an order affecting a substantial right made on summary application in an action after judgment is rendered. Boyd v. Cook, 298 Neb. 819, 906 N.W.2d 31 (2018).

A determination of the statute of limitations governing the prosecution of a criminal charge has no bearing on the correctness of a speedy trial determination. State v. Gill, 297 Neb. 852, 901 N.W.2d 679 (2017).

Even if, in the face of a defendant's insistence, a court refuses to rule on the merits of a motion to quash an information on limitations grounds, the court's refusal to rule would be no more final, for purposes of an appeal, than a ruling on the motion would have been. State v. Gill, 297 Neb. 852, 901 N.W.2d 679 (2017).

The illegality of an arrest gives rise only to "collateral" rights and remedies in the underlying criminal action, which are effectively vindicated on appeal from the judgment. Dugan v. State, 297 Neb. 444, 900 N.W.2d 528 (2017).

An order that merely holds bond funds in the court and does not state who is entitled to the funds is not a final, appealable order. State v. McColery, 297 Neb. 53, 898 N.W.2d 349 (2017).

Under this section, an order is final for purposes of appeal if it affects a substantial right and (1) determines the action and prevents a judgment, (2) is made during a special proceeding, or (3) is made on summary application in an action after judgment is rendered. State v. McColery, 297 Neb. 53, 898 N.W.2d 349 (2017).

An order disqualifying counsel in a civil case is not a final, appealable order, overruling Richardson v. Griffiths, 251 Neb. 825, 560 N.W.2d 430 (1997), and cases relying upon it. Heckman v. Marchio, 296 Neb. 458, 894 N.W.2d 296 (2017).

An order imposing a discovery sanction was not a final order; it did not dispose of the whole merits of the case, was not made during a special proceeding, and was not made after a judgment was rendered. Ginger Cove Common Area Co. v. Wiekhorst, 296 Neb. 416, 893 N.W.2d 467 (2017).

An order refusing to vacate a discovery sanction order was not a final order, because it did not affect a substantial right. Ginger Cove Common Area Co. v. Wiekhorst, 296 Neb. 416, 893 N.W.2d 467 (2017).

The language in Peterson v. Damoude, 95 Neb. 469, 145 N.W. 847 (1914), concerning the appealability of orders in a partition action, harmonizes the final order language of this section with the partition procedure mandated by section 25-2179. Guardian Tax Partners v. Skrupa Invest. Co., 295 Neb. 639, 889 N.W.2d 825 (2017).

The denial of a motion to transfer a criminal case from district court to juvenile court is not final and appealable under this section. State v. Bluett, 295 Neb. 369, 889 N.W.2d 83 (2016).

An order changing a permanency plan in a juvenile case adjudicated under section 43-247(3)(a) does not necessarily affect a substantial right of the parent for purposes of this section when the order continues prior orders directed at family preservation and reunification or remedying the reasons that led to the adjudication. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

Juvenile court proceedings are "special proceedings" for purposes of this section. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

Subsequent review orders in a juvenile case adjudicated under section 43-247(3)(a) do not typically affect a substantial right for purposes of appeal under this section, because the parent has been given the full and fair opportunity to respond to the allegations at the adjudication stage. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

Under this section, an order in a juvenile case adjudicated under section 43-247(3)(a), which order continues prior dispositional orders but changes the permanency objective from family reunification to another objective, is a final, appealable order only if the parent's ability to achieve rehabilitation and family reunification has been clearly eliminated, because such an order affects a substantial right. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

Orders overruling a guarantor's and a coguarantor's objections to writs of execution and garnishment were orders made on summary application after judgment was rendered and affected the guarantor's and coguarantor's substantial rights and, thus, were final and appealable. Cattle Nat. Bank & Trust Co. v. Watson, 293 Neb. 943, 880 N.W.2d 906 (2016).

A finding of abandonment under section 43-104(2)(b) in an ongoing adoption proceeding is not a final, appealable order; such a finding does not terminate parental rights or standing in the proceedings, but merely eliminates the

need for the abandoning parent's consent and authorizes the execution of substitute consent, and such finding has no real and immediate effect on parental obligations, visitation, custody, or other matters pertaining to the parent's contact with the child during the pendency of the final judgment granting or denying the petition for adoption. In re Adoption of Madysen S. et al., 293 Neb. 646, 879 N.W.2d 34 (2016).

An order overruling a motion to terminate parental rights is a final, appealable order. In re Interest of Isabel P. et al., 293 Neb. 62, 875 N.W.2d 848 (2016).

An order of the trial court issuing a warrant for a defendant's arrest and commitment upon finding that the Department of Correctional Services had erroneously released the defendant before his mandatory discharge date was an order on summary application relating to a final judgment (the defendant's sentence). But the order did not affect a substantial right necessary to qualify for immediate appeal. The trial court was not deciding any important right or issue affecting the subject matter of the underlying criminal action or of any rights allegedly derived from the mistaken release, and the trial court did not diminish any claim or defense that was available to the defendant prior to the order for an arrest and commitment warrant. State v. Jackson, 291 Neb. 908, 870 N.W.2d 133 (2015).

An order dismissing a case "subject to being reinstated" upon the filing of a motion for reinstatement within 14 days is conditional and, thus, not a final order. State v. Meints, 291 Neb. 869, 869 N.W.2d 343 (2015).

An order in a juvenile proceeding merely finding the federal Indian Child Welfare Act of 1978 and the Nebraska Indian Child Welfare Act applicable, without further adjudicative or dispositive action, is not a final order within the meaning of this section. In re Interest of Jassenia H., 291 Neb. 107, 864 N.W.2d 242 (2015).

A court's temporary injunction or stay that merely preserves the status quo pending a further order is not an order that amounts to a dismissal of the action or that permanently denies relief to a party. So it is not a final, appealable order. Shasta Linen Supply v. Applied Underwriters, 290 Neb. 640, 861 N.W.2d 425 (2015).

A motion to compel arbitration invokes a special proceeding. An order that compels arbitration or stays court proceedings pending arbitration divests the court of jurisdiction to hear the parties' dispute and determines arbitrability. Accordingly, it is a final, appealable order. Shasta Linen Supply v. Applied Underwriters, 290 Neb. 640, 861 N.W.2d 425 (2015).

When an appeal presents two jurisdictional issues—whether a party has appealed from a final order or judgment and whether the lower court had jurisdiction over the parties' dispute—the first step in determining appellate jurisdiction is to determine whether the lower court's order was final and appealable. Shasta Linen Supply v. Applied Underwriters, 290 Neb. 640, 861 N.W.2d 425 (2015); Big John's Billiards v. State, 283 Neb. 496, 811 N.W.2d 205 (2012).

Juvenile court orders which changed the permanency objective from reunification to adoption, with concurrent plans that did not include reunification with the mother, were appealable even though they contained many of the same goals and strategies as previous orders, because an oral statement by the juvenile court from the bench had the effect of ending any services aimed at reunification with the mother and, thus, affected the mother's substantial rights. In re Interest of Octavio B. et al., 290 Neb. 589, 861 N.W.2d 415 (2015).

The three types of final orders which may be reviewed on appeal are (1) an order which affects a substantial right in an action and which in effect determines the action and prevents a judgment, (2) an order affecting a substantial right made during a special proceeding, and (3) an order affecting a substantial right made on summary application in an action after a judgment is rendered. Kilgore v. Nebraska Dept. of Health & Human Servs., 277 Neb. 456, 763 N.W.2d 77 (2009); State v. Bjorklund, 258 Neb. 432, 604 N.W.2d 169 (2000); State v. Silvers, 255 Neb. 702, 587 N.W.2d 325 (1998); In re Interest of Anthony G., 255 Neb. 442, 586 N.W.2d 427 (1998); State v. Kula, 254 Neb. 962, 579 N.W.2d 541 (1998); Hull v. Aetna Ins. Co., 247 Neb. 713, 529 N.W.2d 783 (1995); Rohde v. Farmers Alliance Mut. Ins. Co., 244 Neb. 863, 509 N.W.2d 618 (1994); Jarrett v. Eichler, 244 Neb. 310, 506 N.W.2d 682 (1993); In re Interest of R.G., 238 Neb. 405, 470 N.W.2d 780 (1991); Abante, LLC v. Premier Fighter, 19 Neb. App. 730, 814 N.W.2d 109 (2012); Michael B. v. Donna M., 11 Neb. App. 346, 652 N.W.2d 618 (2002); Jacobson v. Jacobson, 10 Neb. App. 622, 635 N.W.2d 272 (2001); O'Connor v. Kaufman, 6 Neb. App. 382, 574 N.W.2d 513 (1998).

A juvenile court order ceasing reasonable efforts and rejecting the permanency plan of reunification affected a substantial right of the parent, and thus was a final, appealable order that had to be appealed within 30 days; it did not matter that the court's order did not also simultaneously specify a new permanency plan, but instead returned the case to the Department of Health and Human Services for alternative permanency planning recommendations. In re Interest of LeAntonaé D. et al., 28 Neb. App. 144, 942 N.W.2d 784 (2020).

Under the collateral order doctrine, the denial of a claim for qualified immunity is appealable, notwithstanding the absence of a final judgment, if the denial of immunity turns on a question of law. D.M. v. State, 25 Neb. App.

596, 911 N.W.2d 621 (2018).

An appellate court may review three types of final orders: (1) an order that affects a substantial right and that determines the action and prevents a judgment, (2) an order that affects a substantial right made during a special proceeding, and (3) an order that affects a substantial right made on summary application in an action after a judgment is rendered. Moyers v. International Paper Co., 25 Neb. App. 282, 905 N.W.2d 87 (2017).

Substantial rights within the meaning of the statute include those legal rights that a party is entitled to enforce or defend. Moyers v. International Paper Co., 25 Neb. App. 282, 905 N.W.2d 87 (2017).

A final, appealable order must affect a substantial right. In re Guardianship of Aimee S., 24 Neb. App. 230, 885 N.W.2d 330 (2016).

The three types of final orders that an appellate court may review are (1) an order that affects a substantial right and that determines the action and prevents a judgment, (2) an order that affects a substantial right made during a special proceeding, and (3) an order that affects a substantial right made on summary application in an action after a judgment is rendered. In re Guardianship of Aimee S., 24 Neb. App. 230, 885 N.W.2d 330 (2016).

A substantial right under this section is an essential legal right. Furstenfeld v. Pepin, 23 Neb. App. 673, 875 N.W.2d 468 (2016).

An order on summary application in an action after judgment under this section is an order ruling on a postjudgment motion in an action. Furstenfeld v. Pepin, 23 Neb. App. 673, 875 N.W.2d 468 (2016).

Substantial rights under this section include those legal rights that a party is entitled to enforce or defend. Furstenfeld v. Pepin, 23 Neb. App. 673, 875 N.W.2d 468 (2016).

Under this section, the three types of final orders that an appellate court may review are (1) an order that affects a substantial right and that determines the action and prevents a judgment, (2) an order that affects a substantial right made during a special proceeding, and (3) an order that affects a substantial right made on summary application in an action after a judgment is rendered. Furstenfeld v. Pepin, 23 Neb. App. 673, 875 N.W.2d 468 (2016).

Under this section, the three types of final orders which may be reviewed on appeal are (1) an order which affects a substantial right in an action and which in effect determines the action and prevents a judgment, (2) an order affecting a substantial right made during a special proceeding, and (3) an order affecting a substantial right made on summary application in an action after a judgment is rendered. Belitz v. Belitz, 21 Neb. App. 716, 842 N.W.2d 613 (2014).

The granting of a summary judgment is a final order where it concludes all issues between the two parties on either side of the motion. Abante, LLC v. Premier Fighter, 19 Neb. App. 730, 814 N.W.2d 109 (2012).

25-1905.

Petition in error statute that mandates that appellant file with his or her petition for review a transcript of the proceedings or a praecipe directing the tribunal, board, or officer to prepare the transcript of the proceedings plainly indicates that the transcript or praecipe must be filed specifically with the petition in error and must contain the final judgment or order sought to be reversed, vacated, or modified. Meints v. City of Beatrice, 20 Neb. App. 129, 820 N.W.2d 90 (2012).

25-1911.

The word "court" means not only the tribunal over which a judge presides, but the judge himself or herself when exercising, at chambers, judicial power conferred by statute. Nebraska Republican Party v. Shively, 311 Neb. 160, 971 N.W.2d 128 (2022).

A defendant's appeal of a final order denying a pretrial motion for absolute discharge on statutory speedy trial grounds did not result in appellate jurisdiction to review a nonfinal order that denied the motion on constitutional speedy trial grounds. State v. Abernathy, 310 Neb. 880, 969 N.W.2d 871 (2022).

An order finding a defendant to be indigent and appointing appellate counsel at the county's expense did not affect a substantial right of the parties and was not a final order for purposes of appeal, where the order did not obligate the county to pay any specific amount or set a deadline for payment, such determinations were to be the subject of future proceedings addressing the question of reasonable attorney fees, and the State had the ability to challenge the findings of indigency and recoup any subsequently expended funds from the defendant. State v. Fredrickson, 305 Neb. 165, 939 N.W.2d 385 (2020).

Because the district court's order denying the plaintiff's request for a stay did not finally determine the rights of the parties in an action, it was not a judgment and thus is only appealable if it qualifies as a final order. Mutual of Omaha Bank v. Watson, 301 Neb. 833, 920 N.W.2d 284 (2018).

25-1912.

Although the record did not include an order granting or denying an inmate's in forma pauperis application, the appellate court had jurisdiction over the inmate's appeal where the record included the notice of appeal and an affidavit of poverty. Haynes v. Nebraska Dept. of Corr. Servs., 314 Neb. 771, 993 N.W.2d 97 (2023).

An appeal challenging an order's appointment of a receiver must be filed within 30 days of its entry. Seid v. Seid, 310 Neb. 626, 967 N.W.2d 253 (2021).

Misidentification of the appealing party in a notice of appeal is not a fatal flaw depriving the court of appellate jurisdiction, because this section does not require the notice to include the appellant's name. In re Estate of Lakin, 310 Neb. 271, 965 N.W.2d 365 (2021).

There is nothing in subsection (1) of this section that requires a notice of appeal to include the appellant's name. In re Estate of Lakin, 310 Neb. 271, 965 N.W.2d 365 (2021).

A defendant proceeding in forma pauperis does not perfect the appeal when the notary stamp on the affidavit to proceed in forma pauperis is expired. State v. Greer, 309 Neb. 667, 962 N.W.2d 217 (2021).

The dismissal of a prior unperfected appeal is not res judicata as to a properly perfected second attempt to appeal. State v. Greer, 309 Neb. 667, 962 N.W.2d 217 (2021).

A motion to alter or amend a judgment is a "terminating motion" under subsection (3) of this section. State ex rel. BH Media Group v. Frakes, 305 Neb. 780, 943 N.W.2d 231 (2020).

A motion to alter or amend filed within 10 days of a judgment entered by the district court disposing of a petition in error will terminate the time for running of appeal under subsection (3) of this section. McEwen v. Nebraska State College Sys., 303 Neb. 552, 931 N.W.2d 120 (2019).

Where a court does not reach the merits of a claim, its order does not announce a "decision or final order" which would trigger the saving clause for a premature notice of appeal. State v. Lotter, 301 Neb. 125, 917 N.W.2d 850 (2018).

To trigger the savings clause for premature notices of appeal, an announcement must pertain to a decision or order that, once entered, would be final and appealable. Lindsay Internat. Sales & Serv. v. Wegener, 297 Neb. 788, 901 N.W.2d 278 (2017).

A motion for new trial, under section 25-1142, is not a proper motion to terminate the running of time to file a notice of appeal when the court grants a motion for summary judgement. Clarke v. First Nat. Bank of Omaha, 296 Neb. 632, 895 N.W.2d 284 (2017).

"[A]nnounces" in subsection (3) of this section requires some type of public or official notification by the court and includes a judge's proclamation from the bench, trial docket notes, file-stamped but unsigned journal entries, and signed journal entries which are not file stamped. Clarke v. First Nat. Bank of Omaha, 296 Neb. 632, 895 N.W.2d 284 (2017).

To determine whether a postjudgment motion was effective to terminate the running of time to file a notice of appeal, an appellate court reviews the motion based on the relief it seeks, rather than its title. Clarke v. First Nat. Bank of Omaha, 296 Neb. 632, 895 N.W.2d 284 (2017).

To determine whether the savings clause in subsection (3) of this section applies to a notice of appeal filed before the entry of judgment on a postjudgment motion, the court must determine if the postjudgment motion was timely and effective and then determine if the notice was filed after the court announced its decision on the postjudgment motion. Clarke v. First Nat. Bank of Omaha, 296 Neb. 632, 895 N.W.2d 284 (2017).

The proper procedure to be followed when taking an appeal from a final order of the district court under section 71-1214 is the general appeal procedure set forth in this section. In re Interest of L.T., 295 Neb. 105, 886 N.W.2d 525 (2016).

A court order that substantively alters a prior decree creates a "new judgment" subject to the right to seek timely alteration or amendment under this section. Kingston v. Kingston, 31 Neb. App. 201, 979 N.W.2d 277 (2022).

A determination as to whether a motion, however titled, should be deemed a motion to alter or amend a judgment depends upon the contents of the motion, not its title. In order to qualify for treatment as a motion to alter or amend a judgment, a motion must be filed no later than ten days after the entry of judgment and must seek substantive alteration of the judgment. Kingston v. Kingston, 31 Neb. App. 201, 979 N.W.2d 277 (2022).

The modification of a child custody action and a contempt action for failure to pay child support presented separate issues, even though both were heard at the same time; one sought new relief, and the other sought to enforce relief previously granted; each order needed to be timely appealed. State on behalf of Nathaniel R. v. Shane F., 30 Neb. App. 797, 973 N.W.2d 191 (2022).

A docket entry/journal entry contained in the "Judges Notes" constituted an interlocutory order disposing of the party's motion to alter or amend; it did not need to be a separate file-stamped document. Pearce v. Mutual of Omaha Ins. Co., 28 Neb. App. 410, 945 N.W.2d 516 (2020).

An unsigned journal entry without a file stamp can constitute an interlocutory order; but it cannot constitute a final, appealable order, particularly when it does not dispose of all issues. Pearce v. Mutual of Omaha Ins. Co., 28 Neb. App. 410, 945 N.W.2d 516 (2020).

To obtain a reversal, vacation, or modification of judgments and decrees rendered or final orders made by the district court, a notice of appeal must be filed within 30 days after the entry of such judgment, decree, or final order. State v. Barber, 26 Neb. App. 339, 918 N.W.2d 359 (2018).

Pursuant to this section, a defendant has just 30 days to appeal from the denial of an evidentiary hearing; the failure to do so results in the defendant's losing the right to pursue those allegations further. State v. Huff, 25 Neb. App. 219, 904 N.W.2d 281 (2017).

Under subsection (1) of this section, a notice of appeal must be filed within 30 days of the entry of the final order in order to vest an appellate court with jurisdiction. In re Interest of Shane L. et al., 21 Neb. App. 591, 842 N.W.2d 140 (2013).

25-1912.01.

Where a party has not made a motion for new trial in the trial court, but argues on appeal that there was insufficient evidence to support the amount of damages awarded at trial, an appellate court will review only the sufficiency of the evidence to support the jury's verdict. First Nat. Bank North Platte v. Cardenas, 299 Neb. 497, 909 N.W.2d 79 (2018).

25-1937.

Because section 23-114.01 creates a statutory right to appeal a decision related to a conditional use permit to the district court but does not specify the procedure for perfecting such appeal, the general procedure from this section applies. Preserve the Sandhills v. Cherry County, 313 Neb. 668, 986 N.W.2d 265 (2023).

When a decision regarding a conditional use or special exception permit is appealed under section 23-114.01(5) and a trial is held de novo under this section, the findings of the district court shall have the effect of a jury verdict and the court's judgment will not be set aside by an appellate court unless the court's factual findings are clearly erroneous or the court erred in its application of the law. Egan v. County of Lancaster, 308 Neb. 48, 952 N.W.2d 664 (2020).

25-2001.

A court treats a motion to reinstate a case after an order of dismissal as a motion to vacate the order, and a court generally has jurisdiction over a motion to vacate an order of dismissal and reinstate a case. Schaaf v. Schaaf, 312 Neb. 1, 978 N.W.2d 1 (2022).

The district court's authority to reinstate a case following its grant of partial summary judgment on one of several claims was unaffected by the plaintiffs' voluntary dismissal of the entire action, to which the plaintiffs were not statutorily entitled. Schaaf v. Schaaf, 312 Neb. 1, 978 N.W.2d 1 (2022).

A district court lacks a lawful basis to vacate an order for fraud absent a showing of fraud by the moving party and a finding of fraud by the district court. State v. Bartel, 308 Neb. 169, 953 N.W.2d 224 (2021).

The standard for showing fraud under subsection (4) of this section is high. State v. Bartel, 308 Neb. 169, 953 N.W.2d 224 (2021).

Without statutory authorization, a district court's order purporting to vacate a previous order is without legal effect. State v. Bartel, 308 Neb. 169, 953 N.W.2d 224 (2021).

Courts have the power to vacate or modify their own judgments and orders at any time during the term at which they were pronounced. But this power may not be used to circumvent the Legislature's power to fix the time limit to take an appeal. A court may not vacate an order or judgment and reinstate it at a later date just for the purpose of extending the time for appeal. One exception to this rule against using a court's power to vacate as a tool to extend the time for appeal is where a clerk fails to provide notice of a judgment to a party, thereby impairing the party's ability to appeal. In re Interest of Luz P. et al., 295 Neb. 814, 891 N.W.2d 651 (2017).

Juvenile courts have the power to vacate or modify their own judgments and orders during or after the term in which they were made in the same manner as provided for district courts under this section. In re Interest of Luz P. et al., 295 Neb. 814, 891 N.W.2d 651 (2017).

The purpose of an order nunc pro tunc is to correct clerical or formal errors in order to make the record correctly reflect the judgment actually rendered by the court. A nunc pro tunc order reflects now what was actually done before, but was not accurately recorded. The power to issue nunc pro tunc orders is not only conveyed by statute, but is inherent in the power of the courts. In re Interest of Luz P. et al., 295 Neb. 814, 891 N.W.2d 651 (2017).

The district court did not abuse its discretion in overruling a motion to reopen the case where "new evidence" was not material to the proponent's case and could have been discovered through due diligence. Frederick v. City of Falls City, 295 Neb. 795, 890 N.W.2d 498 (2017).

The rule is well-established in Nebraska that the lack of diligence or negligence of counsel is not an unavoidable casualty or misfortune in the context of subdivision (4)(f) of this section, entitling the applicant to vacation of a judgment after adjournment of the term at which the judgment has been rendered. Woodcock v. Navarrete-James, 26 Neb. App. 809, 923 N.W.2d 769 (2019).

Trial court had no obligation, under statute permitting correction of clerical mistakes in judgments, to set supersedeas bond pending borrower's appeal from order entered in forcible entry and detainer action, so as to prevent issuance of writ of restitution pending borrower's appeal from judgment entered in forcible entry and detainer action brought by lender who purchased property at trustees' sale after borrower defaulted on deed of trust; rather, it was borrower who should have posted supersedeas bond to prevent writ of restitution from being issued pending appeal. Enterprise Bank v. Knight, 20 Neb. App. 662, 832 N.W.2d 25 (2013).

Pursuant to subsection (3) of this section, an order nunc pro tunc is appropriate only to remedy an error arising from oversight or omission, but not to allow a court to sua sponte clarify prior order in absence of any clerical or scrivener's error. Willis v. Brammer, 20 Neb. App. 574, 826 N.W.2d 908 (2013).

25-2121.

The willful refusal of a garnishee who serves as the plan administrator for a judgment debtor's employee benefits plan to comply with section 25-1026 may constitute contempt. Florence Lake Investments v. Berg, 312 Neb. 183, 978 N.W.2d 308 (2022).

A party to an action who fails to obey an order of the court, made for the benefit of the opposing party, is, ordinarily, guilty of a mere civil contempt. Vyhlidal v. Vyhlidal, 309 Neb. 376, 960 N.W.2d 309 (2021).

Civil contempt proceedings are instituted to preserve and enforce the rights of private parties to a suit when a party fails to comply with a court order made for the benefit of the opposing party. Vyhlidal v. Vyhlidal, 309 Neb. 376, 960 N.W.2d 309 (2021).

In order to prove civil contempt, unless the alleged contemptuous acts occurred within the presence of the judge, or the parties stipulate otherwise, an evidentiary hearing is necessary so that the moving party can offer evidence to demonstrate both that a violation of a court order occurred and that the violation was willful. Vyhlidal v. Vyhlidal, 309 Neb. 376, 960 N.W.2d 309 (2021).

25-2124.

Unless a provision in a land installment contract provides that a vendor has the right to declare the contract terminated and repossess the premises if a vendee defaults, the vendor cannot bring an action for ejectment. Beckner

v. Urban, 309 Neb. 677, 962 N.W.2d 497 (2021).

25-2163.

The issuance of a peremptory writ of mandamus under this section because of a respondent's failure to answer the alternative writ is the equivalent of a default judgment. State ex rel. Unger v. State, 293 Neb. 549, 878 N.W.2d 540 (2016).

25-2170.01.

A tenant cannot seek partition of a landlord's property. Dreesen Enters. v. Dreesen, 308 Neb. 433, 954 N.W.2d 874 (2021).

25-2179.

In enacting section 25-1315, the Legislature did not amend the partition statutes or attempt to change the effect of our prior jurisprudence. Both before and after the adoption of section 25-1315, this section characterized the settlement of all ownership rights as a "judgment" and our case law characterizes the order as a final order. Guardian Tax Partners v. Skrupa Invest. Co., 295 Neb. 639, 889 N.W.2d 825 (2017).

The language in Peterson v. Damoude, 95 Neb. 469, 145 N.W. 847 (1914), concerning the appealability of orders in a partition action, harmonizes the final order language of section 25-1902 with the partition procedure mandated by this section. Guardian Tax Partners v. Skrupa Invest. Co., 295 Neb. 639, 889 N.W.2d 825 (2017).

25-21,149.

A declaratory judgment will not lie where a writ of mandamus, another equally serviceable remedy, is available. State ex rel. Wagner v. Evnen, 307 Neb. 142, 948 N.W.2d 244 (2020).

District courts have inherent equity jurisdiction to resolve custody disputes, and they have jurisdiction over habeas proceedings challenging adoption proceedings. Accordingly, district courts have jurisdiction over a related declaratory judgment action challenging the constitutionality of Nebraska adoption statutes. In re Adoption of Jaelyn B., 293 Neb. 917, 883 N.W.2d 22 (2016).

25-21,150.

A declaratory judgment is appropriate to declare one party's then-existing rights under a contract or real covenant. Equestrian Ridge v. Equestrian Ridge Estates II, 308 Neb. 128, 953 N.W.2d 16 (2021).

The district court was correct in concluding that it did not have authority to enter a declaratory judgment for a taxpayer seeking an order declaring the meaning of the Nebraska Supreme Court's prior opinion and directing the county assessor to record the taxable value that the opinion and the mandate required, because a writ of mandamus issued to the Tax Equalization and Review Commission was a serviceable remedy. Cain v. Lymber, 306 Neb. 820, 947 N.W.2d 541 (2020).

District courts have inherent equity jurisdiction to resolve custody disputes, and they have jurisdiction over habeas proceedings challenging adoption proceedings. Accordingly, district courts have jurisdiction over a related declaratory judgment action challenging the constitutionality of Nebraska adoption statutes. In re Adoption of Jaelyn B., 293 Neb. 917, 883 N.W.2d 22 (2016).

25-21,159.

Landowners in a sanitary improvement district are indispensable parties to a declaratory judgment action seeking construction of a statute governing landowner voting rights. SID No. 2 of Knox Cty. v. Fischer, 308 Neb. 791, 957 N.W.2d 154 (2021).

25-21,185.07.

In an action that accrued after February 8, 1992, the jury should not be instructed with the "slight" and "gross" comparative negligence formulation. City of Wahoo v. NIFCO Mech. Systems, 306 Neb. 203, 944 N.W.2d 757 (2020).

25-21,185.08.

A request for inconvenience damages is subsumed within a plaintiff's request for mental pain and suffering damages, when the facts show that the plaintiff is actually seeking hedonic damages for the plaintiff's loss of enjoyment of life resulting from physical injuries. Golnick v. Callender, 290 Neb. 395, 860 N.W.2d 180 (2015).

Apart from an exception for anxiety damages associated with parasitic damages, a request for anxiety damages is usually subsumed with a plaintiff's request for mental pain and suffering damages. Golnick v. Callender, 290 Neb. 395, 860 N.W.2d 180 (2015).

25-21,185.09.

A wrongful death action brought in the name of a 6-year-old child's mother, as representative of the child's estate, was brought for the exclusive benefit of the child's next of kin, and thus, the child's father, as next of kin and beneficiary of the child's estate, was properly included in the court's instruction to the jury regarding the allocation of percentages of contributory negligence, even though the father was not brought into the action either as a claimant within the meaning of the statute that governed the defense of contributory negligence or as a third-party defendant. Curtis v. States Family Practice, 20 Neb. App. 234, 823 N.W.2d 224 (2012).

25-21,185.10.

In an action that accrued after February 8, 1992, the jury should not be instructed with the "slight" and "gross" comparative negligence formulation. City of Wahoo v. NIFCO Mech. Systems, 306 Neb. 203, 944 N.W.2d 757 (2020).

Joint tort-feasors who are defendants in an action involving more than one defendant share joint and several liability to the claimant for economic damages. Ammon v. Nagengast, 24 Neb. App. 632, 895 N.W.2d 729 (2017).

The proper timeframe to consider whether there are multiple defendants is when the case is submitted to the finder of fact. Ammon v. Nagengast, 24 Neb. App. 632, 895 N.W.2d 729 (2017).

25-21,185.11.

In an action that accrued after February 8, 1992, the jury should not be instructed with the "slight" and "gross" comparative negligence formulation. City of Wahoo v. NIFCO Mech. Systems, 306 Neb. 203, 944 N.W.2d 757 (2020).

A claimant cannot recover from a nonsettling joint tort-feasor more than that tort-feasor's proportionate share in order to compensate for the fact that the claimant made a settlement with another that may prove to be inadequate. Ammon v. Nagengast, 24 Neb. App. 632, 895 N.W.2d 729 (2017).

When the claimant settles with a joint tort-feasor, the claimant forfeits joint and several liability. Ammon v. Nagengast, 24 Neb. App. 632, 895 N.W.2d 729 (2017).

25-21,206.

This section expressly waives the State's sovereign immunity, but only if all requirements of the section are met. Burke v. Board of Trustees, 302 Neb. 494, 924 N.W.2d 304 (2019).

25-21,223.

This section contemplates bifurcated proceedings wherever damages are warranted, distinguishing between the "trial of the action for possession" and "other causes of action." 132 Ventures v. Active Spine Physical Therapy, 313 Neb. 45, 982 N.W.2d 778 (2022).

This section is intended to facilitate a speedy determination of the immediate right to possession by allowing for bifurcated proceedings that prioritize the cause of action for forcible entry and detainer. 132 Ventures v. Active Spine Physical Therapy, 313 Neb. 45, 982 N.W.2d 778 (2022).

25-21,226.

This section pertains specifically to a cause of action for forcible entry and detainer; it does not inhibit any right to trial by jury that would otherwise arise incident to other causes of action. 132 Ventures v. Active Spine Physical Therapy, 313 Neb. 45, 982 N.W.2d 778 (2022).

25-21,233.

In an action for forcible entry and detainer, the plain language of this section does not allow an immediate appeal of an order of restitution when the order implicates section 25-1315, meaning the order adjudicates fewer than all claims for relief or the rights and liabilities of fewer than all the parties, without being certified pursuant to section 25-1315(1). TDP Phase One v. The Club at the Yard, 307 Neb. 795, 950 N.W.2d 640 (2020).

25-21,234.

Trial court had no obligation, under statute permitting correction of clerical mistakes in judgments, to set supersedeas bond pending borrower's appeal from order entered in forcible entry and detainer action, so as to prevent issuance of writ of restitution pending borrower's appeal from judgment entered in forcible entry and detainer action brought by lender who purchased property at trustees' sale after borrower defaulted on deed of trust; rather, it was borrower who should have posted supersedeas bond to prevent writ of restitution from being issued pending appeal. Enterprise Bank v. Knight, 20 Neb. App. 662, 832 N.W.2d 25 (2013).

25-2214.

Although the appellate court's mandate did not state that buyout payments were to be made to the clerk of the district court, the district court had authority to make such an order, because the proper place to pay a judgment is the clerk of the court in which the judgment is obtained. Robertson v. Jacobs Cattle Co., 292 Neb. 195, 874 N.W.2d 1 (2015).

25-2221.

In the absence of a more specific rule, this section's rule for computing time applies in calculating whether an action is barred by the statute of limitations. Schuemann v. Timperley, 314 Neb. 298, 989 N.W.2d 921 (2023).

25-2225.

In a summary proceeding under section 32-624 before a district court judge, it was not an abuse of discretion to deny discovery. Nebraska Republican Party v. Shively, 311 Neb. 160, 971 N.W.2d 128 (2022).

25-2301.

The "fees" specified in subsection (2) of this section do not include a party's attorney fees. State v. Ortega, 290 Neb. 172, 859 N.W.2d 305 (2015).

25-2301.01.

The timing of the appellant's execution of the poverty affidavit is not, like an "affiant" personally signing the "affidavit," fundamental to the concept of an "affidavit" set forth in this section. State v. Blake, 310 Neb. 769, 969 N.W.2d 399 (2022).

By obtaining permission to proceed in forma pauperis, a party is not granted the payment of his or her attorney fees. State v. Ortega, 290 Neb. 172, 859 N.W.2d 305 (2015).

25-2301.02.

By not timely ruling on an inmate's in forma pauperis application, the district court functionally abandoned its statutory duty to determine the validity of the inmate's application. Haynes v. Nebraska Dept. of Corr. Servs., 314 Neb. 771, 993 N.W.2d 97 (2023).

The district court's abandonment of its statutory duty to determine the validity of the inmate's application did not divest the appellate court of jurisdiction. Haynes v. Nebraska Dept. of Corr. Servs., 314 Neb. 771, 993 N.W.2d 97 (2023).

The right to interlocutory appeal of the denial of in forma pauperis status in subsection (1) of this section applies only to denials made pursuant to the two bases for denial set forth in that subsection. Robinson v. Houston, 298 Neb. 746, 905 N.W.2d 636 (2018).

A petitioner for habeas corpus relief whose initial motion to proceed in forma pauperis was denied and who takes a timely interlocutory appeal from that denial, accompanied by a motion to proceed in forma pauperis on appeal, is

not required to file a second appeal where the district court erroneously denies the second in forma pauperis motion in order to obtain appellate review of the initial denial. Campbell v. Hansen, 298 Neb. 669, 905 N.W.2d 519 (2018).

When an in forma pauperis application is denied and the applicant seeks leave to proceed in forma pauperis in order to obtain appellate review of that denial, the trial court does not have authority to issue an order that would interfere with such appellate review. Campbell v. Hansen, 298 Neb. 669, 905 N.W.2d 519 (2018).

A trial court does not have authority to deny an in forma pauperis application once an in forma pauperis application is denied and the applicant wishes to seek interlocutory appellate review of the denial. Mumin v. Frakes, 298 Neb. 381, 904 N.W.2d 667 (2017).

A trial court has the authority to deny an in forma pauperis application requested to commence, prosecute, defend, or appeal a case if the court finds the applicant has sufficient funds or the legal positions being asserted therein are frivolous or malicious. Mumin v. Frakes, 298 Neb. 381, 904 N.W.2d 667 (2017).

Under subsection (1) of this section, a trial court cannot deny in forma pauperis status based on the frivolous or malicious nature of the appeal where a defendant has a constitutional right to appeal in a felony case, and a hearing is required on an objection to a party's application for in forma pauperis status, whether the objection is based on the applicant's ability to pay or the applicant is asserting a frivolous position, except where the objection is made on the court's own motion on the grounds that the legal positions asserted by the applicant are frivolous or malicious. State on behalf of Jakai C. v. Tiffany M., 292 Neb. 68, 871 N.W.2d 230 (2015).

An appellate court obtains jurisdiction over an appeal challenging the denial of an application to proceed in forma pauperis upon the filing of a proper application to proceed in forma pauperis and a poverty affidavit with the party's timely notice of appeal. State v. Carter, 292 Neb. 16, 870 N.W.2d 641 (2015).

The trial court properly denied leave to proceed in forma pauperis on the basis that the party asserted only frivolous legal positions in the party's underlying motion for postconviction relief. State v. Carter, 292 Neb. 16, 870 N.W.2d 641 (2015).

The filing of an action in an improper venue does not make the legal position asserted by a plaintiff "frivolous or malicious" for purposes of in forma pauperis status. Castonguay v. Retelsdorf, 291 Neb. 220, 865 N.W.2d 91 (2015).

A district court's denial of in forma pauperis under this section is reviewed de novo on the record based on the transcript of the hearing or the written statement of the court. In re Change of Name of Pattangall, 23 Neb. App. 131, 868 N.W.2d 816 (2015).

A frivolous legal position pursuant to this section is one wholly without merit, that is, without rational argument based on the law or on the evidence. In re Change of Name of Pattangall, 23 Neb. App. 131, 868 N.W.2d 816 (2015).

Except in those cases where the denial of in forma pauperis status would deny a defendant his or her constitutional right to appeal in a felony case, this section allows the court on its own motion to deny in forma pauperis status on the basis that the legal positions asserted by the applicant are frivolous or malicious, provided that the court issue a written statement of its reasons, findings, and conclusions for denial. In re Change of Name of Pattangall, 23 Neb. App. 131, 868 N.W.2d 816 (2015).

A district court's denial of in forma pauperis status is reviewed de novo on the record based on the transcript of the hearing or the written statement of the court. Gray v. Kenney, 22 Neb. App. 739, 860 N.W.2d 214 (2015).

A frivolous legal position is one wholly without merit, that is, without rational argument based on the law or on the evidence. Gray v. Kenney, 22 Neb. App. 739, 860 N.W.2d 214 (2015).

Except in those cases where the denial of in forma pauperis status would deny a defendant his or her constitutional right to appeal in a felony case, this section allows the court on its own motion, or upon objection by an interested party, to deny in forma pauperis status on the basis that the legal positions asserted by the applicant are frivolous or malicious. Gray v. Kenney, 22 Neb. App. 739, 860 N.W.2d 214 (2015).

For the purposes of the statute governing applications to proceed in forma pauperis, a "frivolous legal position" is one wholly without merit, that is, without rational argument based on the law or on the evidence. Lenz v. Hicks, 20 Neb. App. 431, 824 N.W.2d 769 (2012).

The former clients' action against the attorney was not frivolous, and thus, the denial of their petition to proceed in forma pauperis for the failure to plead a cause of action was not warranted; liberally construed, the former clients' action alleged that the attorney committed legal malpractice in his representation of them in a bankruptcy case. Lenz v. Hicks, 20 Neb. App. 431, 824 N.W.2d 769 (2012).

25-2401.

A defendant does not waive his due process rights by failing to request an interpreter. But the absence of such request by a defendant or defense counsel is a fact relevant to whether the court should have recognized on its own that the defendant needed interpretative services. State v. Bol, 294 Neb. 248, 882 N.W.2d 674 (2016).

Even though a defendant might not speak grammatically correct English, where the record satisfactorily demonstrates that such defendant had a sufficient command of the English language to understand questions posed and answers given, a court does not abuse its discretion in refusing to appoint an interpreter. State v. Bol, 294 Neb. 248, 882 N.W.2d 674 (2016).

Generally, a defendant in a criminal proceeding may be entitled to have an interpreter provided only where he or she timely requests one, or it is otherwise brought to the trial court's attention that the defendant or a witness has a language difficulty that may prevent meaningful understanding of, or communication in, the proceeding. State v. Bol, 294 Neb. 248, 882 N.W.2d 674 (2016).

The appointment of an interpreter for an accused at trial is a matter resting largely in the discretion of the trial court. State v. Bol, 294 Neb. 248, 882 N.W.2d 674 (2016).

25-2405.

A court interpreter is not required to recite an oath at the beginning of each proceeding if the interpreter is already certified under the rules of the Nebraska Supreme Court. State v. Garcia, 27 Neb. App. 705, 936 N.W.2d 1 (2019).

A trial court can accept, without further inquiry, an interpreter's representation that he or she is a certified court interpreter. State v. Garcia, 27 Neb. App. 705, 936 N.W.2d 1 (2019).

25-2602.01.

A delegation of arbitrability of future policyholder claims in an agreement concerning or relating to an insurance policy is invalid under subdivision (f)(4) of this section. Citizens of Humanity v. Applied Underwriters, 299 Neb. 545, 909 N.W.2d 614 (2018).

25-2603.

This section does not defeat the Federal Arbitration Act's objective, expressed in 9 U.S.C. 4 (2012), that if the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereon. Cullinane v. Beverly Enters. - Neb., 300 Neb. 210, 912 N.W.2d 774 (2018).

Under subsection (a) of this section, on application of a party showing a valid arbitration agreement and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall order for the moving party; otherwise, the application shall be denied. Cullinane v. Beverly Enters. - Neb., 300 Neb. 210, 912 N.W.2d 774 (2018).

25-2610.

An award does not become so vague and indefinite as to be unenforceable simply because a party can argue that a portion of it may be unclear or ambiguous. The Nebraska Court of Appeals erred in finding the award ambiguous and in ordering a remand to the arbitrator for clarification. Signal 88 v. Lyconic, 310 Neb. 824, 969 N.W.2d 651 (2022).

An award may be recommitted for clarification where it is ambiguous to such an extent that it is impossible to determine its meaning and intent. However, remand for clarification is not the preferred course. When possible, courts should avoid remanding on the basis of ambiguity because of the interest in prompt and final arbitration. Signal 88 v. Lyconic, 310 Neb. 824, 969 N.W.2d 651 (2022).

In considering an application for confirmation of an arbitration award, the court has limited authority under this statutory section to remand to the arbitrator to clarify an ambiguous award. Signal 88 v. Lyconic, 310 Neb. 824, 969 N.W.2d 651 (2022).

Where an ambiguity can be resolved by the record, the district court need not remand for clarification; but where the ambiguity is not resolved by the record, the court must remand for clarification. Signal 88 v. Lyconic, 310 Neb.

824, 969 N.W.2d 651 (2022).

25-2612.

Courts must give extreme deference to the arbitrator's conclusions; the standard of judicial review of arbitral awards is among the narrowest known to law. Signal 88 v. Lyconic, 310 Neb. 824, 969 N.W.2d 651 (2022).

Strong deference is due to an arbitrative tribunal, because when parties agree to arbitration, they agree to accept whatever reasonable uncertainties might arise from the process. Signal 88 v. Lyconic, 310 Neb. 824, 969 N.W.2d 651 (2022).

Under Nebraska's Uniform Arbitration Act, a court may not overrule an arbitrator's decision simply because the court believes that its own interpretation of the contract, or the facts, would be the better one. Signal 88 v. Lyconic, 310 Neb. 824, 969 N.W.2d 651 (2022).

Where arbitration is contemplated, the courts are not equipped to provide the same judicial review given to structured judgments defined by procedural rules and legal principles. Parties should be aware that they get what they bargain for and that arbitration is far different from adjudication. Signal 88 v. Lyconic, 310 Neb. 824, 969 N.W.2d 651 (2022).

Within sixty days of the application of a party, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award. The court's obligation is mandatory rather than discretionary. Signal 88 v. Lyconic, 310 Neb. 824, 969 N.W.2d 651 (2022).

When a party seeks to confirm an arbitration award pursuant to Nebraska's Uniform Arbitration Act, a court must confirm that award unless a party has sought to vacate, modify, or correct the award and grounds for such vacation, modification, or correction exist. Garlock v. 3DS Properties, 303 Neb. 521, 930 N.W.2d 503 (2019).

25-2613.

An arbitration award will not be vacated on grounds immaterial to the award. State v. Nebraska Assn. of Pub. Employees, 313 Neb. 259, 984 N.W.2d 103 (2023).

Grounds as to form do not warrant the vacatur of an award. State v. Nebraska Assn. of Pub. Employees, 313 Neb. 259, 984 N.W.2d 103 (2023).

In determining whether an arbitrator exceeded his or her powers under subsection (a)(3) of this section, a court's review is limited to whether the awarded relief exceeded the limits of the arbitrator's powers as defined by the contract and does not include whether the arbitrator somehow failed to meet a minimum requirement. State v. Nebraska Assn. of Pub. Employees, 313 Neb. 259, 984 N.W.2d 103 (2023).

Arbitration awards governed by the Nebraska Uniform Arbitration Act cannot be vacated on the grounds that the arbitrator manifestly disregarded the law. City of Omaha v. Professional Firefighters Assn., 309 Neb. 918, 963 N.W.2d 1 (2021).

Arbitration in Nebraska is governed by the Federal Arbitration Act if it arises from a contract involving interstate commerce; otherwise, it is governed by the Nebraska Uniform Arbitration Act. City of Omaha v. Professional Firefighters Assn., 309 Neb. 918, 963 N.W.2d 1 (2021).

Courts lack the authority to vacate arbitration awards governed by the Nebraska Uniform Arbitration Act on the grounds that the arbitrator manifestly disregarded the law. City of Omaha v. Professional Firefighters Assn., 309 Neb. 918, 963 N.W.2d 1 (2021).

"Evident partiality" exists under subsection (a)(2) of this section when a reasonable person would have to conclude that an arbitrator was partial to one party to the arbitration. City of Omaha v. Professional Firefighters Assn., 309 Neb. 918, 963 N.W.2d 1 (2021).

It is only when the arbitrator issues an award that simply reflects the arbitrator's personal notions of justice rather than drawing its essence from the contract that a court may find that the arbitrator exceeded his or her powers. City of Omaha v. Professional Firefighters Assn., 309 Neb. 918, 963 N.W.2d 1 (2021).

Serious legal or factual error by the arbitrator does not, standing on its own, provide a basis for vacating an award. City of Omaha v. Professional Firefighters Assn., 309 Neb. 918, 963 N.W.2d 1 (2021).

Subsection (a)(3) of this section is interpreted under the rubric outlined by the U.S. Supreme Court's interpretation

of 9 U.S.C. 10(a)(4) found in Oxford Health Plans LLC v. Sutter, 569 U.S. 564, 133 S. Ct. 2064, 186 L. Ed. 2d 113 (2013). City of Omaha v. Professional Firefighters Assn., 309 Neb. 918, 963 N.W.2d 1 (2021).

The circumstances under which an arbitrator's rulings alone could demonstrate the requisite partiality to vacate an award must be quite rare. City of Omaha v. Professional Firefighters Assn., 309 Neb. 918, 963 N.W.2d 1 (2021).

The sole question presented when a party claims that an arbitrator exceeded his or her powers is whether the arbitrator (even arguably) interpreted the parties' contract, not whether he or she got its meaning right or wrong. City of Omaha v. Professional Firefighters Assn., 309 Neb. 918, 963 N.W.2d 1 (2021).

To vacate an arbitration award on the grounds that the arbitrator exceeded his or her powers, the party must show more than that the arbitrator committed an error—or even a serious error. City of Omaha v. Professional Firefighters Assn., 309 Neb. 918, 963 N.W.2d 1 (2021).

25-2620.

An order denying an application to vacate an arbitration award is not a final and appealable order; such an order may be reviewed upon an appeal from an order confirming the arbitration award. Cinatl v. Prososki, 307 Neb. 477, 949 N.W.2d 505 (2020).

When this section is silent regarding the appealability of an arbitration-related order, an appellate court looks to section 25-1902 to determine whether the order is final and appealable. Cinatl v. Prososki, 307 Neb. 477, 949 N.W.2d 505 (2020).

This section authorizes appellate jurisdiction to review certain arbitration-related orders, such as an order denying an application to compel arbitration or an order granting an application to stay arbitration. But this section does not address whether a party may appeal an order granting an application to compel arbitration or to stay judicial proceedings. Appellate jurisdiction to review an order compelling arbitration and staying the action is determined by looking to the general final order statute, section 25-1902. Boyd v. Cook, 298 Neb. 819, 906 N.W.2d 31 (2018).

25-2720.01.

Under this section, the county court may take certain actions as provided by the Nebraska Constitution or statutes for actions filed in the district court, and it does not confer additional equity jurisdiction on the county court. In re Guardianship & Conservatorship of Maronica B., 314 Neb. 597, 992 N.W.2d 457 (2023).

County courts have the power to vacate or modify their own judgments and orders during or after the term in which they were made in the same manner as provided for district courts under section 25-2001. In re Interest of Luz P. et al., 295 Neb. 814, 891 N.W.2d 651 (2017).

Courts have the power to vacate or modify their own judgments and orders at any time during the term at which they were pronounced. But this power may not be used to circumvent the Legislature's power to fix the time limit to take an appeal. A court may not vacate an order or judgment and reinstate it at a later date just for the purpose of extending the time for appeal. One exception to this rule against using a court's power to vacate as a tool to extend the time for appeal is where a clerk fails to provide notice of a judgment to a party, thereby impairing the party's ability to appeal. In re Interest of Luz P. et al., 295 Neb. 814, 891 N.W.2d 651 (2017).

25-2728.

A county court's order overruling the defendant's motion to seal records, filed years after her case had been dismissed, was a final, appealable order, because the order ruled on a postjudgment motion and affected a substantial right. The right invoked was the statutory right to remove the record of the defendant's citation from the public record, no mere technical right. State v. Coble, 299 Neb. 434, 908 N.W.2d 646 (2018).

25-2729.

When a party is appealing a decision involving a conditional use permit under this section, an appellate court acquires jurisdiction only if, within thirty days of the decision, (1) a notice of appeal is filed with the governmental entity that made the decision or with the county clerk and (2) the required district court docket fee is deposited with the governmental entity that made the decision or with the county clerk. Preserve the Sandhills v. Cherry County, 313 Neb. 668, 986 N.W.2d 265 (2023).

25-2733.

The district court and higher appellate courts generally review judgments from a small claims court for error appearing on the record. Schmunk v. Aquatic Solutions, 29 Neb. App. 940, 962 N.W.2d 581 (2021).

District courts and higher appellate courts generally review appeals from county courts for error appearing on the record. Lesser v. Eagle Hills Homeowners' Assn., 20 Neb. App. 423, 824 N.W.2d 77 (2012).

25-2806.

The formal rules of evidence do not apply in small claims court. Flodman v. Robinson, 22 Neb. App. 943, 864 N.W.2d 716 (2015).

25-3401.

The right to interlocutory appeal of the denial of in forma pauperis status in subsection (1) of section 25-2301.02 applies only to denials made pursuant to the two bases for denial set forth in that subsection, and not to denials based on the "three strikes" provision in this section. Robinson v. Houston, 298 Neb. 746, 905 N.W.2d 636 (2018).

A district court's denial of in forma pauperis under this section is reviewed de novo on the record based on the transcript of the hearing or written statement of the court. Mumin v. Nebraska Dept. of Corr. Servs., 25 Neb. App. 89, 903 N.W.2d 483 (2017).

The district court erred when it failed to make determinations as to whether any or all of the prisoner's previous civil actions were related to or involved the prisoner's conditions of confinement, as further defined in subdivision (1)(b) of this section, were motions for postconviction relief, or were petitions for habeas corpus relief. Mumin v. Nebraska Dept. of Corr. Servs., 25 Neb. App. 89, 903 N.W.2d 483 (2017).

The definition of "civil action" in this section expressly excludes petitions for habeas corpus relief from consideration in determining whether a prisoner has filed three or more civil actions that have been found to be frivolous. Gray v. Nebraska Dept. of Corr. Servs., 24 Neb. App. 713, 898 N.W.2d 380 (2017).

The standard of review for denial of in forma pauperis under this section is de novo on the record. Gray v. Nebraska Dept. of Corr. Servs., 24 Neb. App. 713, 898 N.W.2d 380 (2017).

27-105.

Because evidence of other acts submitted for a proper purpose may at the same time lead the jury to infer bad character and employ propensity reasoning, the trial court must, if requested by the defendant, instruct the jury to focus only on the proper purpose of the evidence. State v. Oldson, 293 Neb. 718, 884 N.W.2d 10 (2016).

27-106.

Under the "rule of completeness" in this section, a party is entitled to admit the entirety of an act, declaration, conversation, or writing when the other party admits a part and when the entirety is necessary to make it fully understood. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

27-201.

An appellate court may examine its own records and take judicial notice of the proceedings and judgment in a former action involving one of the parties, and it may take judicial notice of a document, including briefs filed in an appeal, in a separate but related action concerning the same subject matter in the same court. Western Ethanol Co. v. Midwest Renewable Energy, 305 Neb. 1, 938 N.W.2d 329 (2020).

In determining whether to adjudicate children as to their father, the juvenile court could not take judicial notice of the mother's admission that domestic violence occurred between her and the father in the home, because the admission consisted of adjudicative facts which the father disputed and such facts were not subject to any test by the father at the time of the mother's admission. In re Interest of Lilly S. & Vincent S., 298 Neb. 306, 903 N.W.2d 651 (2017).

While a court may judicially notice its own records under this section, testimony must be transcribed, properly certified, and marked and documents must be marked and identified and each made part of the record so that an appellate court may review the admissibility of each noticed item. In re Estate of Radford, 297 Neb. 748, 901 N.W.2d 261 (2017).

A finding that the population of Grand Island, Nebraska, would certainly be a fact "generally known within the territorial jurisdiction" of the Hall County District Court, and thus, it would be an adjudicative fact subject to judicial notice. State v. Johnson, 31 Neb. App. 207, 979 N.W.2d 123 (2022).

27-301.

The concept referred to as a "presumption of undue influence" in will contests is not a true presumption. In re Estate of Clinger, 292 Neb. 237, 872 N.W.2d 37 (2015).

The trial court did not err in refusing a proposed instruction on a presumption of undue influence where both the contestant and the proponent had met their respective burdens of production of evidence. In re Estate of Clinger, 292 Neb. 237, 872 N.W.2d 37 (2015).

27-401.

Testimony regarding controlled substances seized from the defendant's home was relevant to corroborate testimony of eyewitness and two jailhouse informants in a murder trial, where the eyewitness testified that she purchased marijuana from the defendant on the night of the incident, the first informant testified that the defendant told him that drugs were found during the search of his house, and the second informant testified as to the defendant's statements about the substances seized from his house. State v. Devers, 306 Neb. 429, 945 N.W.2d 470 (2020).

Relevance is a relational concept and carries meaning only in context. Evidence may be irrelevant if it is directed at a fact not properly an issue under the substantive law of the case or if the evidence fails to alter the probabilities of the existence or nonexistence of a fact in issue. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

To be admitted at trial, evidence must be relevant, meaning evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

To determine whether a statement by a law enforcement official in a recorded interview is relevant for the purpose of providing context to a defendant's statement, a court first considers whether the defendant's statement itself is relevant, whether it makes a material fact more or less probable. If the defendant's statement is itself relevant, then a court must consider whether the law enforcement statement is relevant to provide context to the defendant's statement. To do this, a court considers whether the defendant's statement would be any less probative in the absence of the law enforcement statement. If the law enforcement statement does not make the defendant's statement any more probative, it is not relevant. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

The relevance of DNA evidence depends on whether it tends to include or exclude an individual as the source of a biological sample. Nebraska case law generally requires that DNA testing results be accompanied by statistical evidence or a probability assessment that explains whether the results tend to include or exclude the individual as a potential source. State v. Johnson, 290 Neb. 862, 862 N.W.2d 757 (2015).

Unless the State presents the statistical significance of DNA testing results that shows a defendant cannot be excluded as a potential source in a biological sample, the results are irrelevant. They are irrelevant because they do not help the fact finder assess whether the defendant is or is not the source of the sample. And because of the significance that jurors will likely attach to DNA evidence, the value of inconclusive testing results is substantially outweighed by the danger that the evidence will mislead the jurors. State v. Johnson, 290 Neb. 862, 862 N.W.2d 757 (2015).

Evidence of risk-of-procedure or risk-of-surgery discussions with the patient is generally irrelevant and unfairly prejudicial where the plaintiff alleges only negligence, and not lack of informed consent. Hillyer v. Midwest Gastrointestinal Assocs., 24 Neb. App. 75, 883 N.W.2d 404 (2016).

27-402.

The relevance of DNA evidence depends on whether it tends to include or exclude an individual as the source of a biological sample. Nebraska case law generally requires that DNA testing results be accompanied by statistical evidence or a probability assessment that explains whether the results tend to include or exclude the individual as a potential source. State v. Johnson, 290 Neb. 862, 862 N.W.2d 757 (2015).

Unless the State presents the statistical significance of DNA testing results that shows a defendant cannot be excluded as a potential source in a biological sample, the results are irrelevant. They are irrelevant because they do not help the fact finder assess whether the defendant is or is not the source of the sample. And because of the significance that jurors will likely attach to DNA evidence, the value of inconclusive testing results is substantially

outweighed by the danger that the evidence will mislead the jurors. State v. Johnson, 290 Neb. 862, 862 N.W.2d 757 (2015).

Evidence of risk-of-procedure or risk-of-surgery discussions with the patient is generally irrelevant and unfairly prejudicial where the plaintiff alleges only negligence, and not lack of informed consent. Hillyer v. Midwest Gastrointestinal Assocs., 24 Neb. App. 75, 883 N.W.2d 404 (2016).

Under this section, all relevant evidence is admissible unless there is some specific constitutional or statutory reason to exclude such evidence. Furstenfeld v. Pepin, 23 Neb. App. 155, 869 N.W.2d 353 (2015).

27-403.

While the fact that a defendant was acquitted of sexual assault charges in a prior prosecution does not affect the threshold admissibility of the evidence under section 27-414, it is relevant to the undue prejudice analysis conducted under that section and under this section. State v. Lierman, 305 Neb. 289, 940 N.W.2d 529 (2020).

In the context of this section, unfair prejudice means an undue tendency to suggest a decision based on an improper basis. Unfair prejudice speaks to the capacity of some concededly relevant evidence to lure the fact finder into declaring guilt on a ground different from proof specific to the offense charged, commonly on an emotional basis. State v. Sierra, 305 Neb. 249, 939 N.W.2d 808 (2020).

An appellate court reviews for an abuse of discretion a trial court's evidentiary rulings on the admissibility of a defendant's other crimes or bad acts under subsection (2) of this section or under the inextricably intertwined exception to the rule. State v. Lee, 304 Neb. 252, 934 N.W.2d 145 (2019).

Gruesome crimes produce gruesome evidence, but the State may generally choose its evidence to present a coherent picture of the facts of the crimes charged. State v. Munoz, 303 Neb. 69, 927 N.W.2d 25 (2019).

The defendant's statements about family abuse do not bear a significant risk of unfair prejudice. State v. Hernandez, 299 Neb. 896, 911 N.W.2d 524 (2018).

The defendant's statements in which he referenced "gang-banging" in his past and not believing in God carried a risk of unfair prejudice, but the risk was not significant given the isolated and brief nature of the statements in the context of the 2-hour interview. State v. Hernandez, 299 Neb. 896, 911 N.W.2d 524 (2018).

Under this section and sections 27-701 and 27-702, a witness may not give an opinion as to a defendant's guilt or how the case should be decided, but, rather, must leave the conclusions to be drawn by the trier of fact, because such opinions are not helpful. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

Under this section, even evidence that is relevant is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

Only rarely, and in extraordinarily compelling circumstances, will an appellate court, from the vista of a cold appellate record, reverse a trial court's on-the-spot judgment concerning the relative weighing of probative value and unfair effect to determine whether relevant evidence should be excluded. State v. Oldson, 293 Neb. 718, 884 N.W.2d 10 (2016).

In a will contest, the trial court did not abuse its discretion in receiving into evidence a video showing the execution of an earlier will; the video was neither unfairly prejudicial nor cumulative. In re Estate of Clinger, 292 Neb. 237, 872 N.W.2d 37 (2015).

A court should exclude an expert's opinion when it gives rise to conflicting inferences of equal probability, so the choice between them is a matter of conjecture. An expert opinion which is equivocal and is based upon such words as "could," "may," or "possibly" lacks the certainty required to sustain the burden of proof of causation for which the opinion has been offered. State v. Johnson, 290 Neb. 862, 862 N.W.2d 757 (2015).

An expert does not have to couch his or her opinion in the magic words of "reasonable certainty," but it must be sufficiently definite and relevant to provide a basis for the fact finder's determination of a material fact. State v. Johnson, 290 Neb. 862, 862 N.W.2d 757 (2015).

The relevance of DNA evidence depends on whether it tends to include or exclude an individual as the source of a biological sample. Nebraska case law generally requires that DNA testing results be accompanied by statistical evidence or a probability assessment that explains whether the results tend to include or exclude the individual as a

potential source. State v. Johnson, 290 Neb. 862, 862 N.W.2d 757 (2015).

Unless the State presents the statistical significance of DNA testing results that shows a defendant cannot be excluded as a potential source in a biological sample, the results are irrelevant. They are irrelevant because they do not help the fact finder assess whether the defendant is or is not the source of the sample. And because of the significance that jurors will likely attach to DNA evidence, the value of inconclusive testing results is substantially outweighed by the danger that the evidence will mislead the jurors. State v. Johnson, 290 Neb. 862, 862 N.W.2d 757 (2015).

27-404.

Evidence that one of the victims was previously shot—allegedly by the defendant's cousin—established that there was a long-standing feud between that victim and the defendant, and, thus, was inextricably intertwined with the present murders. State v. Mabior, 314 Neb. 932, 994 N.W.2d 65 (2023).

Evidence that one of the victims was previously shot—allegedly by the defendant's cousin—was not evidence under this section because it was inextricably intertwined with the present murders. State v. Mabior, 314 Neb. 932, 994 N.W.2d 65 (2023).

Subsection (3) of this section has no application where the evidence of the prior shooting is not evidence under this section. State v. Mabior, 314 Neb. 932, 994 N.W.2d 65 (2023).

Evidence is not an "other act" under subsection (2) of this section where it only tends to logically prove an element of the crime charged and does not give rise to a propensity inference. State v. Wheeler, 314 Neb. 282, 989 N.W.2d 728 (2023).

In a criminal case, subsection (1) of this section operates as a broad exclusionary rule of relevant evidence that speaks to a criminal defendant's propensity to have committed the crime or crimes charged. The purpose of subsection (1) of this section is that propensity evidence, despite its relevance, creates the risk of a decision by the trier of fact on an improper basis. State v. Wheeler, 314 Neb. 282, 989 N.W.2d 728 (2023).

In a criminal case, subsection (2) of this section operates as an inclusionary rule of evidence. It provides that evidence of other crimes, wrongs, or acts may be admissible for purposes other than propensity. Proof of another distinct substantive act is admissible under subsection (2) of this section when there is some legal connection between the two upon which it can be said that one tends to establish the other or some essential fact in issue. State v. Wheeler, 314 Neb. 282, 989 N.W.2d 728 (2023).

Under this section, other types of character or bad acts evidence are presumed to be *inadmissible*, and where admissible for one or more of the particular purposes as set forth by this section, the evidence may be considered only for those purposes. Thus, while this section is a rule of exclusion, section 27-414 is a rule of admissibility. State v. Lierman, 305 Neb. 289, 940 N.W.2d 529 (2020).

This section's restriction on evidence of other crimes, wrongs, or acts did not apply when evidence of the defendant's pandering of another victim was inextricably intertwined with the evidence of the charged crimes. State v. Briggs, 303 Neb. 352, 929 N.W.2d 65 (2019).

Subsection (2) of this section does not apply to evidence of a defendant's other crimes or bad acts if the evidence is inextricably intertwined with the charged crime. Inextricably intertwined evidence includes evidence that forms part of the factual setting of the crime, or evidence that is so blended or connected to the charged crime that proof of the charged crime will necessarily require proof of the other crimes or bad acts, or if the other crimes or bad acts are necessary for the prosecution to present a coherent picture of the charged crime. State v. Burries, 297 Neb. 367, 900 N.W.2d 483 (2017).

Upon objection to evidence offered under subsection (2) of this section, the proponent must state on the record the specific purpose or purposes for which the evidence is being offered, and the trial court must similarly state the purpose or purposes for which it is receiving the evidence. A trial court must then consider whether the evidence is independently relevant, which means that its relevance does not depend upon its tendency to show propensity. Additionally, evidence offered under subsection (2) of this section is subject to the overriding protection of section 27-403, which requires a trial court to consider whether the probative value of the evidence is substantially outweighed by the danger of unfair prejudice. Finally, when requested, the trial court must instruct the jury on the specific purpose or purposes for which it is admitting the extrinsic acts evidence under subsection (2) of this section, to focus the jurors' attention on that purpose and ensure that it does not consider it for an improper purpose. State v. Burries, 297 Neb. 367, 900 N.W.2d 483 (2017).

Evidence of a defendant's threat against an individual that he shot 2 days later was inextricably intertwined with

the shooting. State v. Parnell, 294 Neb. 551, 883 N.W.2d 652 (2016).

The State cannot introduce other acts that are relevant only through the inference that the defendant is by propensity a probable perpetrator of the crime. State v. Oldson, 293 Neb. 718, 884 N.W.2d 10 (2016).

This section codifies the common-law tradition prohibiting resort by the prosecution to any kind of evidence of a defendant's evil character to establish a probability of his guilt. State v. Oldson, 293 Neb. 718, 884 N.W.2d 10 (2016).

Under subsection (1) of this section, proof of a person's character is barred only when in turn, character is used in order to show action in conformity therewith. State v. Oldson, 293 Neb. 718, 884 N.W.2d 10 (2016).

While this section may prevent the admission of other acts evidence for propensity purposes as a protection of the presumption of innocence, it does not follow that the State violates due process by adducing testimony that could result in the revelation of other acts if the defense chooses to pursue certain lines of questioning on cross-examination. State v. Oldson, 293 Neb. 718, 884 N.W.2d 10 (2016).

In prosecution for intentional child abuse resulting in death, evidence of the child's prior injuries while in the defendant's care was admissible, because those injuries were inextricably intertwined with the fatal injuries. State v. Cullen, 292 Neb. 30, 870 N.W.2d 784 (2015).

Following a rule 404 hearing, witnesses were allowed to testify about threatening statements made by the defendant to witnesses as the defendant was being escorted from the courtroom to the courthouse elevator; evidence of other crimes, wrongs, or acts may be admissible to demonstrate a defendant's consciousness of guilt. State v. Johnson, 31 Neb. App. 207, 979 N.W.2d 123 (2022).

The defendant's statement that the abuse between her and her husband was "50/50" was not evidence of prior bad acts in violation of this section, but, rather, was inextricably intertwined with the charged crime and admissible to present a coherent picture of the assault. State v. Cavitte, 28 Neb. App. 601, 945 N.W.2d 228 (2020).

Subsection (2) of this section does not apply to evidence of a defendant's other crimes or bad acts if the evidence is inextricably intertwined with the charged crime. State v. Kelly, 20 Neb. App. 871, 835 N.W.2d 79 (2013).

Although it is proper to admit evidence of other wrongs which constitutes intrinsic evidence intertwined with the charged offense, where the challenged evidence does not include any showing linking the defendant to the other wrongs evidence, it is not intrinsic evidence intertwined with the charged offense. State v. Thomas, 19 Neb. App. 36, 798 N.W.2d 620 (2011).

27-408.

A court's determination of preliminary questions of fact conditioning the applicability of the exclusionary rule set forth in this section are reviewed for clear error. McGill Restoration v. Lion Place Condo. Assn., 309 Neb. 202, 959 N.W.2d 251 (2021).

An admission against interest concerning an element of the disputed claim is not an exception to the general inadmissibility of conduct or statements made in settlement negotiations. McGill Restoration v. Lion Place Condo. Assn., 309 Neb. 202, 959 N.W.2d 251 (2021).

Conduct or statements made in settlement negotiations are not admissible for another purpose to impeach a prior inconsistent statement. McGill Restoration v. Lion Place Condo. Assn., 309 Neb. 202, 959 N.W.2d 251 (2021).

Documents are not immunized from admissibility merely by being strategically presented in the course of compromise negotiations, and a fact presented during compromise negotiations is not immunized if it was obtained from sources independent of the compromise negotiations. McGill Restoration v. Lion Place Condo. Assn., 309 Neb. 202, 959 N.W.2d 251 (2021).

If a statement violates the Nebraska Evidence Rules governing compromise and offers to compromise, a trial court does not have discretion to admit the statement. McGill Restoration v. Lion Place Condo. Assn., 309 Neb. 202, 959 N.W.2d 251 (2021).

The exclusion set forth in this section does not distinguish between offers to settle and admissions of fact made during settlement negotiations. McGill Restoration v. Lion Place Condo. Assn., 309 Neb. 202, 959 N.W.2d 251 (2021).

Whether a particular writing, conduct, or statement is made in or a product of compromise negotiations is largely

a question of fact. McGill Restoration v. Lion Place Condo. Assn., 309 Neb. 202, 959 N.W.2d 251 (2021).

27-412.

In a sexual assault prosecution, the trial court did not abuse its discretion in prohibiting the defendant from asking the complaining witness about an allegation that she made against a doctor regarding inappropriate touching during a prenatal examination. State v. Ali, 312 Neb. 975, 981 N.W.2d 821 (2022).

A trial court did not abuse its discretion in determining that the defendant could not question the victim about previous sexual encounters because they were not similar enough to be relevant. The victim's encounter with the defendant occurred when the defendant was 18 years old and the victim was 10 years old and involved sexual penetration; the victim's previous encounters involved sexual touching between other similarly aged children. State v. Dady, 304 Neb. 649, 936 N.W.2d 486 (2019).

A false accusation of rape where no sexual activity is involved is itself not "sexual behavior" involving the victim, and such statements fall outside of the rape shield law. State v. Swindle, 300 Neb. 734, 915 N.W.2d 795 (2018).

Before defense counsel launches into cross-examination about false allegations of sexual assault, a defendant must establish, outside of the presence of the jury, by a greater weight of the evidence, that (1) the accusation or accusations were in fact made, (2) the accusation or accusations were in fact false, and (3) the evidence is more probative than prejudicial. State v. Swindle, 300 Neb. 734, 915 N.W.2d 795 (2018).

In limited circumstances, a defendant's right to confrontation can require the admission of evidence that would be inadmissible under the rape shield statute. State v. Swindle, 300 Neb. 734, 915 N.W.2d 795 (2018).

Subject to several exceptions, subsection (1) of this section bars evidence offered to prove that any victim engaged in other sexual behavior and evidence offered to prove any victim's sexual predisposition in civil or criminal proceedings involving alleged sexual misconduct. State v. Swindle, 300 Neb. 734, 915 N.W.2d 795 (2018).

Pursuant to subdivision (2)(a) of this section, a court does not err in excluding evidence about a victim's sexual history prior to an assault when the State does not open the door to such evidence, when the evidence does not directly relate to the issue of consent, and when the evidence would not give the jury a significantly different impression of the victim's credibility. State v. McSwine, 24 Neb. App. 453, 890 N.W.2d 518 (2017).

27-414.

Because the standard set forth as to the question of whether allegations of sexual assault were proved for purposes of this section is lower than the standard of proof the State is held to in prosecuting those allegations, the principles of collateral estoppel do not bar the admission of such evidence in the situation where the defendant was acquitted of the prior allegations. State v. Lierman, 305 Neb. 289, 940 N.W.2d 529 (2020).

Despite the prejudice inherent in allegations of sexual assault, the Legislature enacted this section permitting the admission of such evidence. Assuming that this evidence met the balancing test of this section, the Legislature set no limitation on a fact finder's use of this evidence. State v. Lierman, 305 Neb. 289, 940 N.W.2d 529 (2020).

Under section 27-404, other types of character or bad acts evidence are presumed to be inadmissible, and where admissible for one or more of the particular purposes as set forth by section 27-404, the evidence may be considered only for those purposes. Thus, while section 27-404 is a rule of exclusion, this section is a rule of admissibility. State v. Lierman, 305 Neb. 289, 940 N.W.2d 529 (2020).

Under this section, assuming that notice and hearing requirements are met and the evidence survives a more-probative-than-prejudicial balancing test, evidence of prior sexual assaults are admissible if proved by clear and convincing evidence. State v. Lierman, 305 Neb. 289, 940 N.W.2d 529 (2020).

While the fact that a defendant was acquitted of sexual assault charges in a prior prosecution does not affect the threshold admissibility of the evidence under this section, it is relevant to the undue prejudice analysis conducted under this section and under section 27-403. State v. Lierman, 305 Neb. 289, 940 N.W.2d 529 (2020).

A hearing on prior bad acts evidence is not required if the evidence forms the factual setting of the charged offenses and is necessary to present a complete and coherent picture of the facts. State v. Kelly, 20 Neb. App. 871, 835 N.W.2d 79 (2013).

This section does not change the law regarding acts which are inextricably intertwined to the charged offenses, so that acts that were not considered extrinsic and therefore not subject to section 27-404 before are not extrinsic and not subject to this section now. State v. Kelly, 20 Neb. App. 871, 835 N.W.2d 79 (2013).

Trial court did not abuse its discretion in admitting evidence of a prior sexual assault where the defendant admitted to committing the earlier offense, both offenses involved young boys, and both occurred at a time when the defendant was acting as a babysitter for the boys. State v. Craigie, 19 Neb. App. 790, 813 N.W.2d 521 (2012).

27-504.

This section provides a privilege for professional counsel-patient communications, but under subsection (4)(d), no privilege exists in criminal prosecutions for injuries to children. State v. McMillion, 23 Neb. App. 687, 875 N.W.2d 877 (2016).

27-510.

A ruling made under the initial step of subdivision (3)(b) of this section, regarding whether an informer may be able to give testimony necessary to a fair determination, requires a court to use its judgment and thus exercise its discretion. An appellate court therefore reviews such a ruling for an abuse of discretion. State v. Blair, 300 Neb. 372, 914 N.W.2d 428 (2018).

The decision whether to reveal the identity of a confidential informant is controlled by this section, and judicial discretion is involved only to the extent this section makes discretion a factor in determining that question. Where this section commits a question at issue to the discretion of the trial court, an appellate court reviews the trial court's determination for an abuse of discretion. State v. Blair, 300 Neb. 372, 914 N.W.2d 428 (2018).

27-513.

A person cannot prove he or she suffered ineffective assistance of counsel by his or her counsel's failure to call a witness who would have most likely invoked Fifth Amendment protections against self-incrimination, because the trial court would have barred the witness from testifying to avoid the witness from claiming privilege in the presence of the jury. State v. Britt, 310 Neb. 69, 963 N.W.2d 533 (2021).

A trial court may bar the testimony of a defendant's accomplice who seeks to exculpate the defendant by testifying as to events that are crucial regarding the defendant's culpability, but intends to invoke his or her Fifth Amendment privilege against self-incrimination during cross-examination. State v. Clausen, 307 Neb. 968, 951 N.W.2d 764 (2020).

Although a witness invoked his Fifth Amendment privilege in the jury's presence, no error was plainly evident from the record where the bill of exceptions did not contain evidence showing that the parties or the court knew the witness would invoke his privilege and where, after being given immunity, the witness testified and was subject to cross-examination. State v. Munoz, 303 Neb. 69, 927 N.W.2d 25 (2019).

27-602.

Under this section and sections 27-701 and 27-702, it is improper for a witness to testify whether another person may or may not have been telling the truth in a specific instance. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

Under this section, lay witnesses may testify only as to factual matters based upon their personal knowledge. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

A party's "assumption" of a fact confesses the absence of personal knowledge of the fact. Sulu v. Magana, 293 Neb. 148, 879 N.W.2d 674 (2016).

27-605.

Comments by the judge presiding over a matter are clearly not evidence, because a judge may not assume the role of a witness. In re Interest of J.K., 300 Neb. 510, 915 N.W.2d 91 (2018).

27-606.

Intra-deliberational statements by a juror sharing pretrial community knowledge of the general reputation of the victim's family, which did not directly relate to a factual question in the case, and jurors' speculation about whether they would be in danger if they did not convict the defendant, was not extraneous information. State v. Allen, 314 Neb. 663, 992 N.W.2d 712 (2023).

In an evidentiary hearing regarding an alternate juror's impermissible presence and possible participation in deliberations of the jury, the court is allowed to question individual jurors and the alternate as to how, if at all, the alternate communicated to the jury and inquire as to individual jurors whether the alternate's outside influence was brought to bear upon them. State v. Madren, 308 Neb. 443, 954 N.W.2d 881 (2021).

Juror affidavits cannot be used for the purpose of showing a juror was confused. Facilities Cost Mgmt. Group v. Otoe Cty. Sch. Dist., 298 Neb. 777, 906 N.W.2d 1 (2018).

A trial court's duty to hold an evidentiary hearing on a substantiated allegation of jury misconduct does not extend into matters which are barred from inquiry under subsection (2) of this section. State v. Stricklin, 290 Neb. 542, 861 N.W.2d 367 (2015).

The jury's consideration of a defendant's failure to testify is barred from inquiry under subsection (2) of this section. State v. Stricklin, 290 Neb. 542, 861 N.W.2d 367 (2015).

Because there is no constitutional right to obtain information about a jury's deliberations, a court's discretion under section 25-1635 to disclose juror information for good cause shown after a verdict should be tempered by the restrictions imposed under subsection (2) of this section. Golnick v. Callender, 290 Neb. 395, 860 N.W.2d 180 (2015).

27-608.

Subsection (2) of this section does not affect the admissibility of evidence that has become relevant and admissible under the specific contradiction doctrine. State v. Carpenter, 293 Neb. 860, 880 N.W.2d 630 (2016).

Subsection (2) of this section permits questioning during cross-examination only on specific instances of conduct not resulting in a criminal conviction. State v. Stricklin, 290 Neb. 542, 861 N.W.2d 367 (2015).

To be admissible, reputation evidence of a witness's untruthfulness must embody the collective judgment of the community and must be derived from a group whose size constitutes an indicium of inherent reliability. The community in which the party has the reputation for untruthfulness must be sufficiently large; if the group is too insular, its opinion of the witness's reputation for untruthfulness may not be reliable because it may have been formed with the same set of biases. State v. Brooks, 23 Neb. App. 560, 873 N.W.2d 460 (2016).

27-609.

When a defendant testifies in a criminal trial in his or her own behalf, he or she is precluded from testifying regarding the details or the nature of the previous convictions because such information is not relevant to the defendant's credibility. The defendant may testify as to whether he or she has previous felony convictions or convictions involving dishonesty. State v. Howell, 26 Neb. App. 842, 924 N.W.2d 349 (2019).

27-612.

This section requires production of not only documents used to refresh recollection in the courtroom while the witness is testifying, but also those writings the witness reviewed prior to giving testimony. State v. McMillion, 23 Neb. App. 687, 875 N.W.2d 877 (2016).

27-614.

Trial court erred in failing to allow party to cross-examine witness following interrogation by judge where counsel's request to examine or cross-examine any witnesses was denied. Hronek v. Brosnan, 20 Neb. App. 200, 823 N.W.2d 204 (2012).

27-615.

This section does not require a party to present evidence in order to show that a witness is essential. In re Interest of Gabriel B., 31 Neb. App. 21, 976 N.W.2d 206 (2022).

This section does not require that the witness have no other way to obtain the information needed except to be present in the courtroom. In re Interest of Gabriel B., 31 Neb. App. 21, 976 N.W.2d 206 (2022).

27-701.

A defendant doctor's testimony was not hearsay, because it was limited only to his perception of another treating

doctor's opinion, rather than providing the actual content of the other treating doctor's out-of-court statement. The defendant doctor had firsthand knowledge of the other treating doctor's statement, his belief as to the opinion was an inference that was rationally based on the context, and the testimony was helpful to an ultimate issue. Rodriguez v. Surgical Assocs., 298 Neb. 573, 905 N.W.2d 247 (2018).

Because the credibility of witnesses is a determination within the province of the trier of fact, testimony that usurps that role is not helpful and thus is improper opinion testimony under this section and section 27-702. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

The abolition of the "ultimate issue rule" does not lower the bar so as to admit all opinions, because under this section and section 27-702, opinions must be helpful to the trier of fact. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

Under this section and section 27-702, opinion testimony, whether by a lay or expert witness, is permissible only if it is helpful to the trier of fact in making a determination of a fact in issue. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

Under this section and sections 27-403 and 27-702, a witness may not give an opinion as to a defendant's guilt or how the case should be decided, but, rather, must leave the conclusions to be drawn by the trier of fact, because such opinions are not helpful. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

Under this section and sections 27-602 and 27-702, it is improper for a witness to testify whether another person may or may not have been telling the truth in a specific instance. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

A police officer's testimony regarding the meanings of drug-related code words and jargon used by people involved in the distribution of crack cocaine could not be excluded in a prosecution for drug conspiracy on the basis it invaded the province of the jury. The officer's testimony was helpful, because the meanings of narcotics code words and phrases were not within the common understanding of most jurors, cyphering of the meaning and intent of cell phone calls involving the defendant was something the jury could not do without the interpretation of slang or code words used during the wiretapped calls, and there was proper foundation for the officer's testimony. State v. Russell, 292 Neb. 501, 874 N.W.2d 9 (2016).

Lay witness opinion testimony concerning the identity of a person depicted in a photograph or video is admissible if there is evidence that the witness is better able to correctly identify the contents of the photograph or video than the jury. State v. Hickey, 27 Neb. App. 516, 933 N.W.2d 891 (2019).

27-702.

In a bench trial, an expert's testimony will be admitted and given the weight to which it is entitled. Reiber v. County of Gage, 303 Neb. 325, 928 N.W.2d 916 (2019).

When a court is faced with a decision regarding the admissibility of expert opinion evidence, the trial judge must determine at the outset, pursuant to the evidence rule governing expert witness testimony, whether the expert is proposing to testify to (1) scientific, technical, or other specialized knowledge that (2) will assist the trier of fact to understand or determine a fact in issue. Pitts v. Genie Indus., 302 Neb. 88, 921 N.W.2d 597 (2019).

Because the credibility of witnesses is a determination within the province of the trier of fact, testimony that usurps that role is not helpful and thus is improper opinion testimony under section 27-701 and this section. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

The abolition of the "ultimate issue rule" does not lower the bar so as to admit all opinions, because under section 27-701 and this section, opinions must be helpful to the trier of fact. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

Under section 27-701 and this section, opinion testimony, whether by a lay or expert witness, is permissible only if it is helpful to the trier of fact in making a determination of a fact in issue. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

Under this section and sections 27-403 and 27-701, a witness may not give an opinion as to a defendant's guilt or how the case should be decided, but, rather, must leave the conclusions to be drawn by the trier of fact, because such opinions are not helpful. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

Under this section and sections 27-602 and 27-701, it is improper for a witness to testify whether another person may or may not have been telling the truth in a specific instance. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178

(2017).

A trial court can consider several nonexclusive factors in determining the reliability of an expert's opinion: (1) whether a theory or technique can be (and has been) tested; (2) whether it has been subjected to peer review and publication; (3) whether, in respect to a particular technique, there is a high known or potential rate of error; (4) whether there are standards controlling the technique's operation; and (5) whether the theory or technique enjoys general acceptance within a relevant scientific community. State v. Braesch, 292 Neb. 930, 874 N.W.2d 874 (2016).

Absent evidence that an expert's testimony grows out of the expert's own prelitigation research or that an expert's research has been subjected to peer review, experts must show that they reached their opinions by following an accepted method or procedure as it is practiced by others in their field. State v. Braesch, 292 Neb. 930, 874 N.W.2d 874 (2016).

Before admitting expert opinion testimony under this section, a trial court must determine whether the expert's knowledge, skill, experience, training, and education qualify the witness as an expert. If an expert's opinion involves scientific or specialized knowledge, a trial court must determine whether the reasoning or methodology underlying the testimony is valid (reliable). It must also determine whether that reasoning or methodology can be properly applied to the facts in issue. State v. Braesch, 292 Neb. 930, 874 N.W.2d 874 (2016).

In a bench trial, a trial court is not required to conclusively determine whether an expert's opinion is reliable before admitting the expert's testimony, because the court is not shielding the jury from unreliable evidence. The court has discretion to admit a qualified expert's opinion subject to its later determination after hearing further evidence that the opinion is unreliable and should not be credited. State v. Braesch, 292 Neb. 930, 874 N.W.2d 874 (2016).

To be admissible, an expert's opinion must be based on good grounds, not mere subjective belief or unsupported speculation. A trial court should not require absolute certainty in an expert's opinion, but it has discretion to exclude expert testimony if an analytical gap between the data and the proffered opinion is too great. State v. Braesch, 292 Neb. 930, 874 N.W.2d 874 (2016).

The trial court's admission of a doctor's testimony regarding "grooming" in a sexual assault of a child case, without performing its gatekeeping function under the *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), and *Schafersman v. Agland Coop*, 262 Neb. 215, 631 N.W.2d 862 (2001), framework, was prejudicial error. State v. Edwards, 28 Neb. App. 893, 949 N.W.2d 799 (2020).

An expert's opinion is ordinarily admissible under this section if the witness (1) qualifies as an expert, (2) has an opinion that will assist the trier of fact, (3) states his or her opinion, and (4) is prepared to disclose the basis of that opinion on cross-examination. In re Interest of Aly T. & Kazlynn T., 26 Neb. App. 612, 921 N.W.2d 856 (2018).

Sufficient foundation existed for a doctor's expert opinion in his affidavit that a nursing home's actions or inactions did not cause a resident's injuries and subsequent death, so that the opinion could be considered by the trial court when deciding a motion for summary judgment where the affidavit and attached curriculum vitae established that the doctor, board certified in family and geriatric medicine, had regularly cared for residents of assisted living facilities and was qualified to evaluate the cause of injuries and death. Apkan v. Life Care Centers of America, 26 Neb. App. 154, 918 N.W.2d 601 (2018).

An individual's summary judgment affidavit was not sufficient to meet the requirements to qualify him as an expert in regard to whether a roofing contractor's repairs were defective; the affidavit failed to set forth sufficient foundation for his opinion, because he included no references to his occupation, training, experience, qualifications, or education, and he failed to accurately describe the property he inspected and the methodology he employed during such inspection. Edwards v. Mount Moriah Missionary Baptist Church, 21 Neb. App. 896, 845 N.W.2d 595 (2014).

It is within the trial court's discretion to determine whether there is sufficient foundation for an expert witness to give his opinion about an issue in question. Edwards v. Mount Moriah Missionary Baptist Church, 21 Neb. App. 896, 845 N.W.2d 595 (2014).

27-703.

The defendant doctor could testify to the opinion of another treating doctor to demonstrate the basis for his own opinion. Rodriguez v. Surgical Assocs., 298 Neb. 573, 905 N.W.2d 247 (2018).

27-704.

This section abolished the "ultimate issue" rule in Nebraska. Reiber v. County of Gage, 303 Neb. 325, 928 N.W.2d 916 (2019).

Under this section, a witness may not give an opinion as to how the case should be decided, but, rather, must leave the conclusions to be drawn by the trier of fact, because such opinions are not helpful. Reiber v. County of Gage, 303 Neb. 325, 928 N.W.2d 916 (2019).

Under this section, the basic approach to opinions, lay and expert, is to admit them when helpful to the trier of fact. Reiber v. County of Gage, 303 Neb. 325, 928 N.W.2d 916 (2019).

The "ultimate issue rule," which prohibited witnesses from giving opinions or conclusions on an ultimate fact in issue because such testimony, it was believed, usurps the function or invades the province of the jury, was abolished in Nebraska by this section. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

Under this section, the basic approach to opinions, lay and expert, is to admit them when helpful to the trier of fact. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

27-706.

If proposed expert testimony is fundamentally flawed by the expert's own admission, it is not an abuse of discretion for the trial court to refuse to appoint the expert under this section when there is no showing that this shortcoming in the expert's proposed testimony has been remedied. State v. Quezada, 20 Neb. App. 836, 834 N.W.2d 258 (2013).

27-801.

The evidence established that statements of the chief financial officer and an employee were made by agents of the company within the scope of their employment. Noah's Ark Processors v. UniFirst Corp., 310 Neb. 896, 970 N.W.2d 72 (2022).

Witness interview statements that were gathered as part of an investigation and were relied upon by the employer in making an employment decision were not hearsay, because they were not offered to prove the truth of the matter asserted. Baker-Heser v. State, 309 Neb. 979, 963 N.W.2d 59 (2021).

Where the translator of a defendant's out-of-court verbal or written statements from a foreign language to English is initially shown by the State to be qualified by knowledge, skill, experience, training, or education to perform such translation, and where the translator testifies at trial and is subject to cross-examination, the translation is admissible as nonhearsay under subdivision (4) of this section, and any challenges to the accuracy of the translation go to the weight of the evidence and not to its admissibility. State v. Martinez, 306 Neb. 516, 946 N.W.2d 445 (2020).

The State must prove by a greater weight of the evidence that a defendant authored or made a statement in order to establish preliminary admissibility as nonhearsay by a party opponent. State v. Savage, 301 Neb. 873, 920 N.W.2d 692 (2018).

A declarant's out-of-court statement offered for the truth of the matter asserted is inadmissible unless it falls within a definitional exclusion or statutory exception. State v. Burries, 297 Neb. 367, 900 N.W.2d 483 (2017).

Excited utterances are an exception to the hearsay rule, because the spontaneity of excited utterances reduces the risk of inaccuracies inasmuch as the statements are not the result of a declarant's conscious effort to make them. The justification for the excited utterance exception is that circumstances may produce a condition of excitement which temporarily stills the capacity for reflection and produces utterances free of conscious fabrication. State v. Burries, 297 Neb. 367, 900 N.W.2d 483 (2017).

For a statement to be an excited utterance, the following criteria must be met: (1) There must be a startling event, (2) the statement must relate to the event, and (3) the declarant must have made the statement while under the stress of the event. An excited utterance does not have to be contemporaneous with the exciting event. An excited utterance may be subsequent to the startling event if there was not time for the exciting influence to lose its sway. The true test for an excited utterance is not when the exclamation was made, but whether, under all the circumstances, the declarant was still speaking under the stress of nervous excitement and shock caused by the event. State v. Burries, 297 Neb. 367, 900 N.W.2d 483 (2017).

The period in which the excited utterance exception applies depends on the facts of the case. Relevant facts include the declarant's physical conditions or manifestation of stress and whether the declarant spoke in response to questioning. But a declarant's response to questioning, other than questioning from a law enforcement officer, may still be an excited utterance if the context shows that the declarant made the statement without conscious reflection. State v. Burries, 297 Neb. 367, 900 N.W.2d 483 (2017).

"Owe notes" offered to show that the owner of the writings possessed illegal substances for purposes of sale and distribution were not hearsay, because they were not offered to show that a recorded drug sale actually took place. State v. Schwaderer, 296 Neb. 932, 898 N.W.2d 318 (2017).

A conspirator recounting past transactions or events having no connection with what is being done in promotion of the common design cannot be assumed to represent those conspirators associated with him or her. State v. Britt, 293 Neb. 381, 881 N.W.2d 818 (2016).

Pursuant to subdivision (4) of this section, the necessary commonality of interests between conspirators is no longer present when the central purpose of the conspiracy has succeeded or failed. State v. Britt, 293 Neb. 381, 881 N.W.2d 818 (2016).

Pursuant to subsection (4) of this section, the definitional exclusion to the hearsay rule applies to the coverup or concealment of the conspiracy that occurs while the conspiracy is ongoing, just as it would to any other part of the conspiracy. State v. Henry, 292 Neb. 834, 875 N.W.2d 374 (2016).

Pursuant to subsection (4) of this section, to withdraw from a conspiracy such that statements of a coconspirator are inadmissible, the coconspirator must do more than ceasing, however definitively, to participate; rather, the coconspirator must make an affirmative action either by making a clean breast to the authorities or by communicating abandonment in a manner calculated to reach coconspirators, and must not resume participation in the conspiracy. State v. Henry, 292 Neb. 834, 875 N.W.2d 374 (2016).

The fact that witnesses' memories conflict as to when, where, or how out-of-court statements were made may be relevant to the credibility of the witnesses' testimony, but it is not relevant for purposes of analyzing whether an out-of-court statement is a prior consistent statement. State v. Smith, 292 Neb. 434, 873 N.W.2d 169 (2016).

Text messages attributed to the victim were not hearsay where offered to show their effect on the defendant. State v. Wynne, 24 Neb. App. 377, 887 N.W.2d 515 (2016).

Where there was sufficient evidence to establish that the defendant authored the text messages attributed to him, those text messages, which were his own statements, were not hearsay. State v. Wynne, 24 Neb. App. 377, 887 N.W.2d 515 (2016).

Pursuant to subsection (1) of this section, a defendant's mother's utterance to a police officer, asking whether the officer was alone, was not a "statement" under the Nebraska Evidence Rules, was not offered for any truth of any matter, and was therefore not hearsay, in a prosecution for third degree assault on a law enforcement officer and second-offense resisting arrest; the utterance was not an assertion or declaration, but instead was an interrogatory seeking information and not asserting any particular fact. State v. Heath, 21 Neb. App. 141, 838 N.W.2d 4 (2013).

27-802.

The Nebraska Evidence Rules provide that hearsay is admissible when authorized by the statutes of the State of Nebraska. In re Application No. OP-0003, 303 Neb. 872, 932 N.W.2d 653 (2019).

27-803.

To be admitted under the residual hearsay exception, a statement must have "equivalent circumstantial guarantees of trustworthiness" as other hearsay statements that are excepted from exclusion by a specific rule. The statement also must (a) be offered as evidence of a material fact, (b) be more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts, and (c) serve the general purposes of the rules of evidence and the interests of justice by its admission. Finally, the rule provides that a statement may not be admitted under the exception unless a notice requirement set forth in the rule is met. State v. Matteson, 313 Neb. 435, 985 N.W.2d 1 (2023).

Under the plain text of subsection (24) of this section, a trial court does not weigh the criteria set forth in the rule as part of some sort of balancing test. Rather, the text provides that a hearsay statement must satisfy each of five statutory requirements before it can be admitted under the residual hearsay exception. These five statutory requirements are thus "conditions precedent to admission" rather than "factors." State v. Matteson, 313 Neb. 435, 985 N.W.2d 1 (2023).

Statements having a dual medical and investigatory purpose are admissible under subdivision (4) of this section, only if the proponent of the statements demonstrates that (1) the declarant's purpose in making the statements was to assist in the provision of medical diagnosis or treatment and (2) the statements were of a nature reasonably pertinent to medical diagnosis or treatment by a medical professional. In re Interest of Xandria P., 311 Neb. 591, 973 N.W.2d 692 (2022).

The fundamental inquiry to determine whether statements, made by a declarant who knew law enforcement was listening, had a medical purpose is if the challenged statement had some value in diagnosis or treatment, because the patient would still have the requisite motive for providing the type of sincere and reliable information that is important to diagnosis and treatment. In re Interest of Xandria P., 311 Neb. 591, 973 N.W.2d 692 (2022).

The testimony of the forensic interview specialist and the recorded forensic interview itself provide adequate foundation for admitting a juvenile's recorded testimony under subdivision (4) of this section. In re Interest of Xandria P., 311 Neb. 591, 973 N.W.2d 692 (2022).

An exhibit composed of printouts from the county treasurer's official website and a letter from the treasurer setting forth the amount of delinquent taxes for a property, along with pages showing the tax billed each year, the tax paid, and the interest paid, fit within the business record exception to hearsay. AVG Partners I v. Genesis Health Clubs, 307 Neb. 47, 948 N.W.2d 212 (2020).

Pretrial notice of an intent to admit evidence under the residual hearsay exception is mandatory, and an adverse party's knowledge of a statement is not enough to satisfy the notice requirement. State v. Martinez, 306 Neb. 516, 946 N.W.2d 445 (2020).

Testimony by an examining physician concerning a 10-year-old victim's diagnoses was admissible pursuant to the hearsay exception governing medical diagnosis or treatment, where the physician testified that she learned of the diagnoses while conducting a patient interview for the purpose of treating the victim during a visit to the emergency room following the underlying incident. The physician further testified that obtaining a patient history was an important part of her job and that she attempted to obtain a medical history from every patient she treated. State v. Dady, 304 Neb. 649, 936 N.W.2d 486 (2019).

A sexual assault victim's statements to a sexual assault nurse examiner during an examination performed in an emergency room and to a doctor performing a followup examination that the defendant sexually abused her were admissible under the medical purpose hearsay exception. State v. Mora, 298 Neb. 185, 903 N.W.2d 244 (2017).

Statements made by a child victim of sexual assault to a forensic interviewer with a dual medical and investigatory purpose were admissible under subdivision (3) of this section when the forensic interviewer was in the chain of medical care and circumstantial evidence permitted an inference that the statements were made in legitimate and reasonable contemplation of medical diagnosis or treatment. State v. Jedlicka, 297 Neb. 276, 900 N.W.2d 454 (2017).

Nebraska's business record exception to hearsay is not a carbon copy of its federal counterpart. Unlike Fed. R. Evid. 803(6), subsection (5) of this section excludes opinions and diagnoses from the business record exception. So, an expert's opinions and medical diagnoses, as distinguished from factual statements, in an employer's file for an employee were not admissible under Nebraska's business record exception. Arens v. NEBCO, Inc., 291 Neb. 834, 870 N.W.2d 1 (2015).

The business record exception to hearsay is not limited to records created by the holder of the records. It applies to a memorandum, report, record, or data compilation. The term "data compilation" is broad enough to include records furnished by third parties with knowledge of the relevant acts, events, or conditions if the third party has a duty to make the records and the holder of the record routinely compiles and keeps them. Arens v. NEBCO, Inc., 291 Neb. 834, 870 N.W.2d 1 (2015).

Subdivision (5)(b) of this section, on its face, does not apply to criminal proceedings. State v. Walker, 29 Neb. App. 292, 953 N.W.2d 65 (2020).

A child sexual assault victim's statements to parents were admissible as excited utterances under subdivision (1) of this section. State v. Edwards, 28 Neb. App. 893, 949 N.W.2d 799 (2020).

Pursuant to subdivision (3) of this section, a child sexual assault victim's statements, as relayed to a doctor by a forensic examiner and testified to by the doctor, were admissible even though they were double hearsay because each part of the combined statements conformed with an exception to the hearsay rule. State v. Edwards, 28 Neb. App. 893, 949 N.W.2d 799 (2020).

Pursuant to subdivision (3) of this section, statements made by a child victim of sexual abuse to a forensic interviewer in the chain of medical care may be admissible even though the interview has the partial purpose of assisting law enforcement. State v. Edwards, 28 Neb. App. 893, 949 N.W.2d 799 (2020).

Statements having a dual medical and investigatory purpose are admissible under subdivision (3) of this section only if the proponent of the statements demonstrates that (1) the declarant's purpose in making the statements was

to assist in the provision of medical diagnosis or treatment and (2) the statements were of a nature reasonably pertinent to medical diagnosis or treatment by a medical professional. State v. Edwards, 28 Neb. App. 893, 949 N.W.2d 799 (2020).

Subdivision (3) of this section is based on the notion that a person seeking medical attention will give a truthful account of the history and current status of his or her condition in order to ensure proper treatment. State v. Edwards, 28 Neb. App. 893, 949 N.W.2d 799 (2020).

Under subdivision (3) of this section, the appropriate state of mind of the declarant may be reasonably inferred from the circumstances; such a determination is necessarily fact specific. State v. Edwards, 28 Neb. App. 893, 949 N.W.2d 799 (2020).

Under subdivision (3) of this section, the fundamental inquiry when considering a declarant's intent is whether the statement was made in legitimate and reasonable contemplation of medical diagnosis or treatment. State v. Edwards, 28 Neb. App. 893, 949 N.W.2d 799 (2020).

Under subdivision (3) of this section, a statement is generally considered admissible under the medical purpose hearsay exception if gathered for dual medical and investigatory purposes, as long as the statement, despite its dual purpose, was made in legitimate and reasonable contemplation of medical diagnosis and treatment. State v. Cheloha, 25 Neb. App. 403, 907 N.W.2d 317 (2018).

27-804.

Pursuant to subdivision (2)(c) of this section, a trial court cannot rely simply on the State's assurances of unavailability or on the declarant's invocation of the privilege against self-incrimination and the failure to call the declarant to testify as a result. Instead, before a declarant may be excused as unavailable based on a claim of privilege, the declarant must appear at trial, assert the privilege, and have that assertion approved by the trial judge. In addition, the witness must be exempted from testifying by a ruling of the court. State v. Britt, 293 Neb. 381, 881 N.W.2d 818 (2016).

Whether a particular remark within a larger narrative is truly self-inculpatory—such that a reasonable person would make the statement only if believed to be true—is a fact-intensive inquiry requiring careful examination of all the circumstances surrounding the criminal activity involved. When considering statements of a mixed nature, the question is whether the statements have a net exculpatory versus net inculpatory effect. State v. Britt, 293 Neb. 381, 881 N.W.2d 818 (2016).

When considering whether a good faith effort to procure a witness has been made under subdivision (1)(e) of this section, the proper inquiry is whether the means utilized by the proponent prior to trial were reasonable, not whether other means remain available at the time of trial or whether additional steps might have been undertaken. State v. Trice, 292 Neb. 482, 874 N.W.2d 286 (2016).

27-805.

A child sexual assault victim's statements, as relayed to a doctor by a forensic examiner and testified to by a doctor, were admissible even though they were double hearsay because each part of the combined statements conformed with an exception to the hearsay rule. State v. Edwards, 28 Neb. App. 893, 949 N.W.2d 799 (2020).

27-901.

A chief financial officer's testimony about exhibits satisfied the authentication requirement by providing sufficient information to show that the documents were what they purported to be. AVG Partners I v. Genesis Health Clubs, 307 Neb. 47, 948 N.W.2d 212 (2020).

The identity of a participant in a telephone conversation may be established by circumstantial evidence, such as the circumstances preceding or following the telephone conversation. State v. Burries, 297 Neb. 367, 900 N.W.2d 483 (2017).

This section requires authentication or identification of evidence sufficient to support a finding that a matter is what the proponent claims as a condition precedent for admission. But authentication or identification under this section is not a high hurdle. A proponent is not required to conclusively prove the genuineness of the evidence or to rule out all possibilities inconsistent with authenticity. If the evidence is sufficient to support a finding that the evidence is what it purports to be, the rule is satisfied. State v. Burries, 297 Neb. 367, 900 N.W.2d 483 (2017).

The proponent of the text messages is not required to conclusively prove who authored the messages; the

possibility of an alteration or misuse by another generally goes to weight, not admissibility. State v. Henry, 292 Neb. 834, 875 N.W.2d 374 (2016).

If the proponent's showing is sufficient to support a finding that the evidence is what it purports to be, the proponent has satisfied the requirement of this section. State v. Wynne, 24 Neb. App. 377, 887 N.W.2d 515 (2016).

This section does not impose a high hurdle for authentication or identification. State v. Wynne, 24 Neb. App. 377, 887 N.W.2d 515 (2016).

Where evidence showed that the defendant used his cell phone during the month of the murder; that in the period prior to the murder, there was contact between the cell phone attributed to the defendant and the telephone numbers of various family members and the defendant's girlfriend; that there was no evidence to suggest that anyone other than the defendant was using the cell phone in question at the time of the murder; that the content of the text messages and sequence of subsequent call contacts between the cell phone attributed to the defendant and the victim's cell phone were consistent with the timeline established for the murder; and that all outgoing contacts by the cell phone attributed to the defendant ceased just shortly before the murder occurred, the trial court did not abuse its discretion in overruling the defendant's objections with respect to his authorship of the text messages attributed to him. State v. Wynne, 24 Neb. App. 377, 887 N.W.2d 515 (2016).

27-902.

While not a high hurdle, it is still the burden of the proponent of the evidence to provide the court with sufficient evidence that the document or writing is what it purports to be. VKGS v. Planet Bingo, 309 Neb. 950, 962 N.W.2d 909 (2021).

27-1002.

By its terms, this section applies to proof of the contents of a recording. Chevalier v. Metropolitan Util. Dist., 24 Neb. App. 874, 900 N.W.2d 565 (2017).

The best evidence rule is a rule of preference for the production of the original of a writing, recording, or photograph when the contents of the item are sought to be proved. Chevalier v. Metropolitan Util. Dist., 24 Neb. App. 874, 900 N.W.2d 565 (2017).

The purpose of the best evidence rule is the prevention of fraud, inaccuracy, mistake, or mistransmission of critical facts contained in a writing, recording, or photograph when its contents are an issue in a proceeding. Chevalier v. Metropolitan Util. Dist., 24 Neb. App. 874, 900 N.W.2d 565 (2017).

The best evidence rule, also known as the original document rule, states that the original writing, recording, or photograph is required to prove the content of that writing, recording, or photograph. Flodman v. Robinson, 22 Neb. App. 943, 864 N.W.2d 716 (2015).

28-105.

The statutory provisions of section 29-2204.02 and this section relating to post-release supervision are mandatory, and a sentence that fails to impose post-release supervision when required is an appropriate matter for an appellate court's discretionary plain error review. State v. Roth, 311 Neb. 1007, 977 N.W.2d 221 (2022).

The nonretroactive provision of subsection (7) of this section applies to the changes made by 2015 Neb. Laws, L.B. 605, to penalties for Class IV felony convictions under section 29-2204.02. State v. Benavides, 294 Neb. 902, 884 N.W.2d 923 (2016).

A person convicted of a felony for which a mandatory minimum sentence is prescribed is not eligible for probation. State v. Russell, 291 Neb. 33, 863 N.W.2d 813 (2015).

For purposes of the authorized limits of an indeterminate sentence, both "mandatory minimum" as used in section 28-319.01(2) and "minimum" as used in this section in regard to a Class IB felony mean the lowest authorized minimum term of the indeterminate sentence. State v. Russell, 291 Neb. 33, 863 N.W.2d 813 (2015).

To sustain a conviction for "use" of a weapon under this section, the State must show that a defendant actively employed the weapon for the purpose of committing a felony. State v. Riley, 31 Neb. App. 292, 979 N.W.2d 538 (2022).

A defendant's sentence on a Class IIIA felony needed to be an indeterminate sentence pursuant to subsection (4)

of section 29-2204.02, because the defendant was also sentenced on Class II felonies. State v. Wells, 28 Neb. App. 118, 940 N.W.2d 847 (2020).

Under subsection (2) of this section, sentences of less than 1 year shall be served in the county jail, whereas sentences of 1 year or more for Class IIIA felonies shall be served in institutions under the jurisdiction of the Department of Correctional Services. State v. Minnick, 22 Neb. App. 907, 865 N.W.2d 117 (2015).

28-105.01.

The phrase "nothwithstanding any other provision of law" in this section neither impacts nor overrides the procedural and time limitations applicable to postconviction motions under the Nebraska Postconviction Act. State v. Lotter, 311 Neb. 878, 976 N.W.2d 721 (2022).

28-105.02.

A sentence of 70 years' to life imprisonment was not excessive or a de facto life sentence for an offender who, at age 14, murdered his younger sister. State v. Thieszen, 300 Neb. 112, 912 N.W.2d 696 (2018).

A sentence of 110 to 126 years' imprisonment for a murder committed at age 17 was not excessive or a de facto life sentence; the court considered the relevant sentencing factors along with the offender's youth and attendant characteristics and the fact that the offender would be eligible for parole at age 72. State v. Russell, 299 Neb. 483, 908 N.W.2d 669 (2018).

The defendant's resentencing of 60 to 80 years' imprisonment with credit for time served for murder committed as a juvenile offender did not violate Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), where the defendant was not sentenced to life imprisonment without parole and instead had the opportunity for parole in just under 14 years, a full mitigation hearing was held before his sentencing at which both the State and the defendant were given an opportunity to present evidence, and the court stated that it had to consider the fact that a jury convicted the defendant of murder in the first degree but also had to consider the mitigating factors under this section, as well as a psychological evaluation. State v. Jackson, 297 Neb. 22, 899 N.W.2d 215 (2017).

28-106.

A determinate sentence, as used in subsection (2) of this section, is imposed when the defendant is sentenced to a single term of years. State v. Vanness, 300 Neb. 159, 912 N.W.2d 736 (2018).

A defendant's sentences on various misdemeanors needed to be indeterminate sentences pursuant to subsection (5) of section 29-2204.02, because the defendant was also sentenced on Class II felonies. State v. Wells, 28 Neb. App. 118, 940 N.W.2d 847 (2020).

28-109.

Under this section, "serious bodily injury" means bodily injury which involves a (1) substantial risk of death, (2) substantial risk of serious permanent disfigurement, or (3) protracted loss or impairment of the function of any part or organ of the body. State v. Williams, 306 Neb. 261, 945 N.W.2d 124 (2020).

The record supported that a shoulder injury was a serious bodily injury where the victim had to be anesthetized twice in emergency room before the dislocated shoulder could be put back into place, was administered pain medication, required physical therapy and subsequent shoulder surgery, was placed on light-duty work after the injury, and was not yet fully healed at the time of testimony. State v. Kearns, 29 Neb. App. 648, 956 N.W.2d 739 (2021).

28-111.

The phrase "because of" requires the State to prove some causal connection between the victim's association with a person of a certain sexual orientation and the criminal act. State v. Duncan, 293 Neb. 359, 878 N.W.2d 363 (2016).

28-116.

The nonretroactive provision of section 28-105(7) applies to the changes made by 2015 Neb. Laws, L.B. 605, to penalties for Class IV felony convictions under section 29-2204.02. State v. Benavides, 294 Neb. 902, 884 N.W.2d 923 (2016).

28-201.

First degree assault and attempted voluntary manslaughter are two distinct offenses. First degree assault requires serious bodily injury to occur, and attempted voluntary manslaughter does not require any injury to occur. State v. Smith, 294 Neb. 311, 883 N.W.2d 299 (2016).

An intentional killing can be manslaughter, if it results from a sudden quarrel. Thus, attempted sudden quarrel manslaughter can be considered a crime. State v. Smith, 19 Neb. App. 708, 811 N.W.2d 720 (2012).

28-202.

Pursuant to subsection (1) of this section, a conviction requires only that an agreement for the commission of a criminal act was entered into and an overt act in furtherance of the conspiracy was committed. State v. Theisen, 306 Neb. 591, 946 N.W.2d 677 (2020).

28-205.

There is no requirement that the underlying felony referred to in this section be committed in Nebraska. State v. Schiesser, 24 Neb. App. 407, 888 N.W.2d 736 (2016).

28-303.

A question of premeditation is for the jury to decide. State v. Cotton, 299 Neb. 650, 910 N.W.2d 102 (2018).

Under subdivision (1) of this section, the three elements which the State must prove beyond a reasonable doubt to obtain a conviction for first degree murder are as follows: The defendant (1) killed another person, (2) did so purposely, and (3) did so with deliberate and premeditated malice. State v. Cotton, 299 Neb. 650, 910 N.W.2d 102 (2018).

28-305.

First degree assault and attempted voluntary manslaughter are two distinct offenses. First degree assault requires serious bodily injury to occur, and attempted voluntary manslaughter does not require any injury to occur. State v. Smith, 294 Neb. 311, 883 N.W.2d 299 (2016).

Because this section is a codification of the common-law crime of involuntary manslaughter, the State must show all elements of that common-law crime to convict under that section, unless the Legislature expressly dispensed with any such element. Because the Legislature did not specifically exclude mens rea from the language of the offense, the State must show mens rea to sustain a conviction. State v. Carman, 292 Neb. 207, 872 N.W.2d 559 (2015).

The State has prosecutorial discretion to charge a person for either manslaughter or motor vehicle homicide as the result of an unintentional death arising from an unlawful act during the operation of a motor vehicle where the defendant's conduct constitutes both offenses; but if the State chooses to pursue charges for manslaughter, it must show mens rea. State v. Carman, 292 Neb. 207, 872 N.W.2d 559 (2015).

To convict a defendant of "unlawful act" manslaughter or "involuntary" manslaughter, the State must show that the defendant acted with more than ordinary negligence in committing the predicate unlawful act. State v. Carman, 292 Neb. 207, 872 N.W.2d 559 (2015).

Traffic infractions are public welfare offenses which do not require a showing of mens rea and, therefore, are insufficient by themselves to support a conviction for "unlawful act" manslaughter or "involuntary" manslaughter. State v. Carman, 292 Neb. 207, 872 N.W.2d 559 (2015).

An intentional killing can be manslaughter, if it results from a sudden quarrel. Thus, attempted sudden quarrel manslaughter can be considered a crime. State v. Smith, 19 Neb. App. 708, 811 N.W.2d 720 (2012).

28-306.

Just as in the context of habitual criminal and driving under the influence sentence enhancements, evidence of a prior conviction must be introduced in order to enhance a sentence for motor vehicle homicide. State v. Valdez, 305 Neb. 441, 940 N.W.2d 840 (2020).

28-308.

First degree assault and attempted voluntary manslaughter are two distinct offenses. First degree assault requires serious bodily injury to occur, and attempted voluntary manslaughter does not require any injury to occur. State v. Smith, 294 Neb. 311, 883 N.W.2d 299 (2016).

Malice is not an element of first degree assault, and, as such, "sudden quarrel" would not be applicable to negate it. State v. Smith, 294 Neb. 311, 883 N.W.2d 299 (2016).

There is no double jeopardy violation where a defendant is charged and convicted of first degree assault under this section and second degree assault under section 28-309(1)(a). State v. Ballew, 291 Neb. 577, 867 N.W.2d 571 (2015).

28-309.

There is no double jeopardy violation where a defendant is charged and convicted of first degree assault under section 28-308 and second degree assault under subdivision (1)(a) of this section. State v. Ballew, 291 Neb. 577, 867 N.W.2d 571 (2015).

28-310.

Subdivision (1)(b) of this section is violated when a person acts in such a manner as to intentionally cause a reasonable person in the position of the one threatened to feel apprehension of being bodily harmed. State v. Grant, 310 Neb. 700, 968 N.W.2d 837 (2022).

28-311.

For the purposes of this section, "undertaking the activity" refers to the act or acts that formed the liability under subsection (1). State v. Kipple, 310 Neb. 654, 968 N.W.2d 613 (2022).

The defendant bears the burden of showing that he or she had the express or implied permission of the parent, guardian, or other legal custodian of the child in undertaking the activity. State v. Kipple, 310 Neb. 654, 968 N.W.2d 613 (2022).

28-311.01.

Because this section requires that the threat be communicated to another, a recipient is an essential element of the crime of terroristic threats. State v. Godek, 312 Neb. 1004, 981 N.W.2d 810 (2022).

The word "another," as used in this section, refers to the person hearing or receiving the threat. State v. Godek, 312 Neb. 1004, 981 N.W.2d 810 (2022).

The word "threaten," as used in this section, requires communication of a threat to a listener or recipient. State v. Godek, 312 Neb. 1004, 981 N.W.2d 810 (2022).

Whether or not based on "words only," this section does not require that the threatened crime of violence be imminent. State v. Bryant, 311 Neb. 206, 971 N.W.2d 146 (2022).

Whether words constitute a threat depends on the context of the interaction between the people involved and is not to be determined solely based upon the literal meaning of the words standing alone. State v. Bryant, 311 Neb. 206, 971 N.W.2d 146 (2022).

28-311.02.

Subsection (2)(a) of this section encompasses conduct which "seriously . . . threatens"; it is not limited to threats of physical violence. Diedra T. v. Justina R., 313 Neb. 417, 984 N.W.2d 312 (2023).

Threats of nonphysical harm, such as "outing" a person as "queer" to the person's employer, can constitute threats for purposes of subsection (2)(a) of this section. Diedra T. v. Justina R., 313 Neb. 417, 984 N.W.2d 312 (2023).

Evidence was insufficient to support a finding that an alleged harasser's behavior fit the statutory definition of a harassing "course of conduct" as defined by subdivision (2)(b) of this section, where the incident between the alleged harasser and the alleged victims occurred within a span of 10 to 20 minutes on one particular day, and there was no evidence of harassment prior to or after the incident. Knopik v. Hahn, 25 Neb. App. 157, 902 N.W.2d 716 (2017).

Nebraska's stalking and harassment statutes are given an objective construction, and the victim's experience resulting from the perpetrator's conduct should be assessed on an objective basis. Glantz v. Daniel, 21 Neb. App. 89, 837 N.W.2d 563 (2013).

28-311.09.

"[A]ppear," as it is found in subdivision (8)(b) of this section, is not narrowly confined to require the presence of a respondent in person. Rather, it is the same as any other "appearance" in court. Weatherly v. Cochran, 301 Neb. 426, 918 N.W.2d 868 (2018).

Under this section, a respondent is entitled to appear by and through his or her counsel. Weatherly v. Cochran, 301 Neb. 426, 918 N.W.2d 868 (2018).

This section was amended operative January 1, 2020, and now provides that the petition and affidavit shall be deemed to have been offered into evidence at any show cause hearing, and the petition and affidavit shall be admitted into evidence unless specifically excluded by the court; this was a substantive amendment and therefore was not applicable to the pending case. Prentice v. Steede, 28 Neb. App. 423, 944 N.W.2d 323 (2020).

When a trial court determines an ex parte temporary harassment protection order is not warranted, an evidentiary hearing is not mandated under the harassment protection order statute as it is under the domestic abuse protection order statute. In harassment protection order proceedings, a trial court has the discretion to direct a respondent to show cause why an order should not be entered or, alternatively, the court can dismiss the petition if insufficient grounds have been stated in the petition and affidavit. Rosberg v. Rosberg, 25 Neb. App. 856, 916 N.W.2d 62 (2018).

The court erred in finding sufficient evidence to support issuance of harassment protection orders because the alleged harasser had not engaged in the type of stalking offense for which this section provides relief, where the incident between the alleged harasser and the alleged victims occurred within a span of 10 to 20 minutes on one particular day, and there was no evidence of harassment prior to or after the incident. Knopik v. Hahn, 25 Neb. App. 157, 902 N.W.2d 716 (2017).

The 5-day time requirement specified in this section for requesting a hearing is not essential to accomplishing the main objective of Nebraska's stalking and harassment statutes. Glantz v. Daniel, 21 Neb. App. 89, 837 N.W.2d 563 (2013).

The requirement in this section to request a hearing within 5 days of service of the ex parte order is directory rather than mandatory. Glantz v. Daniel, 21 Neb. App. 89, 837 N.W.2d 563 (2013).

28-311.11.

The protective remedy in this section acknowledges that a sexual assault survivor may be harmed when subjected to communication and continued contact with the assailant. Amanda F. v. Daniel K., 313 Neb. 573, 984 N.W.2d 909 (2023).

If a court is considering an alternate form of protection order than was requested by the petitioner, pursuant to subsection (8) of this section, the court must ensure that the respondent has been notified of the ultimate theory selected and that the respondent has had a fair opportunity to address that theory. Yerania O. v. Juan P., 310 Neb. 749, 969 N.W.2d 121 (2022).

To satisfy the requirement of specific findings under subsection (8) of this section, the court must set forth the reasoning for its order, explaining why its conclusion is appropriate, rather than simply quoting the statutory language. Yerania O. v. Juan P., 310 Neb. 749, 969 N.W.2d 121 (2022).

A party seeking a sexual assault protection order must prove a sexual assault offense by a preponderance of the evidence. S.B. v. Pfeifler, 26 Neb. App. 448, 920 N.W.2d 851 (2018).

28-313.

The victim's ability to effectuate an escape despite being bound and gagged does not equate with a voluntary release under subsection (3) of this section. State v. Betancourt-Garcia, 295 Neb. 170, 887 N.W.2d 296 (2016).

28-318.

A conviction for first degree sexual assault through the use of deception was supported by evidence that the victim, a young aspiring Olympian who trained at the defendant's gym, was told by the defendant that he needed to sexually penetrate her with his fingers to "adjust" her pelvis, that the defendant was 35 years older than the victim, that the defendant used deception for years to obtain the victim's consent and escalate the nature of the sexual penetration, and that the defendant told the victim that the penetration was necessary for "recovery" when she protested. State v. Anders, 311 Neb. 958, 977 N.W.2d 234 (2022).

The word "deception" means words or conduct, or both words and conduct, causing the victim to believe what is false. State v. Anders, 311 Neb. 958, 977 N.W.2d 234 (2022).

Pursuant to subdivision (6) of this section, fellatio is defined as the oral stimulation of the penis for the purpose of sexual satisfaction. State v. Garcia, 311 Neb. 648, 974 N.W.2d 305 (2022).

Pursuant to subdivision (6) of this section, fellatio meets the definition of penetration regardless of whether the victim is forced to fellate the defendant or the defendant fellates the victim. State v. Garcia, 311 Neb. 648, 974 N.W.2d 305 (2022).

"[C]oercion," under subdivision (8)(a)(i) of this section, includes nonphysical force. State v. McCurdy, 301 Neb. 343, 918 N.W.2d 292 (2018).

The slightest intrusion into the genital opening is sufficient to constitute penetration under subsection (6) of this section, and such element may be proved by either direct or circumstantial evidence. State v. Garcia-Contreras, 31 Neb. App. 657, 987 N.W.2d 641 (2023).

Under subdivision (8)(a)(iv) of this section, consent to sexual penetration that was the result of the actor's deception as to the identity of the actor qualifies as being without consent. State v. Prado, 30 Neb. App. 223, 967 N.W.2d 696 (2021).

Sufficient evidence existed to establish sexual contact when the defendant touched the buttocks of a 12-year-old girl over her clothing on multiple occasions, coupled with the defendant's position of authority over the victim, his knowledge of her "tough" upbringing, and his watching pornography immediately after touching the victim on one occasion. State v. Cheloha, 25 Neb. App. 403, 907 N.W.2d 317 (2018).

Under subdivision (5) of this section, sexual contact means the intentional touching of the victim's sexual or intimate parts or the intentional touching of the victim's clothing covering the immediate area of the victim's sexual or intimate parts, and it includes only such conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification of either party. State v. Cheloha, 25 Neb. App. 403, 907 N.W.2d 317 (2018).

28-319.

A conviction for first degree sexual assault through the use of deception was supported by evidence that the victim, a young aspiring Olympian who trained at the defendant's gym, was told by the defendant that he needed to sexually penetrate her with his fingers to "adjust" her pelvis, that the defendant was 35 years older than the victim, that the defendant used deception for years to obtain the victim's consent and escalate the nature of the sexual penetration, and that the defendant told the victim that the penetration was necessary for "recovery" when she protested. State v. Anders, 311 Neb. 958, 977 N.W.2d 234 (2022).

A defendant who fellates a victim without consent is guilty of first degree sexual assault. State v. Garcia, 311 Neb. 648, 974 N.W.2d 305 (2022).

Evidence was sufficient to support a conviction for first degree sexual assault where the victim testified she did not consent to having sex with anyone on the night of her party, an attendee at the party testified that the defendant said he had sex with the victim, and there was abundant testimony about the victim's intoxication. State v. Guzman, 305 Neb. 376, 940 N.W.2d 552 (2020).

Subdivision (1)(b) of this section applies to a wide array of situations that affect a victim's capacity, including age. State v. Dady, 304 Neb. 649, 936 N.W.2d 486 (2019).

The definition of "mentally incapable" could have been excluded from the court's instructions, as the language of subdivision (1)(b) of this section is sufficiently clear that a definitional instruction would not normally be necessary. State v. Dady, 304 Neb. 649, 936 N.W.2d 486 (2019).

The evidence was sufficient to support a finding that a 10-year-old victim was incapable of appraising the nature of sexual conduct where the expert testimony provided an explanation of the brain capacities and reasoning abilities of a normal 10-year-old child and opined that the victim appeared to be a normally developed 10-year-old child.

State v. Dady, 304 Neb. 649, 936 N.W.2d 486 (2019).

The trial court's ambiguous instruction was harmless error because the potential ambiguity did not in fact mislead the jury, because the instructions taken as a whole, combined with the evidence and arguments presented at trial, clarified the ambiguity of "because of the victim's age" such that the jury understood "age" in this context to be a subjective review of the victim's developmental age. State v. Dady, 304 Neb. 649, 936 N.W.2d 486 (2019).

Under subdivision (1)(b) of this section, whether the victim was incapable of consent depends upon a specific inquiry into the victim's capacity, i.e., whether the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct. State v. Dady, 304 Neb. 649, 936 N.W.2d 486 (2019).

Using the phrase "because of the victim's age" to preface the term "mentally incapable" is ambiguous as to whether age can be the sole basis for a finding that the victim was mentally incapable, without an individualized assessment of the victim's maturity. State v. Dady, 304 Neb. 649, 936 N.W.2d 486 (2019).

The victim's lack of consent is not an element of the crime of sexual assault when the victim is incapable of resisting or appraising the nature of his or her conduct. In re Interest of K.M., 299 Neb. 636, 910 N.W.2d 82 (2018).

To prove a lack-of-capacity sexual assault on the basis of a mental impairment, the State must prove beyond a reasonable doubt that the victim's impairment was so severe that he or she was mentally incapable of resisting or mentally incapable of appraising the nature of the sexual conduct with the alleged perpetrator. In re Interest of K.M., 299 Neb. 636, 910 N.W.2d 82 (2018).

Consent is not relevant and the State need not prove lack of consent for a charge under subdivision (1)(c) of this section. State v. Cramer, 28 Neb. App. 469, 945 N.W.2d 222 (2020).

28-319.01.

The age classifications of the victim in subdivision (1)(a) of this section are rationally related to plausible policy reasons considered by lawmakers, including the concern of protecting young people. The relationship of the classifications to legislative goals was not so attenuated as to render the distinction arbitrary or irrational, and it does not violate the Equal Protection Clause of the 14th Amendment of the Constitution of the United States or Article I, sec. 3, of the Nebraska Constitution. State v. Hibler, 302 Neb. 325, 923 N.W.2d 398 (2019).

For purposes of the authorized limits of an indeterminate sentence, both "mandatory minimum" as used in subsection (2) of this section and "minimum" as used in section 28-105 in regard to a Class IB felony mean the lowest authorized minimum term of the indeterminate sentence. State v. Russell, 291 Neb. 33, 863 N.W.2d 813 (2015).

The mandatory minimum sentence required by subsection (2) of this section affects both probation and parole: Probation is not authorized, and the offender will not receive any good time credit until the full amount of the mandatory minimum term of imprisonment has been served. State v. Russell, 291 Neb. 33, 863 N.W.2d 813 (2015).

The range of penalties for sexual assault of a child in the first degree, first offense, under subsection (2) of this section, is 15 years' to life imprisonment. State v. Russell, 291 Neb. 33, 863 N.W.2d 813 (2015).

28-320.

Pursuant to subsection (1) of this section, common sense alone establishes that a child of 5 or 6 years of age is incapable of understanding the nature of sexual conduct as a matter of law. In re Interest of Gunner B., 312 Neb. 697, 980 N.W.2d 863 (2022).

28-320.01.

The exact date of the commission of an offense is not a substantive element of first, second, or third degree sexual assault of a child. State v. Samayoa, 292 Neb. 334, 873 N.W.2d 449 (2015).

28-322.04.

Under this section, the word "subject" means to cause to undergo the action of something specified. State v. Wood, 296 Neb. 738, 895 N.W.2d 701 (2017).

28-323.

Multiple counts of third degree domestic assault under this section are not the "same offense" for double jeopardy purposes if a break occurred between the alleged assaults that allowed the defendant to form anew the required criminal intent. State v. Kleckner, 291 Neb. 539, 867 N.W.2d 273 (2015).

The defendant, who was charged with third degree domestic assault, testified that his girlfriend pushed him against a door and prevented him from leaving the residence. He then pushed the girlfriend off of him, causing her to fall and suffer an injury. The defendant was entitled to self-defense instruction, and any conflicting evidence was for the jury to decide. State v. Bedford, 31 Neb. App. 339, 980 N.W.2d 451 (2022).

28-324.

To find the element of taking "by putting in fear" under this section, the finder of fact must determine from the context established by the evidence whether the defendant's conduct would have placed a reasonable person in fear. State v. Garcia, 302 Neb. 406, 923 N.W.2d 725 (2019).

Evidence of a principal's intent to steal drugs from an undercover officer who had just purchased them from him was sufficient to support the defendant's conviction for aiding and abetting robbery; the principal told the officer to give him the drugs back, the officer refused at first and tried to leave, the principal took the money out of his pocket and insisted that the officer take his money back and give the drugs to the principal, the officer ultimately gave the drugs to the principal and took his money back, the officer felt threatened during the incident and felt that he had no choice but to give the drugs to the principal, and the principal had no right to the drugs after the transaction was complete. State v. Burbach, 20 Neb. App. 157, 821 N.W.2d 215 (2012).

For purposes of the robbery statute, "stealing" has commonly been described as taking without right or leave with intent to keep wrongfully; the focus of the statute is on the intent to deprive the owner of his or her property permanently, to keep it from him or her. State v. Burbach, 20 Neb. App. 157, 821 N.W.2d 215 (2012).

28-353.

This section does not limit family caregiver status to an order of court or express or implied contract. This section also includes reference to any person who has assumed responsibility for the care of a vulnerable adult voluntarily. State v. Boyd, 28 Neb. App. 874, 949 N.W.2d 540 (2020).

28-358.

The statutory definition of exploitation does not require proof of a financial crime. State v. Vanderford, 312 Neb. 580, 980 N.W.2d 397 (2022).

28-386.

The term "neglected" as used in subdivision (1)(f) of this section includes an act or omission. State v. Boyd, 28 Neb. App. 874, 949 N.W.2d 540 (2020).

28-416.

For purposes of subsection (1) of this section, circumstantial evidence that a defendant received controlled substances in amounts larger than are typically associated with personal use can be sufficient to support a finding of intent to distribute. State v. Worthman, 311 Neb. 284, 971 N.W.2d 785 (2022).

28-431.

The State's burden of proof under this section is to show by clear and convincing evidence that such property was used in violation of the act. State v. $18,000, 311 Neb. 621, 974 N.W.2d 290 (2022).

28-518.

Subsection (8) of this section requires the State to prove and the jury to find only that the property at issue had some value in order to convict the defendant of a theft offense. In addition, in order for any theft conviction to be graded above a Class II misdemeanor, the State has to prove and the jury has to find that the property at issue had a value falling within the ranges of value set forth for the various grades of theft in this section. State v. Fernandez, 313 Neb. 745, 986 N.W.2d 53 (2023).

When items are stolen simultaneously from the same location, only one theft has occurred and the value of the

items should be aggregated to determine the grade of the offense. State v. Sierra, 305 Neb. 249, 939 N.W.2d 808 (2020).

Where a jury found that the defendant unlawfully took multiple items, the jury's finding that the defendant did not take the items "pursuant to one scheme or course of conduct" did not require that the defendant be found not guilty. State v. Duncan, 294 Neb. 162, 882 N.W.2d 650 (2016).

Whether the theft of multiple items was "taken pursuant to one scheme or course of conduct" is not an essential element of a theft offense; instead, whether the items were "taken pursuant to one scheme or course of conduct" is relevant to the determination of whether the value of the items taken could be aggregated for purposes of grading the offense. State v. Duncan, 294 Neb. 162, 882 N.W.2d 650 (2016).

The defendant's prior two convictions for theft by shoplifting could be used to enhance his third conviction for theft by shoplifting, although the prior two convictions occurred before subsection (4) of this section was amended by 2015 Neb. Laws, L.B. 605, to increase the maximum value of the thing involved, since the defendant's third conviction would have been classified under subsection (4) under either the old or the new version of this subsection. State v. Sack, 24 Neb. App. 721, 897 N.W.2d 317 (2017).

28-520.

The plain language of "knowing" in subdivision (1)(a) of this section, in the context of entering any building or occupied structure "knowing that he or she is not licensed or privileged to do so," imposes a subjective standard focused on the accused's actual knowledge. State v. Stanko, 304 Neb. 675, 936 N.W.2d 353 (2019).

28-522.

A person entering premises open to the public has not "complied with all lawful conditions imposed on access to or remaining in the premises" pursuant to subdivision (2) of this section if he or she has been lawfully barred from the premises and the business has not reinstated its implied consent to entry. State v. Stanko, 304 Neb. 675, 936 N.W.2d 353 (2019).

28-636.

"Person" in the context of the term "[p]ersonal identification document" for purposes of this section means a real person and not a fictitious person. State v. Covey, 290 Neb. 257, 859 N.W.2d 558 (2015).

28-638.

"Person" in the context of the term "personal identifying information" for purposes of this section means a real person and not a fictitious person. State v. Covey, 290 Neb. 257, 859 N.W.2d 558 (2015).

28-701.

A bigamy prosecution can be based on a voidable marriage. State v. Johnson, 310 Neb. 527, 967 N.W.2d 242 (2021).

28-706.

To prove that a defendant has failed, refused, or neglected to provide proper support under this section, the State is not required to prove that a defendant has an ability to pay; however, a defendant may present evidence of inability to pay in order to disprove intent. State v. Erpelding, 292 Neb. 351, 874 N.W.2d 265 (2015).

28-707.

Negligent child abuse resulting in death is a lesser-included offense of intentional child abuse resulting in death. State v. Gonzalez, 313 Neb. 520, 985 N.W.2d 22 (2023).

The subsection of this section criminalizing child abuse that results in the death of such child is not unconstitutionally vague. State v. Matteson, 313 Neb. 435, 985 N.W.2d 1 (2023).

To prove that child abuse results in the death of such child, the State must prove that the defendant proximately caused the child's death. State v. Matteson, 313 Neb. 435, 985 N.W.2d 1 (2023).

To convict a defendant of knowing and intentional child abuse resulting in death, the State must prove the defendant knowingly and intentionally caused or permitted the child to be abused in one or more of the ways defined in subsection (1) of this section, and also must prove the offense resulted in the child's death. It is not necessary to prove the defendant intended the abuse to result in the child's death. State v. Montoya, 304 Neb. 96, 933 N.W.2d 558 (2019).

Criminal endangerment in subsection (1) of this section, providing that a "person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be . . . [p]laced in a situation that endangers his or her life or physical or mental health," encompasses not only conduct directed at the child, but also conduct that presents the likelihood of injury due to the child's having been placed in a situation caused by the defendant's conduct. State v. Ferguson, 301 Neb. 697, 919 N.W.2d 863 (2018).

Criminal endangerment in subsection (1)(a) of this section encompasses not only conduct directed at the child but also conduct which presents the likelihood of injury due to the child's having been placed in a situation caused by the defendant's conduct. State v. Mendez-Osorio, 297 Neb. 520, 900 N.W.2d 776 (2017).

The State is not required to prove a minor child was in the exclusive care or custody of the defendant when the child abuse occurred. State v. Olbricht, 294 Neb. 974, 885 N.W.2d 699 (2016).

This section only requires proof of the status of the victim as a minor child; it does not require proof of the victim's actual identity or birth date. State v. Thomas, 25 Neb. App. 256, 904 N.W.2d 295 (2017).

Under subsection (2) of this section, the statutory privilege between patient and professional counselor is not available in a prosecution for child abuse. State v. McMillion, 23 Neb. App. 687, 875 N.W.2d 877 (2016).

28-716.

The immunity provision set forth in this section which relates to mandatory reporting of suspected child abuse or neglect does not prohibit the juvenile court from acquiring jurisdiction of juveniles determined to be within the meaning of section 43-247(3)(a), even when such reporting is made by the parent of the subject juvenile(s). In re Interest of B.B. et al., 29 Neb. App. 1, 951 N.W.2d 526 (2020).

28-813.01.

A person knowingly possesses child pornography in violation of this section when he or she knows of the nature or character of the material and of its presence and has dominion or control over it. State v. Mucia, 292 Neb. 1, 871 N.W.2d 221 (2015).

28-831.

A defendant's knowledge of the victim's age is not an essential element of the offense of sex trafficking of a minor. State v. Swindle, 300 Neb. 734, 915 N.W.2d 795 (2018).

28-833.

Where a prosecution involves a minor child rather than a decoy, a defendant's knowledge that the recipient is under age 16 is an element of the crime of enticement by electronic communication device. State v. Paez, 302 Neb. 676, 925 N.W.2d 75 (2019).

28-901.

A police chief's failure to forward, in accordance with section 29-424, to the county attorney a citation charging a city employee with a crime in order to prevent the city employee's employment from being terminated was obstructing government operations as set forth in subsection (1) of this section. The police chief obstructed or impaired a governmental function by failing to forward the citation to the county attorney, as required by section 29-424, because the action of failing to forward the citation impaired the county attorney's performance of its prosecutorial functions. The police chief did not have discretion to remove the citation of the city employee from the packet of citations to be sent to the county attorney such to conclude that he did not breach section 29-424. State v. Wilkinson, 293 Neb. 876, 881 N.W.2d 850 (2016).

28-904.

Because neither "substantial" nor "substantial force" were defined in either this section or section 28-109, and definitions of such were also absent in the relevant Nebraska case law, the district court's jury instruction, which

gave a partial and incomplete dictionary definition, misstated the issue and had a tendency to confuse the jury. The jury reached a guilty verdict 10 minutes after receiving the erroneous supplemental instruction, and thus, the verdict rendered was not surely unattributable to the error and not harmless; the conviction was reversed and the cause remanded for a new trial. State v. Gaudreault, 30 Neb. App. 501, 969 N.W.2d 695 (2022).

28-905.

This section does not require that the jury have a separate instruction for an attempt to arrest or issue a citation. This element is inherent in the criminal offense as provided in this section. State v. Armagost, 291 Neb. 117, 864 N.W.2d 417 (2015).

An attempt to arrest or cite the defendant is an essential element of the offense of fleeing in a motor vehicle to avoid arrest. State v. Armagost, 22 Neb. App. 513, 856 N.W.2d 156 (2014).

28-906.

The serving of a protection order by a peace officer falls within "preservation of the peace." In re Interest of Elijahking F., 313 Neb. 60, 982 N.W.2d 516 (2022).

"Interference" means the action or fact of interfering or intermeddling (with a person, et cetera, or in some action). State v. Ferrin, 305 Neb. 762, 942 N.W.2d 404 (2020).

It is not necessary under this section for a defendant to engage in some sort of physical act. State v. Ferrin, 305 Neb. 762, 942 N.W.2d 404 (2020).

"Obstacle" means something that stands in the way or that obstructs progress (literal and figurative); a hindrance, impediment, or obstruction. State v. Ferrin, 305 Neb. 762, 942 N.W.2d 404 (2020).

To show a violation of this section, the State must prove that (1) the defendant intentionally obstructed, impaired, or hindered either a peace officer, a judge, or a police animal assisting a peace officer; (2) at the time the defendant did so, the peace officer or judge was acting under color of his or her official authority to enforce the penal law or preserve the peace; and (3) the defendant did so by using or threatening to use either violence, force, physical interference, or obstacle. State v. Ferrin, 305 Neb. 762, 942 N.W.2d 404 (2020).

28-907.

The defendant's allegedly false statements to the 911 emergency dispatch service concerning crimes being committed at a certain address were made to a peace officer for purposes of the criminal statute prohibiting false reporting of a criminal matter; although the 911 emergency dispatch service was not a branch of law enforcement, it acted as an intermediary used by the general public to reach peace officers, and statements made to the emergency dispatch service were made with the intent to summon a law enforcement officer to that address. State v. Halligan, 20 Neb. App. 87, 818 N.W.2d 650 (2012).

28-919.

A defendant's reasons for attempting to induce a witness to commit any of the acts enumerated in this section are not relevant. State v. Benson, 305 Neb. 949, 943 N.W.2d 426 (2020).

Evidence was sufficient to support a conviction for tampering with a witness, where after the victim reported that she was sexually assaulted, the defendant relayed a message asking the victim to drop the charges; by doing so, the defendant essentially asked the victim to inform falsely or to withhold information. State v. Guzman, 305 Neb. 376, 940 N.W.2d 552 (2020).

28-924.

A sheriff who failed to receive a prisoner lawfully committed to jail for purposes of section 23-1703 was guilty of official misconduct. State v. Dailey, 314 Neb. 325, 990 N.W.2d 523 (2023).

28-930.

Pepper spray is a dangerous instrument, as it is an object which, because of its nature and the manner and intention of its use, is capable of inflicting bodily injury. State v. Simmons, 23 Neb. App. 462, 872 N.W.2d 293 (2015).

28-932.

The use of a deadly or dangerous weapon in the commission of an assault by a confined person is an element of the offense which must be submitted to the jury and proved beyond a reasonable doubt, because the use of a weapon increases the offense of assault by a confined person from a Class IIIA felony to a Class IIA felony. State v. Jenkins, 28 Neb. App. 931, 950 N.W.2d 124 (2020).

28-1201.

Given the amendment to section 28-1202 and the amendment to the term "knife" as defined in subsection (5) of this section, any knife with a blade over 3 1/2 inches in length is a deadly weapon per se, and the manner or intended use of such deadly weapon is not an element of the crime charged. State v. Nguyen, 293 Neb. 493, 881 N.W.2d 566 (2016).

28-1202.

A weapon is concealed on or about the person if it is concealed in such proximity to the passenger of a motor vehicle as to be convenient of access and within immediate physical reach. State v. Warlick, 308 Neb. 656, 956 N.W.2d 269 (2021).

Constructive possession does not establish the elements of this section of "carry[ing] a concealed weapon 'on or about his or her person.'" State v. Warlick, 308 Neb. 656, 956 N.W.2d 269 (2021).

Evidence that a machete was "tucked down by the center console" area of a vehicle and that an officer did not see it when he looked in the vehicle was sufficient to support a conviction for carrying a concealed weapon. State v. Lowman, 308 Neb. 482, 954 N.W.2d 905 (2021).

Given the amendment to this section and the amendment to the term "knife" as defined in section 28-1201(5), any knife with a blade over 3 1/2 inches in length is a deadly weapon per se, and the manner or intended use of such deadly weapon is not an element of the crime charged. State v. Nguyen, 293 Neb. 493, 881 N.W.2d 566 (2016).

28-1204.05.

The prohibition on possessing firearms in this section is not punishment imposed for a prior juvenile adjudication. In re Interest of Zoie H., 304 Neb. 868, 937 N.W.2d 801 (2020).

28-1205.

The operability of a firearm is not relevant to whether it is a firearm under subdivision (1)(a) of this section. State v. Betancourt-Garcia, 310 Neb. 440, 967 N.W.2d 111 (2021).

Malice is not an element of first degree assault, and, as such, "sudden quarrel" would not be applicable to negate it. A similar rationale applies to use of a deadly weapon to commit a felony, which does not have malice as an element. State v. Smith, 294 Neb. 311, 883 N.W.2d 299 (2016).

Under subsection (3) of this section, only those crimes defined in this section are treated as distinct offenses from the felony committed, and only the sentences imposed under this section are required to be consecutive to any other sentence imposed. State v. Elliott, 21 Neb. App. 962, 845 N.W.2d 612 (2014).

28-1206.

In the sufficiency of evidence context, the State is not required to prove that a defendant charged with violating this section had or waived counsel at the time of a prior conviction as an essential element of the crime. State v. Vann, 306 Neb. 91, 944 N.W.2d 503 (2020).

To prove that a defendant has a prior felony conviction in a felon in possession case, convictions obtained after *Gideon v. Wainwright*, 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963), are entitled to a presumption of regularity such that records of conviction are admissible, unless the defendant can show that he or she did not have or waive counsel at the time of conviction. State v. Vann, 306 Neb. 91, 944 N.W.2d 503 (2020).

Statute prohibiting felon from possessing a firearm includes purchase and possession of antique firearm. State v. Tharp, 22 Neb. App. 454, 854 N.W.2d 651 (2014).

28-1212.03.

The absence of an intent to restore a firearm to the owner is a material element of possession of a stolen firearm and must be instructed to the jury. State v. Mann, 302 Neb. 804, 925 N.W.2d 324 (2019).

The use of the term "deprive" in a separate definition within the jury instructions does not instruct the jury that the absence of an intent to restore the property was a material element of the crime. State v. Mann, 302 Neb. 804, 925 N.W.2d 324 (2019).

28-1310.

Subdivision (1)(b) of this section, in specifying "telephones such individual," does not place a time limit on when the telephone call is made in relation to a telephone call initiated by the victim and does not require that the conversation be a new one. State v. Bryant, 311 Neb. 206, 971 N.W.2d 146 (2022).

28-1322.

A school security officer or campus supervisor may be a victim of disturbing the peace. In re Interest of Elainna R., 298 Neb. 436, 904 N.W.2d 689 (2017).

28-1407.

A defense under this section, otherwise known as the choice of evils justification, was not available to a defendant who left the scene of an injury accident to allegedly prevent loss to the cattle he was hauling in his semi-truck, where there was no allegation that the defendant intentionally collided with a motorist in an attempt to save the cattle in his trailer, and the defendant's act of leaving the scene was not done with force. State v. Schmaltz, 304 Neb. 74, 933 N.W.2d 435 (2019).

The justification or choice of evils defense statute specifies that conduct which the actor believes to be necessary to avoid a harm or evil to himself or to another is justifiable if the harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged and mandates that a legislative purpose to exclude the justification claimed not otherwise plainly appear. State v. Beal, 21 Neb. App. 939, 846 N.W.2d 282 (2014).

28-1408.

While the violation of department policy may be evidence that the degree or nature of force used was unlawful, section 28-1413 ultimately requires the court to make a determination that the force used was not forbidden by this section or section 28-1409. State v. Jackson, 26 Neb. App. 727, 923 N.W.2d 97 (2019).

28-1409.

The policy underlying this section supports its application in situations where a suspect has resisted a pat-down search, even where that pat-down search is later found to be unconstitutional. State v. Wells, 290 Neb. 186, 859 N.W.2d 316 (2015).

The defendant, who was charged with third degree domestic assault, testified that his girlfriend pushed him against a door and prevented him from leaving the residence. He then pushed the girlfriend off of him, causing her to fall and suffer an injury. The defendant was entitled to self-defense instruction, and any conflicting evidence was for the jury to decide. State v. Bedford, 31 Neb. App. 339, 980 N.W.2d 451 (2022).

While the violation of department policy may be evidence that the degree or nature of force used was unlawful, section 28-1413 ultimately requires the court to make a determination that the force used was not forbidden by section 28-1408 or this section. State v. Jackson, 26 Neb. App. 727, 923 N.W.2d 97 (2019).

When one is attacked within one's dwelling, the right to defend oneself and the privilege of nonretreat should apply equally, regardless of whether the attacker is a cohabitant or an unlawful entrant. State v. White, 20 Neb. App. 116, 819 N.W.2d 473 (2012).

28-1413.

Subdivision (1) of this section codifies the common-law defense against criminal liability for a parent's use of force in, among other circumstances, punishing his or her child's misbehavior. At common law, a parent, or one

standing in the relation of parent, was not liable either civilly or criminally for moderately and reasonably correcting a child, but it was otherwise if the correction was immoderate and unreasonable. State v. Kilgore, 30 Neb. App. 273, 967 N.W.2d 743 (2021).

The question of whether a parent's use of physical force to discipline his or her child was protected under subdivision (1) of this section presents a question of fact for the fact finder. State v. Kilgore, 30 Neb. App. 273, 967 N.W.2d 743 (2021).

While the violation of department policy may be evidence that the degree or nature of force used was unlawful, this section ultimately requires the court to make a determination that the force used was not forbidden by section 28-1408 or section 28-1409. State v. Jackson, 26 Neb. App. 727, 923 N.W.2d 97 (2019).

28-1439.01.

Conviction for possession of a controlled substance with intent to deliver was not based solely on the uncorroborated testimony of a cooperating individual, even though some testimony was elicited from two cooperating individuals, where the State provided evidence of text messages that indicated that the defendant was selling methamphetamine, as well as witness testimony from five other noncooperating individuals who generally corroborated the cooperating individuals' testimony. State v. Savage, 301 Neb. 873, 920 N.W.2d 692 (2018).

28-1463.02.

A defendant can be found guilty of creating or possessing child pornography beyond a reasonable doubt even when the actual depiction at issue is unavailable at trial. State v. Smith, 292 Neb. 434, 873 N.W.2d 169 (2016).

In order to show "erotic nudity," as defined in subsection (3) of this section, the State must prove, first, that the depiction displays a human's genitals or a human's pubic area or female breast area, and second, that the depiction was created for the purpose of real or simulated overt sexual gratification or sexual stimulation. State v. Smith, 292 Neb. 434, 873 N.W.2d 169 (2016).

To determine whether photographs were taken for the purpose of real or simulated overt sexual gratification or sexual stimulation, an appellate court considers the following nonexclusive factors: (1) whether the focal point of the visual depiction is on the child's genitalia or pubic area; (2) whether the setting of the visual depiction is sexually suggestive, i.e., in a place or pose generally associated with sexual activity; (3) whether the child is depicted in an unnatural pose, or in inappropriate attire, considering the age of the child; (4) whether the child is fully or partially clothed, or nude; (5) whether the visual depiction suggests sexual coyness or willingness to engage in sexual activity; and (6) whether the visual depiction is intended or designed to elicit a sexual response in the viewer. State v. Smith, 292 Neb. 434, 873 N.W.2d 169 (2016).

29-119.

Although the victim's parents, and not the victim's sister, were statutorily-defined "victims" under this section, the court did not abuse its discretion in allowing the sister to read her impact statement at sentencing where the parents were elderly, lived out of state, and did not want to participate in the resentencing. State v. Thieszen, 300 Neb. 112, 912 N.W.2d 696 (2018).

29-122.

Voluntary intoxication is not a defense to any criminal offense and shall not be taken into consideration in determining the existence of a mental state that is an element of the criminal offense. State v. Cheloha, 25 Neb. App. 403, 907 N.W.2d 317 (2018).

29-215.

This section is not a venue statute. State v. Warlick, 308 Neb. 656, 956 N.W.2d 269 (2021).

Subsection (2)(d) of this section authorizes law enforcement to make an arrest outside his or her primary jurisdiction pursuant to an interlocal agreement, but there must be evidence that such an agreement exists and that it actually authorizes authority for the arrest. State v. Ohlrich, 20 Neb. App. 67, 817 N.W.2d 797 (2012).

29-411.

Given the facts viewed most favorably to the plaintiff, the defendant officer's statement identifying himself as a sheriff's deputy was insufficient to announce his office and purpose: The officer was dressed in jeans, a sweatshirt,

and a ball cap, did not show his badge, displayed a weapon upon entry into the home, and failed to produce a copy of the warrant before or after his forced entry into the home. Waldron v. Roark, 292 Neb. 889, 874 N.W.2d 850 (2016).

29-424.

A police chief's failure to forward, in accordance with this section, to the county attorney a citation charging a city employee with a crime in order to prevent the city employee's employment from being terminated was obstructing government operations as set forth in section 28-901(1). The police chief obstructed or impaired a governmental function by failing to forward the citation to the county attorney, as required by this section, because the action of failing to forward the citation impaired the county attorney's performance of its prosecutorial functions. The police chief did not have discretion to remove the citation of the city employee from the packet of citations to be sent to the county attorney such to conclude that he did not breach this section. State v. Wilkinson, 293 Neb. 876, 881 N.W.2d 850 (2016).

29-815.

Where there was no clear showing of prejudice, an officer's failure to return a search warrant within the time limit provided by this section was purely a ministerial defect and did not render the warrant invalid. State v. Nolt, 298 Neb. 910, 906 N.W.2d 309 (2018).

Failure to provide a copy of a search warrant was a purely ministerial defect that did not invalidate the warrant absent a clear showing of prejudice. State v. Svendgard, 31 Neb. App. 596, 986 N.W.2d 88 (2023).

29-818.

The denial of a motion for the return of a seized firearm was improper where the State failed to meet its burden to show the firearm was used by the claimant in an unlawful manner as an instrumentality of a crime. State v. Zimmer, 311 Neb. 294, 972 N.W.2d 57 (2022).

This section applies to a motion for the return of seized property where the firearm was seized incident to arrest for discharging a firearm within the city limits, a complaint was later filed charging refusal to obey a lawful order stemming from the incident, and the person pled guilty to this charge. State v. Zimmer, 311 Neb. 294, 972 N.W.2d 57 (2022).

The presumptive right to possession of seized property may be overcome when superior title in another is shown by a preponderance of the evidence. State v. Ebert, 303 Neb. 394, 929 N.W.2d 478 (2019).

The district court, as the court in which the criminal charge was filed, has exclusive jurisdiction to determine the rights to seized property and the property's disposition. State v. McGuire, 301 Neb. 895, 921 N.W.2d 77 (2018).

Postconviction proceedings are the equivalent of a "trial" for purposes of this section. State v. Buttercase, 296 Neb. 304, 893 N.W.2d 430 (2017).

Under this section, the court, where the criminal charge has been filed and where seized property was or may be used as evidence, has exclusive jurisdiction to dispose of the property and to determine rights therein, including questions respecting the title, possession, control, and disposition thereof. State v. Riley, 31 Neb. App. 292, 979 N.W.2d 538 (2022).

A car was property seized for the purpose of enforcing criminal laws in the plaintiff's ongoing criminal case; therefore, the car had been and remained to be in the custody of the court in the criminal case. As such, the district court in the plaintiff's separate criminal case continued to have exclusive jurisdiction to determine the rights to the car and the car's disposition. Huff v. Otto, 28 Neb. App. 646, 947 N.W.2d 343 (2020).

A harmonious reading of this section and section 29-819 is that references to jurisdiction in each are to jurisdiction over seized property, not subject matter jurisdiction. Huff v. Otto, 28 Neb. App. 646, 947 N.W.2d 343 (2020).

This section mandates that the seized property is to be kept so long as necessary to make it available as evidence in "any trial." Postconviction proceedings are the equivalent of a "trial" for purposes of this section. Huff v. Otto, 28 Neb. App. 646, 947 N.W.2d 343 (2020).

Where invoked, the grant of "exclusive jurisdiction" under this section gives a criminal trial court exclusive jurisdiction over only two issues: the disposition of seized property and the determination of rights in seized property. Huff v. Otto, 28 Neb. App. 646, 947 N.W.2d 343 (2020).

29-819.

A harmonious reading of this section and section 29-818 is that references to jurisdiction in each are to jurisdiction over seized property, not subject matter jurisdiction. Huff v. Otto, 28 Neb. App. 646, 947 N.W.2d 343 (2020).

29-820.

Traditional, or per se, contraband is defined as "objects the possession of which, without more, constitutes a crime." A claimant has no right to have per se contraband returned to him or her. Derivative contraband are articles which are not inherently illegal, but are used in an unlawful manner. State v. Zimmer, 311 Neb. 294, 972 N.W.2d 57 (2022).

This section applies only where the exclusive jurisdiction of a court under section 29-818 has not been invoked. State v. McGuire, 301 Neb. 895, 921 N.W.2d 77 (2018).

Under this section, law enforcement is authorized to dispose of certain property seized or held and no longer required as evidence. State v. Riley, 31 Neb. App. 292, 979 N.W.2d 538 (2022).

When reading section 29-818 and this section together, this section applies only where the exclusive jurisdiction of a court under section 29-818 has not been invoked. State v. Riley, 31 Neb. App. 292, 979 N.W.2d 538 (2022).

When criminal proceedings have terminated, the person from whom property was seized is presumed to have a right to its return, and the burden is on the government to show that it has a legitimate reason to retain the property. State v. Dubray, 24 Neb. App. 67, 883 N.W.2d 399 (2016).

29-822.

Absent an exception, a failure to move for the suppression of evidence seized unlawfully waives the objection. State v. Cotton, 299 Neb. 650, 910 N.W.2d 102 (2018).

The intention of this section is that motions to suppress evidence are to be ruled on and finally determined before trial, unless the motion is within the exceptions contained in the statute. State v. Cotton, 299 Neb. 650, 910 N.W.2d 102 (2018).

29-824.

This section provides the State with the specific right of appealing a district court's ruling granting a motion to suppress. State v. Hood, 23 Neb. App. 208, 869 N.W.2d 383 (2015).

29-825.

This section outlines the process for filing with the appellate court an application of review of an order granting a motion to suppress. State v. Hood, 23 Neb. App. 208, 869 N.W.2d 383 (2015).

This section specifically requires the appealing party, not the court reporter, to timely file the relevant documents with the clerk of the appellate court. State v. Hood, 23 Neb. App. 208, 869 N.W.2d 383 (2015).

29-826.

This section gives the district court the authority to establish time limits for the State to file a notice of intent with the clerk of the district court seeking review of an order granting a motion to suppress and to file the application with the appellate court. State v. Hood, 23 Neb. App. 208, 869 N.W.2d 383 (2015).

29-901.

An appearance bond (less any applicable statutory fee) must be refunded to the defendant rather than peremptorily applied to costs where the defendant appeared as ordered and judgment had been entered against him. State v. Zamarron, 19 Neb. App. 349, 806 N.W.2d 128 (2011).

29-908.

When a defendant fails to appear for a preliminary hearing on Thursday, and then is arrested on the following

Monday, the evidence is sufficient to find that the defendant failed to surrender within 3 days of his or her failure to appear. State v. Hassan, 309 Neb. 644, 962 N.W.2d 210 (2021).

29-1201.

Nebraska's speedy trial statutes also apply to prosecutions commenced by the filing of a complaint in county court. State v. Chapman, 307 Neb. 443, 949 N.W.2d 490 (2020).

29-1207.

A continuance by the court's own motion, or judicial delay, does not toll the speedy trial statute absent a showing by the State of good cause under subsection (4)(f) of this section. State v. Williams, 313 Neb. 981, 987 N.W.2d 613 (2023).

Trials have rules, and failures to comply with court rules that impede the business of the court may constitute good cause under subsection (4) of this section. State v. Williams, 313 Neb. 981, 987 N.W.2d 613 (2023).

Under subsection (4) of this section, the State is entitled to rely on evidence offered by the defendant and received by the court to meet its burden of proving excludable time. State v. Williams, 313 Neb. 981, 987 N.W.2d 613 (2023).

There is no general exception to subsection (4)(a) of this section for delays in hearing a defendant's pretrial motions due to continuances granted to the State. State v. Nelson, 313 Neb. 464, 984 N.W.2d 620 (2023).

A continuance refers to the circumstance where a court proceeding set for one date is postponed to a future date; a continuance must be granted at the request or with the consent of the defendant or his or her counsel before the resulting period of delay is excludable. State v. Space, 312 Neb. 456, 980 N.W.2d 1 (2022).

Where the same district court judge found a defendant incompetent to stand trial in a different case on or about the time that the State filed the information against the defendant in the instant case, the State proved by the greater weight of the evidence that the delay due to the competency proceedings and finding of incompetency in the other criminal case against the defendant should be excluded in the instant case under subdivision (4)(a) of this section. State v. Moore, 312 Neb. 263, 978 N.W.2d 327 (2022).

The statutory phrase "including, but not limited to" means the pretrial motions listed under subdivision (4)(a) of this section are provided as examples and are not intended to be an exhaustive list. State v. Webb, 311 Neb. 694, 974 N.W.2d 317 (2022).

Unless there is no appeal, a motion is not finally granted or determined for speedy trial purposes until an appellate court has finally decided the matter. Thus, periods to be excluded under subdivision (4)(a) of this section include the period of time between the denial of a defendant's pretrial motion and the filing of an interlocutory appeal from that motion, if such appeal is filed. State v. Bixby, 311 Neb. 110, 971 N.W.2d 120 (2022).

A defendant's appeal of a final order denying a pretrial motion for absolute discharge on statutory speedy trial grounds did not result in appellate jurisdiction to review a nonfinal order that denied the motion on constitutional speedy trial grounds. State v. Abernathy, 310 Neb. 880, 969 N.W.2d 871 (2022).

A court may find that the risk of exposing trial participants to COVID-19 is good cause to delay a defendant's right to a speedy trial within this section. State v. Gnanaprakasam, 310 Neb. 519, 967 N.W.2d 89 (2021).

A defendant permanently waives his or her statutory speedy trial rights under subdivision (4)(b) of this section when an ultimately unsuccessful motion for discharge results in the continuance of a timely trial to a date outside the statutory 6-month period, as calculated on the date the motion for discharge was filed. State v. Riessland, 310 Neb. 262, 965 N.W.2d 13 (2021).

Evidence of good cause is properly presented at the hearing on the motion for absolute discharge and need not be articulated at the time of the court's sua sponte order delaying trial. State v. Chase, 310 Neb. 160, 964 N.W.2d 254 (2021).

There is no legal principle that requires the good cause shown to be consistent with the court's prior, contemporaneous rationale when sua sponte delaying trial. State v. Chase, 310 Neb. 160, 964 N.W.2d 254 (2021).

When a trial court's sua sponte decision to delay trial implicates statutory speedy trial rights, the exclusion of the period attributable to such delay is governed by a showing on the record of good cause as described by subdivision (4)(f) of this section. State v. Chase, 310 Neb. 160, 964 N.W.2d 254 (2021).

For purposes of speedy trial calculation, there is no meaningful distinction between the phrases "period of time" and "period of delay." State v. Coomes, 309 Neb. 749, 962 N.W.2d 510 (2021).

"Good cause" means a substantial reason, one that affords a legal excuse. Good cause is a factual question to be addressed on a case-by-case basis. State v. Coomes, 309 Neb. 749, 962 N.W.2d 510 (2021).

Pursuant to subdivision (4)(c)(i) of this section, the prosecution established a period of delay under the speedy trial statute, because the prosecutor's affidavit demonstrated the need for a continuance due to the unavailability of material witnesses; the prosecutor's exercise of due diligence in obtaining witnesses; and reasonable grounds to believe such evidence will be available at later date. State v. Billingsley, 309 Neb. 616, 961 N.W.2d 539 (2021).

Pursuant to subdivision (4)(c)(ii) of this section, the prosecution established a period of delay under the speedy trial statute, because the prosecutor's affidavit demonstrated the need for additional time to prepare its case because of exceptional circumstances. State v. Billingsley, 309 Neb. 616, 961 N.W.2d 539 (2021).

An excludable period of time under subdivision (4) (a) of this section did not occur because the court could not reasonably infer that defendant was incarcerated pending further proceedings. State v. Hernandez, 309 Neb. 299, 959 N.W.2d 769 (2021).

An excludable period of time under subdivision (4)(d) of this section did not occur because the State failed to prove it made diligent efforts to serve the bench warrant on the defendant while he was not incarcerated in another state. State v. Hernandez, 309 Neb. 299, 959 N.W.2d 769 (2021).

A pending arrest warrant can result in excludable speedy trial time only if the State proves diligent efforts to serve the warrant have been tried and failed. State v. Jennings, 308 Neb. 835, 957 N.W.2d 143 (2021).

To calculate the time for speedy trial purposes, a court must exclude the day the complaint was filed, count forward 6 months, back up 1 day, and then add any time excluded under subsection (4) of this section to determine the last day the defendant can be tried. State v. Chapman, 307 Neb. 443, 949 N.W.2d 490 (2020).

For speedy trial purposes, the calculation of excludable time for a continuance begins the day after the continuance is granted and includes the day on which the continuance ends. State v. Lovvorn, 303 Neb. 844, 932 N.W.2d 64 (2019).

Although amendments to subdivision (4)(b) of this section providing for waiver of speedy trial rights if delay results from a request for continuance were designed to prevent abuse, it does not follow that the waiver set forth therein applies only if the defendant's continuance was in bad faith; such a case-by-case evaluation of subjective intent would be untenable, and this section does not provide for it. State v. Bridgeford, 298 Neb. 156, 903 N.W.2d 22 (2017).

When ruling on a motion for absolute discharge pursuant to section 29-1208, the trial court shall make specific findings of each period of delay excludable under subdivisions (4)(a) to (e) of this section, in addition to the findings under subdivision (4)(f) of this section. Such findings shall include the date and nature of the proceedings, circumstances, or rulings which initiated and concluded each excludable period; the number of days composing each excludable period; and the number of days remaining in which the defendant may be brought to trial after taking into consideration all excludable periods. State v. Lintz, 298 Neb. 103, 902 N.W.2d 683 (2017).

The reason for the defendant's request for a continuance is irrelevant to whether the defendant has waived the statutory right to a speedy trial by requesting a continuance that results in the trial's being rescheduled to a date more than 6 months after the indictment is returned or information filed. State v. Gill, 297 Neb. 852, 901 N.W.2d 679 (2017).

This section does not impose a unitary speedy trial clock on all joined codefendants. The period of delay is determined by first calculating the defendant's speedy trial time absent the codefendant exclusion and then determining the number of days beyond that date that the joint trial is set to begin. State v. Beitel, 296 Neb. 781, 895 N.W.2d 710 (2017).

A Nebraska prisoner sought relief under two different speedy trial statutes, but only section 29-3805, governing intrastate detainers, applied. State v. Kolbjornsen, 295 Neb. 231, 888 N.W.2d 153 (2016).

When the State is statutorily authorized to take an interlocutory appeal from a district court's order granting a defendant's pretrial motion in a criminal case, then such an appeal is an expected and reasonable consequence of the defendant's motion and the time attributable to the appeal, regardless of the course the appeal takes, is properly excluded from speedy trial computation. State v. Hood, 294 Neb. 747, 884 N.W.2d 696 (2016).

This section requires discharge of a defendant whose case has not been tried within 6 months after the filing of the information. State v. Saylor, 294 Neb. 492, 883 N.W.2d 334 (2016).

After a mistrial has been granted, the filing of a plea in bar tolls the speedy trial clock from the date of the initial filing until final disposition; such tolling would include the time from the district court's decision on the motion through the filing of the mandate on remand if any interlocutory appeal is taken. State v. Ramos, 31 Neb. App. 434, 981 N.W.2d 612 (2022).

For speedy trial purposes, the calculation of excludable time for a continuance begins the day after the continuance is granted and includes the day on which the continuance ends. State v. Jaso, 31 Neb. App. 236, 978 N.W.2d 463 (2022).

To calculate the deadline for trial under this section, a court must exclude the day the State filed the information, count forward six months, back up one day, and then add any time excluded under subsection (4) of this section. State v. Jaso, 31 Neb. App. 236, 978 N.W.2d 463 (2022).

The statutory speedy trial rights of instate prisoners are governed by sections 29-3801 to 29-3809, and the procedure under this section does not apply to instate prisoners. State v. LeFever, 30 Neb. App. 562, 970 N.W.2d 792 (2022).

For cases commenced with a complaint in county court but thereafter bound over to district court, the 6-month statutory speedy trial period does not commence until the filing of the information in district court. State v. Carrera, 25 Neb. App. 650, 911 N.W.2d 849 (2018).

If an information is filed initially in district court, referred to as a "direct information," such filing is treated in the nature of a complaint until a preliminary hearing is held or waived. In the case of a direct information, the day the information is filed for speedy trial act purposes is the day the district court finds probable cause or the day the defendant waives the preliminary hearing. State v. Carrera, 25 Neb. App. 650, 911 N.W.2d 849 (2018).

Pursuant to subdivision (4)(a) of this section, it is presumed that a delay in hearing defense pretrial motions is attributable to the defendant unless the record affirmatively indicates otherwise. A delay due to the appointment of the district court judge to the Nebraska Supreme Court, which caused the case to be reassigned, should be attributable to the defendant's motion to suppress as reasonable delay when there is no evidence of judicial neglect. State v. Carrera, 25 Neb. App. 650, 911 N.W.2d 849 (2018).

The time between the dismissal of an information and its refiling is not includable, or is tolled, for purposes of the statutory 6-month period. However, any nonexcludable time that passed under the original information is tacked onto any nonexcludable time under the refiled information, if the refiled information alleges the same offense charged in the previously dismissed information. State v. Carrera, 25 Neb. App. 650, 911 N.W.2d 849 (2018).

Unlike the requirement in subsection (4)(f) of this section that any delay be for good cause, conspicuously absent from subsection (4)(a) of this section is any limitation, restriction, or qualification of the time which may be charged to the defendant as a result of the defendant's motions. Rather, the plain terms of subsection (4)(a) exclude all time between the time of the filing of the defendant's pretrial motions and their final disposition, regardless of the promptness or reasonableness of the delay. State v. Johnson, 22 Neb. App. 747, 860 N.W.2d 222 (2015).

A defendant's motion to discharge based on statutory speedy trial grounds constitutes a waiver of that right under subsection (4)(b) of this section where (1) the filing of such motion results in the continuance of a timely trial to a date outside the statutory 6-month period, as calculated on the date the motion to discharge was filed, (2) discharge is denied, and (3) that denial is affirmed on appeal. State v. Fioramonti, 22 Neb. App. 52, 847 N.W.2d 95 (2014).

Subsection (1) of this section requires that every person indicted or informed against for any offense shall be brought to trial within 6 months, unless the 6 months are extended by any period to be excluded in computing the time for trial. State v. Fioramonti, 22 Neb. App. 52, 847 N.W.2d 95 (2014).

The phrase "period of delay," as used in subsection (4) of this section, is synonymous with the phrase "period of time." State v. Fioramonti, 22 Neb. App. 52, 847 N.W.2d 95 (2014).

To calculate the deadline for trial under the speedy trial statutes, a court must exclude the day the State filed the information, count forward 6 months, back up 1 day, and then add any time excluded under subsection (4) of this section. State v. Fioramonti, 22 Neb. App. 52, 847 N.W.2d 95 (2014).

During the period between dismissal of a first information and the filing of a second information which alleges the same charges, the speedy trial time is tolled and the time resumes upon the filing of the second information, including the day of its filing. State v. Florea, 20 Neb. App. 185, 820 N.W.2d 649 (2012).

Pursuant to subsection (4)(a) of this section, the time during which an appeal of a denial of a motion for discharge is pending on appeal is excludable from the speedy adjudication trial clock. In re Interest of Shaquille H., 20 Neb. App. 141, 819 N.W.2d 741 (2012).

Pursuant to subsection (4)(b) of this section, where a juvenile's counsel agrees to reset an adjudication proceeding, such period of delay resulting therefrom is excludable. In re Interest of Shaquille H., 20 Neb. App. 141, 819 N.W.2d 741 (2012).

As a general rule, a trial court's determination as to whether charges should be dismissed on statutory speedy trial grounds is a factual question which will be affirmed on appeal unless clearly erroneous. State v. Henshaw, 19 Neb. App. 663, 812 N.W.2d 913 (2012).

Because the filing of a defendant's pro se plea in abatement tolled the statutory speedy trial clock, and the excludable period continued until the court ruled on the plea in abatement, when the defense counsel filed a subsequent plea in abatement, the clock was already stopped and such filing had no effect on the speedy trial calculation. State v. Henshaw, 19 Neb. App. 663, 812 N.W.2d 913 (2012).

If defendant is not brought to trial before the running of the statutory speedy trial time period, as extended by excludable periods, he or she shall be entitled to his or her absolute discharge. State v. Henshaw, 19 Neb. App. 663, 812 N.W.2d 913 (2012).

Once defendant's pro se plea in abatement was filed by the clerk of the district court, the statutory speedy trial clock stopped until the trial court disposed of the pretrial motion, and it was irrelevant for speedy trial purposes whether defendant's plea in abatement was properly filed. State v. Henshaw, 19 Neb. App. 663, 812 N.W.2d 913 (2012).

Speedy trial statute excludes all time between the filing of a defendant's pretrial motions and their disposition, regardless of the promptness or reasonableness of the delay; the excludable period commences on the day immediately after the filing of a defendant's pretrial motion, and final disposition occurs on the date the motion is granted or denied. State v. Henshaw, 19 Neb. App. 663, 812 N.W.2d 913 (2012).

To calculate the time for statutory speedy trial purposes, a court must exclude the day the information was filed, count forward 6 months, back up 1 day, and then add any excludable time to determine the last day the defendant can be tried. State v. Henshaw, 19 Neb. App. 663, 812 N.W.2d 913 (2012).

Under subdivision (4)(b) of this section, the period of delay resulting from a continuance granted at the request or with the consent of the defendant or his counsel shall be excluded from the calculation of the time for trial. State v. Mortensen, 19 Neb. App. 220, 809 N.W.2d 793 (2011).

Under subsection (1) of this section, every person indicted or informed against for any offense shall be brought to trial within 6 months, unless the 6 months are extended by any period to be excluded in computing the time for trial. State v. Mortensen, 19 Neb. App. 220, 809 N.W.2d 793 (2011).

29-1208.

The speedy trial statutes apply to prosecutions on complaint and of city ordinance violations. State v. Williams, 313 Neb. 981, 987 N.W.2d 613 (2023).

The power of the trial court to rule on a motion for discharge is not bound in any way by its prior interlocutory rulings. State v. Nelson, 313 Neb. 464, 984 N.W.2d 620 (2023).

A defendant's appeal of a final order denying a pretrial motion for absolute discharge on statutory speedy trial grounds did not result in appellate jurisdiction to review a nonfinal order that denied the motion on constitutional speedy trial grounds. State v. Abernathy, 310 Neb. 880, 969 N.W.2d 871 (2022).

If a trial court fails to include the computation as required by State v. Williams, 277 Neb. 133, 761 N.W.2d 514 (2009), in its order on a motion for absolute discharge, the appeal will be summarily remanded to the trial court so that it can prepare the required computation. State v. Lintz, 298 Neb. 103, 902 N.W.2d 683 (2017).

When ruling on a motion for absolute discharge pursuant to this section, the trial court shall make specific findings of each period of delay excludable under section 29-1207(4)(a) to (e), in addition to the findings under section 29-1207(4)(f). Such findings shall include the date and nature of the proceedings, circumstances, or rulings which initiated and concluded each excludable period; the number of days composing each excludable period; and the number of days remaining in which the defendant may be brought to trial after taking into consideration all

excludable periods. State v. Lintz, 298 Neb. 103, 902 N.W.2d 683 (2017).

If a defendant is not brought to trial before the running of the statutory speedy trial time period, as extended by excludable periods, he or she shall be entitled to his or her absolute discharge. State v. Henshaw, 19 Neb. App. 663, 812 N.W.2d 913 (2012); State v. Mortensen, 19 Neb. App. 220, 809 N.W.2d 793 (2011).

29-1209.

A writ of habeas corpus would not issue to permit collateral attack on a sentence for first degree sexual assault and first degree false imprisonment based on an alleged speedy trial violation that the prisoner waived by failing to file a motion for discharge. Jones v. Nebraska Dept. of Corr. Servs., 21 Neb. App. 206, 838 N.W.2d 51 (2013).

29-1301.01.

Two jury instructions read in conjunction with one another correctly instructed the jury that the offenses must have been "committed in this state." Taken as a whole, the instructions as to venue did not relieve the State of its burden to prove the acts were committed in Nebraska, and the defendant was not prejudiced as to necessitate a reversal on these grounds. State v. Lee, 304 Neb. 252, 934 N.W.2d 145 (2019).

29-1301.02.

Two jury instructions read in conjunction with one another correctly instructed the jury that the offenses must have been "committed in this state." Taken as a whole, the instructions as to venue did not relieve the State of its burden to prove the acts were committed in Nebraska, and the defendant was not prejudiced as to necessitate a reversal on these grounds. State v. Lee, 304 Neb. 252, 934 N.W.2d 145 (2019).

29-1407.01.

A hearing on a motion concerning the public disclosure of grand jury documents is a special proceeding. In re Grand Jury of Douglas Cty., 302 Neb. 128, 922 N.W.2d 226 (2019).

An order regarding the public disclosure of grand jury documents is made during a special proceeding. In re Grand Jury of Douglas Cty., 302 Neb. 128, 922 N.W.2d 226 (2019).

In a special proceeding, an order is final and appealable if it affects a substantial right of the aggrieved party. In re Grand Jury of Douglas Cty., 302 Neb. 128, 922 N.W.2d 226 (2019).

29-1418.

Any error in a ruling on a motion to dismiss under subsection (3) of this section based on the sufficiency of evidence before a grand jury is cured by a subsequent finding at trial of guilt beyond a reasonable doubt which is supported by sufficient evidence. State v. Chauncey, 295 Neb. 453, 890 N.W.2d 453 (2017).

29-1602.

The State must endorse a list of witnesses known to it, but it need not highlight a witness' expert status. State v. Figures, 308 Neb. 801, 957 N.W.2d 161 (2021).

29-1607.

In an informal preliminary hearing, it does not violate the Confrontation Clause to rely on out-of-court statements to determine probable cause for purposes of continuing a defendant's pretrial detention. State v. Anderson, 305 Neb. 978, 943 N.W.2d 690 (2020).

29-1808.

Objections to an information or the content of an information should be raised by a motion to quash. State v. Smith, 294 Neb. 311, 883 N.W.2d 299 (2016).

The charging of alternative means of committing the same crime that are incongruous as a matter of law is a defect apparent on the face of the record. State v. McIntyre, 290 Neb. 1021, 863 N.W.2d 471 (2015).

29-1812.

The proper method of objecting to trial in the district court for the insufficiency of a preliminary hearing, or the failure to provide one at all, is by a timely motion to quash or a plea in abatement. State v. Johnson, 314 Neb. 20, 988 N.W.2d 159 (2023).

29-1816.

Pursuant to subdivision (1)(a)(ii) of this section, whether a juvenile court has jurisdiction over a person is determined not by the person's age at the time of the offense, but, rather, by the person's age at the time he or she is charged for the offense. State v. Pauly, 311 Neb. 418, 972 N.W.2d 907 (2022).

County courts have not been given authority to decide motions to transfer to juvenile court in cases in which they lack jurisdiction to try the case. State v. A.D., 305 Neb. 154, 939 N.W.2d 484 (2020).

Pursuant to subsection (2) of this section, alleged juvenile offenders have the ability to move for a transfer of their case from a county or district court to a juvenile court and this motion must be made within 30 days after arraignment unless otherwise permitted by the court for good cause shown. State v. Uhing, 301 Neb. 768, 919 N.W.2d 909 (2018).

Subsection (2) and subdivision (3)(c) of this section provide that an alleged juvenile offender can move for transfer to a juvenile court within 30 days of the juvenile's arraignment and that either the juvenile or the State can appeal an order on the motion within 10 days of its entry. State v. Uhing, 301 Neb. 768, 919 N.W.2d 909 (2018).

Pursuant to subdivision (3)(a) of this section, after considering the evidence and the criteria set forth in section 43-276, the court shall transfer the case to juvenile court unless a sound basis exists for retaining the case in county court or district court. State v. Tyler P., 299 Neb. 959, 911 N.W.2d 260 (2018).

Pursuant to subdivision (3)(b) of this section, the court is required to set forth findings for the reason for its decision. State v. Tyler P., 299 Neb. 959, 911 N.W.2d 260 (2018).

The district court abused its discretion in granting the transfer of two criminal cases to the juvenile court because there was substantial evidence supporting the retention of the cases in the district court for the sake of public safety and societal security, and there was a lack of evidence demonstrating that any further rehabilitation through the juvenile system would be practical and nonproblematical in the limited time left under the juvenile court's jurisdiction. State v. Esai P., 28 Neb. App. 226, 942 N.W.2d 416 (2020).

For matters initiated in the county or district court, a party can move to transfer to the juvenile court pursuant to subsection (3) of this section. State v. Comer, 26 Neb. App. 270, 918 N.W.2d 13 (2018).

The second degree murder and use of a deadly weapon charges filed against a 15-year-old were retained in the district court; the trial court's denial of a motion to transfer to the juvenile court is reviewed for an abuse of discretion. State v. Leroux, 26 Neb. App. 76, 916 N.W.2d 903 (2018).

The statutory amendment providing for interlocutory appeals from an order granting or denying transfer of the case from county or district court to juvenile court became effective August 24, 2017. State v. Leroux, 26 Neb. App. 76, 916 N.W.2d 903 (2018).

29-1817.

A plea in bar may be used to raise a double jeopardy challenge to the State's right to retry a defendant following a mistrial. State v. Combs, 297 Neb. 422, 900 N.W.2d 473 (2017).

29-1819.02.

Where the trial court provided the required advisement of possible immigration consequences, errors by the interpreter in communicating that advisement to the defendant do not create a statutory right to withdraw a plea of guilty or nolo contendere. State v. Garcia, 301 Neb. 912, 920 N.W.2d 708 (2018).

Even if a defendant was not sufficiently advised of his or her rights concerning immigration consequences to pleading guilty, failure to give the advisement is not alone sufficient to entitle a convicted defendant to have the conviction vacated and the plea withdrawn; a defendant must also allege and show that he or she actually faces an immigration consequence which was not included in the advisement given. State v. Llerenas-Alvarado, 20 Neb. App. 585, 827 N.W.2d 518 (2013).

The word "prior" has been interpreted to require the immigration advisement to be given by the court immediately before the entry of a plea of guilty or nolo contendere to ensure the defendant is aware of the immigration consequences of the plea when the plea is made, and to ensure a defendant who is arraigned and subsequently pleads to a lesser charge is aware that the immigration advisement applies. State v. Llerenas-Alvarado, 20 Neb. App. 585, 827 N.W.2d 518 (2013).

29-1823.

A finding of "conditionally competent" is not permitted under Nebraska law. State v. Lauhead, 306 Neb. 701, 947 N.W.2d 296 (2020).

Lay witness testimony is admissible in a competency hearing under subsection (1) of this section. State v. Martinez, 295 Neb. 1, 886 N.W.2d 256 (2016).

29-1912.

The State may disseminate discovery to a criminal defendant through his or her counsel. State v. Figures, 308 Neb. 801, 957 N.W.2d 161 (2021).

Under this section, whether a prosecutor's failure to disclose evidence results in prejudice depends on whether the information sought is material to the preparation of the defense, meaning that there is a strong indication that such information will play an important role in uncovering admissible evidence, aiding preparation of witnesses, corroborating testimony, or assisting impeachment or rebuttal. State v. Harris, 296 Neb. 317, 893 N.W.2d 440 (2017).

An expert's oral, unrecorded opinions do not fall within the scope of subdivision (1)(e) of this section. State v. Parnell, 294 Neb. 551, 883 N.W.2d 652 (2016).

The defendant was not prejudiced by the State's delay in turning over its cooperation agreement with a witness such that the district court should have disqualified the witness from testifying. Deposition responses read into the record by the State indicated that the defense counsel was made aware of the cooperation agreement at that time. Moreover, the State turned over the cooperation agreement prior to trial, and the fact that the witness was receiving a benefit in exchange for her testimony was brought to the jury's attention by both the State and the defense counsel during the witness' testimony. State v. Johnson, 31 Neb. App. 207, 979 N.W.2d 123 (2022).

The State did not fail to comply with subsection (1)(e) of this section when it did not provide the defendant with a chromatogram graphic printout of his blood test result during discovery, where chromatogram had to be interpreted by a forensic scientist to determine its validity, the defendant was provided with the laboratory result during discovery, and the scientist was questioned about the chromatogram during trial. State v. Hashman, 20 Neb. App. 1, 815 N.W.2d 658 (2012).

29-1913.

There is no obligation for the district court to suppress the evidence without a motion that the specific evidence be made available to conduct like tests or analyses. In the absence of any discovery motion, the trial court cannot know the precise issue presented and make the necessary factual findings in determining whether an order of discovery should be granted. And without a proper discovery order and a claim of the violation of such order, the court cannot properly determine whether the evidence subject to the order was, in fact, unavailable and whether it was unavailable due to neglect or intentional alteration. State v. Henry, 292 Neb. 834, 875 N.W.2d 374 (2016).

Under the plain language of this section, exclusion of the described tests or analyses is a mandatory sanction for violation of the discovery order issued under this section, in the event of unavailability due to neglect or intentional alteration as described in the section. State v. Henry, 292 Neb. 834, 875 N.W.2d 374 (2016).

29-1917.

A district court's order authorizing a second deposition of a State witness who refused to answer questions during the first deposition was a sufficient remedy for noncompliance with discovery, where the authorization occurred approximately 4 months before trial was to begin. State v. Devers, 306 Neb. 429, 945 N.W.2d 470 (2020).

There is no obligation for the State to produce the victim or assist in locating the victim for purposes of a pretrial deposition by defense counsel. State v. Anderson, 305 Neb. 978, 943 N.W.2d 690 (2020).

29-1919.

Under the plain meaning of this section, if a party fails to comply with discovery and give notice of an intent to call a witness, the court may prohibit that witness from being called. State v. Sierra, 305 Neb. 249, 939 N.W.2d 808 (2020).

29-2001.

A defendant waived the right to be present at trial by voluntarily leaving the courtroom during witness testimony. State v. Figures, 308 Neb. 801, 957 N.W.2d 161 (2021).

29-2002.

A defendant appealing the denial of a motion to sever has the burden to show compelling, specific, and actual prejudice. State v. Benson, 305 Neb. 949, 943 N.W.2d 426 (2020).

Joined charges do not usually result in prejudice if the evidence is sufficiently simple and distinct for the jury to easily separate evidence of the charges during deliberations. State v. Benson, 305 Neb. 949, 943 N.W.2d 426 (2020).

The question of whether offenses were properly joined involves a two-stage analysis: (1) whether the offenses were sufficiently related to be joinable and (2) whether the joinder was prejudicial to the defendant. State v. Benson, 305 Neb. 949, 943 N.W.2d 426 (2020).

There is no error under either subsection (1) or (3) of this section if joinder was not prejudicial, and a denial of a motion to sever will be reversed only if clear prejudice and an abuse of discretion are shown. State v. Benson, 305 Neb. 949, 943 N.W.2d 426 (2020).

Joinder of murder and pandering charges was proper because the evidence was such that the jury could have easily separated evidence of the charges during deliberations. State v. Briggs, 303 Neb. 352, 929 N.W.2d 65 (2019).

While subsections (1) and (3) of this section present different questions, it is clear that there is no error under either subsection if joinder was not prejudicial. State v. Cotton, 299 Neb. 650, 910 N.W.2d 102 (2018).

29-2004.

A court may discharge a juror for cause after it learned that the defendant's affiliate attempted to talk to the juror during the trial and the juror provided conflicting testimony when questioned about the event. State v. Figures, 308 Neb. 801, 957 N.W.2d 161 (2021).

In a trial for first degree sexual assault, the trial court had discretion to discharge a juror following the close of evidence given the following facts: (1) the juror, on the first day of trial after the jury was sworn, alerted the court of his reluctance to serve on the jury given his upbringing and criminal history; (2) the court had questioned the juror and determined that the juror could remain impartial; (3) the court, after giving its instructions, sua sponte, raised concerns about the juror's lack of attentiveness during trial; and (4) the juror's criminal record, which the State proffered in support of its motion for discharge, indicated that the juror had misrepresented his criminal history in the juror qualification form. State v. Huff, 298 Neb. 522, 905 N.W.2d 59 (2017).

On the State's motion at the close of evidence to strike a seated juror for cause, in a prosecution for first degree sexual assault, the State had the burden to show that the challenged juror was biased, was engaged in misconduct, or was otherwise unable to continue to serve. State v. Huff, 298 Neb. 522, 905 N.W.2d 59 (2017).

This section, governing the discharge of a juror after the jury is sworn, and not section 29-2006, which governs the disqualification of a juror for cause before the jury is sworn, governed the State's motion to "strike" the juror for cause after trial began. State v. Huff, 298 Neb. 522, 905 N.W.2d 59 (2017).

When a defendant, through diligence, is able to discover a reason to challenge a juror, the objection to the juror must be made at the time of voir dire. State v. Huff, 298 Neb. 522, 905 N.W.2d 59 (2017).

29-2006.

Section 29-2004, governing the discharge of a juror after the jury is sworn, and not this section, which governs the disqualification of a juror for cause before the jury is sworn, governed the State's motion to "strike" the juror for cause after trial began. State v. Huff, 298 Neb. 522, 905 N.W.2d 59 (2017).

29-2011.02.

A court is not obligated under this section to notify a defendant when the State offers a witness immunity. State v. Lierman, 305 Neb. 289, 940 N.W.2d 529 (2020).

The language of this section, and the case law interpreting it, provides that because the Legislature has given courts the power to immunize a witness solely upon the request of the prosecutor, it is not a power the court can exercise upon the request of the defendant or upon its own initiative. State v. Lierman, 305 Neb. 289, 940 N.W.2d 529 (2020).

29-2014.

An information charging conspiracy to commit robbery satisfied the overt act requirement by alleging robbery as both the object of conspiracy and the overt act committed in pursuance thereof. State v. Davis, 310 Neb. 865, 969 N.W.2d 861 (2022).

29-2022.

Prejudice arising from the failure to comply with the requirements of this section does not alter the prejudice analysis required by Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). State v. Sellers, 290 Neb. 18, 858 N.W.2d 577 (2015).

29-2028.

The State is not required to corroborate a victim's testimony in cases of first degree sexual assault, even if the testimony is inconsistent with prior statements; if believed by the finder of fact, the victim's testimony alone is sufficient. State v. Anders, 311 Neb. 958, 977 N.W.2d 234 (2022).

29-2101.

To be granted a new trial, this section requires that the enumerated grounds materially affect the defendant's substantial rights. State v. Muratella, 314 Neb. 463, 991 N.W.2d 25 (2023).

When a guilty or no contest plea is accepted and the court enters a judgment of conviction thereon, that is a "verdict of conviction" for the purposes of this section. State v. Muratella, 314 Neb. 463, 991 N.W.2d 25 (2023).

Evidence received at postconviction proceedings cannot be considered in determining a subsequent motion for new trial based on evidence obtained through the DNA Testing Act if the postconviction evidence was not presented at the defendant's former trial and is not newly discovered DNA or similar forensic testing evidence. State v. Duncan, 309 Neb. 455, 960 N.W.2d 576 (2021).

Evidence must have existed at trial for it to be uncovered after the trial. State v. Bartel, 308 Neb. 169, 953 N.W.2d 224 (2021).

Evidence of facts happening after trial ordinarily cannot be considered as newly discovered evidence on which to justify the granting of a new trial. State v. Bartel, 308 Neb. 169, 953 N.W.2d 224 (2021).

29-2102.

The constitutional right to trial by a fair and impartial jury that is affected by a stranger's presence in the jury room is a substantial right, so when an alternate juror is mistakenly allowed in the jury room during deliberations, without any safeguards in place under section 29-2004, a court has a mandatory duty to conduct an evidentiary hearing to determine the extent and nature of any communications by the alternate or whether the alternate's presence or communications materially influenced the jury. State v. Madren, 308 Neb. 443, 954 N.W.2d 881 (2021).

A de novo standard of review applies when an appellate court is reviewing a trial court's dismissal of a motion for new trial under this section without conducting an evidentiary hearing. State v. Cross, 297 Neb. 154, 900 N.W.2d 1 (2017).

29-2103.

An appellate court does not consider a motion for new trial to the extent that its grounds fail to conform to the statutory requirements of timeliness. State v. Bartel, 308 Neb. 169, 953 N.W.2d 224 (2021).

The law requires diligence on the part of clients and their attorneys, and the mere neglect of either will not entitle

a party to relief on that ground. State v. Bartel, 308 Neb. 169, 953 N.W.2d 224 (2021).

"Unavoidably prevented" as used in subsection (3) of this section refers to circumstances beyond the control of the party filing the motion for new trial. State v. Bartel, 308 Neb. 169, 953 N.W.2d 224 (2021).

Where the record does not support a finding that a defendant was unavoidably prevented from timely filing a motion for new trial based on grounds set forth in subdivisions (1) through (4) or (7) of section 29-2101, such a filing made more than 10 days after the jury returned its verdict has no effect and may not be considered by an appellate court. State v. Avina-Murillo, 301 Neb. 185, 917 N.W.2d 865 (2018).

A former version of subsection (4) of this section, which required a defendant to move for a new trial because of newly discovered evidence within 3 years, did not violate the due process rights of a defendant who alleged the State failed to disclose favorable evidence it had received 5 years after his murder conviction. The defendant did not claim that the favorable evidence was sufficiently compelling to show his actual innocence or that Nebraska's postconviction procedures were inadequate to protect his statutory postconviction rights, and a defendant has no substantive due process right to have the State disclose exculpatory evidence discovered after a final judgment. State v. Harris, 296 Neb. 317, 893 N.W.2d 440 (2017).

29-2203.

Subsection (4) of this section codified longstanding Nebraska precedent that intoxication is not a mental disease or defect. State v. Brennauer, 314 Neb. 782, 993 N.W.2d 305 (2023).

The defendant's filing of a notice of intention to rely upon an insanity defense under this section preserved his right to present evidence as to his sanity at trial, but it did not require the trial court to make any determination regarding the defendant's sanity before trial, and it did not preclude the trial court from accepting the defendant's waiver of his right to trial when he entered his no contest pleas. State v. Warner, 312 Neb. 116, 977 N.W.2d 904 (2022).

A defendant who pleads that he or she is not responsible by reason of insanity has the burden to prove the defense by a preponderance of the evidence. State v. John, 310 Neb. 958, 969 N.W.2d 894 (2022).

Any person prosecuted for an offense may plead that he or she is not responsible by reason of insanity at the time of the offense. State v. John, 310 Neb. 958, 969 N.W.2d 894 (2022).

Generally, under Nebraska's common-law definition, the insanity defense requires proof that (1) the defendant had a mental disease or defect at the time of the crime and (2) the defendant did not know or understand the nature and consequences of his or her actions or that he or she did not know the difference between right and wrong. State v. John, 310 Neb. 958, 969 N.W.2d 894 (2022).

29-2204.

In imposing a sentence subject to a habitual criminal enhancement, 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 an inmate's mandatory discharge date. Gray v. Frakes, 311 Neb. 409, 973 N.W.2d 166 (2022).

This section and section 29-2204.02(4) do not require a sentence for a Class IV felony to have a minimum term less than the maximum term. State v. Artis, 296 Neb. 172, 893 N.W.2d 421 (2017).

For purposes of the authorized limits of an indeterminate sentence, both "mandatory minimum" as used in section 28-319.01(2) and "minimum" as used in section 28-105 in regard to a Class IB felony mean the lowest authorized minimum term of the indeterminate sentence. State v. Russell, 291 Neb. 33, 863 N.W.2d 813 (2015).

Minimum term of 30 months' imprisonment imposed by trial court on each of 10 counts of possession of child pornography exceeded minimum term of imprisonment provided by law, where minimum term could not exceed one-third of maximum term of 60 months' imprisonment. State v. Landera, 20 Neb. App. 24, 816 N.W.2d 20 (2012).

29-2204.02.

The statutory provisions of this section and section 28-105 relating to post-release supervision are mandatory, and a sentence that fails to impose post-release supervision when required is an appropriate matter for an appellate court's discretionary plain error review. State v. Roth, 311 Neb. 1007, 977 N.W.2d 221 (2022)

This section encompasses a policy decision by the Legislature favoring probationary sentences for Class IV

felonies, and findings required under this section do not necessarily apply to sentencing decisions pertaining to higher-level offenses. State v. McGovern, 311 Neb. 705, 974 N.W.2d 595 (2022).

For purposes of the indeterminacy requirement in subsection (4) of this section, it matters not when the underlying offenses occurred in relation to each other or that some of the relevant charges were brought via charging documents; subsection (4) is broad enough that it theoretically could be read to impose an indeterminacy requirement upon a Class III, Class IIIA, or Class IV felony sentence imposed consecutively or concurrently with a Class I, IA, IB, IC, ID, II, or IIA felony sentence that is already in progress. What matters under subsection (4) is that the sentences for those offenses are imposed consecutively or concurrently to each other. State v. Starks, 308 Neb. 527, 955 N.W.2d 313 (2021).

It is plain error under subsection (4) of this section for a sentencing court to order determinate sentences for three Class IV felonies to be imposed consecutively with a Class IIA felony sentence. State v. Starks, 308 Neb. 527, 955 N.W.2d 313 (2021).

A sentence of imprisonment upon revocation from post-release supervision is a determinate sentence within the meaning of this section. State v. Galvan, 305 Neb. 513, 941 N.W.2d 183 (2020).

Where the district court sentenced a defendant for a Class II felony and imposed a concurrent sentence for a Class IV felony for offenses occurring in 2017, the court plainly erred by imposing a determinate sentence rather than an indeterminate sentence for the Class IV felony. State v. Guzman, 305 Neb. 376, 940 N.W.2d 552 (2020).

A determinate sentence, as used in subdivision (1)(a) of this section, is imposed when the defendant is sentenced to a single term of years. State v. Vanness, 300 Neb. 159, 912 N.W.2d 736 (2018).

A transfer from juvenile court to criminal court does not eliminate the possibility of disposition under the juvenile code. In re Interest of Steven S., 299 Neb. 447, 908 N.W.2d 391 (2018).

The trial court did not plainly err by failing to impose an indeterminate sentence where an information alleged that a Class IIIA felony occurred over a period of time both before and after August 30, 2015; the evidence about when the assaults occurred could cover dates before and after August 30; and the jury did not make a specific finding demonstrating that it found the offense was committed after August 30. State v. Mora, 298 Neb. 185, 903 N.W.2d 244 (2017).

The defendant's sentence of 2 years' imprisonment with a 12-month period of post-release supervision for possession of a controlled substance was vacated pursuant to State v. Randolph, 186 Neb. 297, 183 N.W.2d 225 (1971), where the defendant was sentenced concurrently for two Class IV felonies and a Class W misdemeanor and where after sentencing, but while the matter was pending on appeal, 2016 Neb. Laws, L.B. 1094, struck section 29-2260(5) and added subsection (4) of this section, which precluded post-release supervision. State v. Chacon, 296 Neb. 203, 894 N.W.2d 238 (2017).

A determinate sentence is imposed when the defendant is sentenced to a single term of years, such as a sentence of 2 years' imprisonment. In contrast, when imposing an indeterminate sentence, a sentencing court ordinarily articulates either a minimum term and maximum term or a range of time for which a defendant is to be incarcerated. State v. Artis, 296 Neb. 172, 893 N.W.2d 421 (2017).

In Nebraska, the fact that the minimum term and maximum term of a sentence are the same does not affect the sentence's status as an indeterminate sentence. State v. Artis, 296 Neb. 172, 893 N.W.2d 421 (2017).

Section 29-2204 and subsection (4) of this section do not require a sentence for a Class IV felony to have a minimum term less than the maximum term. State v. Artis, 296 Neb. 172, 893 N.W.2d 421 (2017).

A determination of whether there are substantial and compelling reasons under subdivision (2)(c) of this section is within the trial court's discretion and will not be reversed on appeal absent an abuse of discretion. State v. Baxter, 295 Neb. 496, 888 N.W.2d 726 (2017).

The court may fulfill the requirement of subsection (3) of this section to state its reasoning on the record by a combination of the sentencing hearing and sentencing order. State v. Baxter, 295 Neb. 496, 888 N.W.2d 726 (2017).

The court's determination of substantial and compelling reasons under subdivision (2)(c) of this section should be based on a review of the record, including the presentence investigation report and the record of the trial, and its determination must be supported by such record. State v. Baxter, 295 Neb. 496, 888 N.W.2d 726 (2017).

Under the nonretroactive provision of section 28-105(7), the changes made in this section to the penalties for Class IV felony convictions by 2015 Neb. Laws, L.B. 605, do not apply to any offense committed before August

30, 2015. State v. Benavides, 294 Neb. 902, 884 N.W.2d 923 (2016).

It is clear that the Legislature did not intend to apply this section retroactively. State v. Raatz, 294 Neb. 852, 885 N.W.2d 38 (2016).

Based on the plain and ordinary meaning of the statutory language in subsection (5), this section does not apply where the sentence of imprisonment for a misdemeanor was not imposed consecutively or concurrently with a sentence of imprisonment for a Class III, IIIA, or IV felony. State v. Criss, 31 Neb. App. 765, 989 N.W.2d 450 (2023).

A defendant's sentence on a Class IIIA felony needed to be an indeterminate sentence because the defendant was also sentenced on Class II felonies. State v. Wells, 28 Neb. App. 118, 940 N.W.2d 847 (2020).

A defendant's sentences on various misdemeanors needed to be indeterminate sentences pursuant to subsection (5) of this section, because the defendant was also sentenced on Class II felonies. State v. Wells, 28 Neb. App. 118, 940 N.W.2d 847 (2020).

If a defendant was previously subject to parole under preexisting sentences and subsequently sentenced in other cases either concurrently or consecutively to the prior sentences, subsection (4) of this section prevents the defendant from being subject to post-release supervision. State v. Lillard, 27 Neb. App. 824, 937 N.W.2d 1 (2019).

Subsection (4) of this section applies in a situation where sentences are imposed and the defendant is serving preexisting sentences. State v. Lillard, 27 Neb. App. 824, 937 N.W.2d 1 (2019).

29-2204.03.

Both this section and section 29-2261 give the court the discretion to order further evaluations of the defendant prior to sentencing when it deems such evaluations necessary for determining the sentence to be imposed; neither statute provides that a defendant can or should request the evaluations. Trial counsel cannot be deficient for failing to request evaluations that the court itself could have ordered, but in its discretion deemed unnecessary. State v. St. Cyr, 26 Neb. App. 61, 916 N.W.2d 753 (2018).

29-2221.

In imposing a sentence subject to a habitual criminal enhancement, 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 an inmate's mandatory discharge date. Gray v. Frakes, 311 Neb. 409, 973 N.W.2d 166 (2022).

This section requires evidence showing that a defendant has twice been ordered by a court to be committed for at least 1 year to a penal institution, but does not require evidence showing that a defendant actually served a full year in prison pursuant to such order of commitment. State v. Drake, 311 Neb. 219, 971 N.W.2d 759 (2022).

By its terms, subsection (1) of this section requires the triggering offense to be "a felony" before the habitual criminal statute will apply to the sentencing of the triggering offense. But in order to be one of the prior convictions that establishes habitual criminal status, this section does not require that the prior conviction was a "felony" per se; instead, it requires that the prior conviction resulted in a sentence of imprisonment for a term "of not less than one year." State v. Abejide, 293 Neb. 687, 879 N.W.2d 684 (2016).

The language of subsection (1) of this section does not require that all convictions enhanced pursuant to this section be served consecutively to each other. Unless the offense for which the defendant was convicted requires the sentence to run consecutively to other convictions, the court retains its discretion to impose a concurrent sentence. State v. Lantz, 290 Neb. 757, 861 N.W.2d 728 (2015).

29-2260.

A sentence of probation is not excessively lenient, even though the crimes were serious with an egregious set of facts, where the offender was convicted of a Class II felony for which the law prescribed no mandatory minimum sentence, the presentence investigation report showed he is at low risk to reoffend, and the psychological evaluation recognized he was around 14 years of age at the time of the offenses and has not subsequently engaged in any other known or reported forms of sexual misconduct. State v. Pauly, 311 Neb. 418, 972 N.W.2d 907 (2022).

This section does not require the trial court to articulate on the record that it has considered each sentencing factor, and it does not require the court to make specific findings as to the factors and the weight given them. State v. McCulley, 305 Neb. 139, 939 N.W.2d 373 (2020).

The defendant's sentence of 2 years' imprisonment with a 12-month period of post-release supervision for possession of a controlled substance was vacated pursuant to State v. Randolph, 186 Neb. 297, 183 N.W.2d 225 (1971), where the defendant was sentenced concurrently for two Class IV felonies and a Class W misdemeanor and where after sentencing, but while the matter was pending on appeal, 2016 Neb. Laws, L.B. 1094, struck subsection (5) of this section and added section 29-2204.02(4), which precluded post-release supervision. State v. Chacon, 296 Neb. 203, 894 N.W.2d 238 (2017).

Subsection (2) of this section gives the court discretion to withhold a sentence of imprisonment for an offender convicted of either a misdemeanor or a felony for which mandatory or mandatory minimum imprisonment is not specifically required. State v. McCain, 29 Neb. App. 981, 961 N.W.2d 576 (2021).

29-2261.

The presentence investigation and report shall include, when available, any submitted victim statements and an analysis of the circumstances attending the commission of the crime and the offender's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, and personal habits. The presentence investigation and report may also include any other matters the probation officer deems relevant or the court directs to be included. State v. Schroeder, 305 Neb. 527, 941 N.W.2d 445 (2020).

It is "the better practice" for a sentencing court to issue a more direct advisement of the statutory right to a presentence investigation, conduct an explicit inquiry into the voluntariness of a defendant's waiver of that right, and make explicit findings with respect to a waiver. State v. Iddings, 304 Neb. 759, 936 N.W.2d 747 (2020).

Both section 29-2204.03 and this section give the court the discretion to order further evaluations of the defendant prior to sentencing when it deems such evaluations necessary for determining the sentence to be imposed; neither statute provides that a defendant can or should request the evaluations. Trial counsel cannot be deficient for failing to request evaluations that the court itself could have ordered, but in its discretion deemed unnecessary. State v. St. Cyr, 26 Neb. App. 61, 916 N.W.2d 753 (2018).

29-2262.

Custodial sanctions are distinct from jail time under subdivision (2)(b) of this section. State v. Kantaras, 294 Neb. 960, 885 N.W.2d 558 (2016).

Jail time under subdivision (2)(b) of this section is a predetermined, definite term of jail time up to the term authorized by the statute; that term may be served periodically, but it is not conditional. State v. Kantaras, 294 Neb. 960, 885 N.W.2d 558 (2016).

The general provisions of subsection (1) and subdivision (2)(r) of this section do not confer the power to impose jail time as part of sentences of probation; jail time as a condition of probation may be granted only under specific statutory authority. State v. Kantaras, 294 Neb. 960, 885 N.W.2d 558 (2016).

The amendment by 2015 Neb. Laws, L.B. 605, removing the provision of this section relating to jail time as a condition of probation for felony offenses did not implicitly repeal the provision in section 60-6,197.03(6) that required 60 days in jail as a condition of probation. State v. Thompson, 294 Neb. 197, 881 N.W.2d 609 (2016).

Individuals in the county or district court can be placed on probation with conditions related to the rehabilitation of the offender. State v. Comer, 26 Neb. App. 270, 918 N.W.2d 13 (2018).

29-2262.06.

When a court sentences a defendant to post-release supervision, it may impose any conditions of post-release supervision authorized by statute. State v. Dill, 300 Neb. 344, 913 N.W.2d 470 (2018).

Stale financial affidavits and earlier orders allowing a defendant to proceed in forma pauperis were insufficient to show the defendant's financial condition at the time he requested that the court waive payment of probation fees. State v. Jensen, 299 Neb. 791, 910 N.W.2d 155 (2018).

29-2263.

Subsection (3) of this section only applies during the term of probation and does not provide authority for when an offender is still incarcerated and not yet a probationer. State v. Sullivan, 313 Neb. 293, 983 N.W.2d 541 (2023).

An order denying a motion to modify or eliminate a probation condition is a final, appealable order. State v. Paulsen, 304 Neb. 21, 932 N.W.2d 849 (2019).

Once the State invokes the revocation process under section 29-2268 and a court finds a violation of post-release supervision, the court lacks the power to invoke the early discharge provisions of this section. State v. Kennedy, 299 Neb. 362, 908 N.W.2d 69 (2018).

This section authorizes a court to commute the terms of probation, but not the original sentence. State v. Irish, 298 Neb. 61, 902 N.W.2d 669 (2017).

Where a court is required to revoke a driver's license as part of a judgment of conviction, it is part of the offender's punishment for the crime, and is not considered a term of probation which can be altered under this section. State v. Irish, 298 Neb. 61, 902 N.W.2d 669 (2017).

29-2264.

The decision of whether to set aside a conviction pursuant to this section is discretionary, and in exercising its discretion, the court must consider the factors specified therein. State v. Brunsen, 311 Neb. 368, 972 N.W.2d 405 (2022).

The statutory mandate of this section that the court consider "[a]ny other information the court considers relevant" does not empower the court to rest its decision on irrelevant or erroneous facts or misperceptions of the law. State v. Brunsen, 311 Neb. 368, 972 N.W.2d 405 (2022).

29-2267.

Where a probationer allegedly committed a new felony—possession of methamphetamine—while already on probation for a felony, the allegation of a law violation was not a "substance abuse" violation for revocation of probation purposes and the State could therefore institute revocation proceedings without showing that the probationer had served at least 90 days of cumulative custodial sanctions during the current probation term. State v. Jedlicka, 305 Neb. 52, 938 N.W.2d 854 (2020).

Pursuant to subsection (1) of this section, the court shall not revoke probation except after a hearing upon proper notice where the violation of probation is established by clear and convincing evidence. State v. Phillips, 302 Neb. 686, 924 N.W.2d 699 (2019).

29-2268.

A court's authority to revoke a probationer and impose a term of imprisonment extends only to the single term of post-release supervision that the probationer is serving, provided that the probationer has not otherwise been ordered to serve multiple terms concurrently. State v. Galvan, 305 Neb. 513, 941 N.W.2d 183 (2020).

Terms of post-release supervision may be served consecutively. When a consecutive sentence is imposed, the second sentence begins only upon the termination of the prior term of imprisonment. A prisoner who receives multiple consecutive sentences does not serve all sentences simultaneously, but serves only one sentence at a time. State v. Galvan, 305 Neb. 513, 941 N.W.2d 183 (2020).

Because a court has discretion under subsection (2) of this section to impose, upon revocation, any term of imprisonment up to the remaining period of post-release supervision, an appellate court will not disturb that decision absent an abuse of discretion. State v. Phillips, 302 Neb. 686, 924 N.W.2d 699 (2019).

The Legislature has not demonstrated within this section that jail credit should be given for time served prior to revocation. State v. Phillips, 302 Neb. 686, 924 N.W.2d 699 (2019).

Time spent in jail prior to revocation is credited against a probationer's sentence of post-release supervision. State v. Phillips, 302 Neb. 686, 924 N.W.2d 699 (2019).

When calculating the "remaining period of post-release supervision" under subsection (2) of this section, courts must first identify the number of days the probationer was originally ordered to serve on post-release supervision. The court calculates the "remaining period of post-release supervision" by subtracting the number of days actually served from the number of days ordered to be served. State v. Phillips, 302 Neb. 686, 924 N.W.2d 699 (2019).

When determining the amount of time "remaining" on a period of post-release supervision, courts are not required

to turn a blind eye to a probationer's absconsion from supervision. State v. Phillips, 302 Neb. 686, 924 N.W.2d 699 (2019).

When a court has revoked post-release supervision, the maximum term of imprisonment that can be imposed is governed exclusively by this section and does not depend on the maximum sentence of initial imprisonment authorized by the relevant statute. State v. Wal, 302 Neb. 308, 923 N.W.2d 367 (2019).

Once a district court finds a violation of post-release supervision, it must proceed under this section. State v. Kennedy, 299 Neb. 362, 908 N.W.2d 69 (2018).

Termination of post-release supervision as being unsatisfactory is not a revocation of post-release supervision and is not statutorily authorized. State v. Kennedy, 299 Neb. 362, 908 N.W.2d 69 (2018).

29-2280.

It is plain error for a court to fail to specify in its written sentencing order whether the restitution is to be made immediately, in specified installments, or within a specified period of time. State v. Street, 306 Neb. 380, 945 N.W.2d 450 (2020).

Before restitution can properly be ordered, the trial court must consider (1) whether restitution should be ordered, (2) the amount of actual damages sustained by the victim of a crime, and (3) the amount of restitution a criminal defendant is capable of paying. State v. McCulley, 305 Neb. 139, 939 N.W.2d 373 (2020).

Restitution ordered by a court pursuant to this section is a criminal penalty imposed as a punishment for a crime and is part of the criminal sentence imposed by the sentencing court. State v. McCulley, 305 Neb. 139, 939 N.W.2d 373 (2020).

29-2281.

Actual damages do not require an assessment of the damaged property's prior fair market value when it can be repaired to its former condition. State v. Street, 306 Neb. 380, 945 N.W.2d 450 (2020).

The listed factors of this section are neither exhaustive nor mathematically applied, and the court's ultimate determination of whether restitution should be imposed is a matter of discretion. State v. McCulley, 305 Neb. 139, 939 N.W.2d 373 (2020).

This section does not require setting forth factors to be considered in determining whether to order restitution and does not require a court to specifically articulate that it has considered factors or make explicit findings, disapproving State v. St. Cyr, 26 Neb. App. 61, 916 N.W.2d 753 (2018), and State v. Mick, 19 Neb. App. 521, 808 N.W.2d 663 (2012). State v. McCulley, 305 Neb. 139, 939 N.W.2d 373 (2020).

In imposing a sentence, the court must state the precise terms of the sentence. Such requirement of certainty and precision applies to criminal sentences containing restitution orders, and a court's restitution order must inform the defendant whether the restitution must be made immediately, in specified installments, or within a specified period of time, not to exceed 5 years, as required under this section. State v. Esch, 290 Neb. 88, 858 N.W.2d 219 (2015).

Despite the existence of a plea agreement involving restitution, the trial court still must give meaningful consideration to the defendant's ability to pay the agreed-upon restitution. State v. Mick, 19 Neb. App. 521, 808 N.W.2d 663 (2012).

29-2282.

Restitution will be upheld if calculated by use of reasonable methods; therefore, when the defendant does not present contradictory evidence, the court does not err in relying on a victim's competent estimates of loss. State v. Street, 306 Neb. 380, 945 N.W.2d 450 (2020).

The determination of whether return or repair is impossible, impractical, or inadequate is left to the sound discretion of the sentencing court and is not necessarily bound by concepts of fair market value. State v. Street, 306 Neb. 380, 945 N.W.2d 450 (2020).

This section warrants restitution where the offense results in damage, destruction, or loss of property. State v. McBride, 27 Neb. App. 219, 927 N.W.2d 842 (2019).

29-2302.

Factors to be considered in determining the reasonableness of a defendant's appeal bond following a misdemeanor conviction include the atrocity of the defendant's offenses, the probability of the defendant's appearance to serve his or her sentence following the conclusion of his or her appeal, the defendant's prior criminal history, and the nature of the other circumstances surrounding the case. State v. Kirby, 25 Neb. App. 10, 901 N.W.2d 704 (2017).

Reasonableness of the appeal bond amount is determined under the general discretion of the district court. State v. Kirby, 25 Neb. App. 10, 901 N.W.2d 704 (2017).

29-2306.

Lack of staleness of execution under a particular measure of days is not an essential prerequisite to appellate jurisdiction; under the current statutory scheme, the jurisdictional prerequisite of a filing fee is satisfied when the lower court grants in forma pauperis status after considering a timely filed application and accompanying affidavit that, unless good cause is shown in the record why the appellant could not sign the affidavit, was executed personally by the impoverished appellant. State v. Blake, 310 Neb. 769, 969 N.W.2d 399 (2022).

The relative staleness of the execution of a poverty affidavit does not change the mandate of subsection (4) of section 25-1912 that "no step other than the filing of such notice of appeal and the depositing of such docket fee shall be deemed jurisdictional." State v. Blake, 310 Neb. 769, 969 N.W.2d 399 (2022).

The relative staleness of the execution of a poverty affidavit does not change the mandate of this section that "[i]f an application to proceed in forma pauperis is filed and granted, the Court of Appeals or Supreme Court shall acquire jurisdiction of the case when the notice of appeal is filed with the clerk of the district court." State v. Blake, 310 Neb. 769, 969 N.W.2d 399 (2022).

The order granting an application to proceed in forma pauperis is not a final, appealable order because it does not affect a substantial right. State v. Fredrickson, 306 Neb. 81, 943 N.W.2d 701 (2020).

The relevant date under this section is the date the defendant files the application, not the date on which the court grants the application. State v. Newcomer, 23 Neb. App. 761, 875 N.W.2d 914 (2016).

29-2308.

For a defendant who has been sentenced consecutively for two or more crimes, an appellate court generally considers the aggregate sentence to determine if it is excessive. State v. Morton, 310 Neb. 355, 966 N.W.2d 57 (2021).

It is inappropriate in determining whether a sentence is excessive to opine that the facts better fit a crime the defendant was not convicted of, which would have had a lesser sentence. State v. Morton, 310 Neb. 355, 966 N.W.2d 57 (2021).

So long as the facts provide a sufficient basis to find all elements beyond a reasonable doubt for the crimes the defendant is convicted of, whether an alternative crime fits those facts "best" is a matter of prosecutorial discretion and not a reason to question the trial court's sentence on the crimes found to have been committed. State v. Morton, 310 Neb. 355, 966 N.W.2d 57 (2021).

An appellate court will not disturb a sentence imposed within statutory limits unless the sentence was an abuse of discretion. State v. Starks, 308 Neb. 527, 955 N.W.2d 313 (2021).

29-2315.01.

An appeal in an exception proceeding will be dismissed when the government challenges only the trial court's application of settled law to a set of unique facts. State v. Valadez, 313 Neb. 902, 987 N.W.2d 268 (2023).

When exception proceedings follow from an order granting a plea in bar, none of the statutory events triggering the attachment of legal jeopardy occur, and further proceedings against the defendant are proper. State v. Lewis, 313 Neb. 879, 986 N.W.2d 739 (2023).

When a defendant challenges a sentence imposed by the district court as excessive and the State believes the sentence to be erroneous but has not complied with this section or section 29-2321, the State may not assert such error via a cross-appeal. State v. Guzman, 305 Neb. 376, 940 N.W.2d 552 (2020).

The State does not have the ability to appeal an order finding indigency and appointing counsel prior to the

issuance of a final order. State v. Fredrickson, 305 Neb. 165, 939 N.W.2d 385 (2020).

In cases brought as error proceedings under this section, the good faith exception to the exclusionary rule applies to warrantless blood draws conducted prior to the U.S. Supreme Court's decision in Birchfield v. North Dakota, 579 U.S. 438, 136 S. Ct. 2160, 195 L. Ed. 2d 560 (2016). State v. Hatfield, 300 Neb. 152, 912 N.W.2d 731 (2018).

By its language, this section clearly requires that an error proceeding cannot be brought until after a "final order" has been entered. The test of finality of an order or judgment for the purpose of appeal under this section is whether the particular proceeding or action was terminated by the order or judgment. State v. Warner, 290 Neb. 954, 863 N.W.2d 196 (2015).

The Nebraska Supreme Court has consistently maintained that strict compliance with this section is required to confer jurisdiction. State v. Coupens, 20 Neb. App. 485, 825 N.W.2d 808 (2013).

This section does not permit an appeal by the State from any interlocutory ruling of the trial court in a criminal proceeding. State v. Coupens, 20 Neb. App. 485, 825 N.W.2d 808 (2013).

This section grants the State the right to seek appellate review of adverse criminal rulings and specifies the special procedure by which to obtain such review. State v. Coupens, 20 Neb. App. 485, 825 N.W.2d 808 (2013).

29-2316.

When exception proceedings follow from an order granting a plea in bar, jeopardy has not attached and remand is proper if the exception is sustained. State v. Lewis, 313 Neb. 879, 986 N.W.2d 739 (2023).

Where a criminal matter is brought to a higher appellate court by an exception proceeding from the district court sitting as an appellate court, the higher appellate court may reverse the district court's order, because this section does not limit the relief the higher appellate court can order. State v. Hatfield, 300 Neb. 152, 912 N.W.2d 731 (2018).

When an exception proceeding is before the Nebraska Supreme Court or Court of Appeals from the district court where the trial took place in district court, this section restricts the scope of any ruling directed at the defendant and district court. But where the district court is sitting as an appellate court, the defendant was not placed in jeopardy in that court and the limitations of this section do not apply to dispositions or orders directed at the district court. State v. Thalken, 299 Neb. 857, 911 N.W.2d 562 (2018).

Whether this section prevents an appellate court from reversing the judgment of the trial court turns on whether the trial court placed the defendant in jeopardy, not whether the Double Jeopardy Clause bars further action. State v. Kleckner, 291 Neb. 539, 867 N.W.2d 273 (2015).

29-2317.

Reference to the county court in sections 29-2317 to 29-2319 also applies to the separate juvenile court. In re Interest of Lori S., 20 Neb. App. 152, 819 N.W.2d 736 (2012).

Sections 29-2317 to 29-2319 outline exception proceedings which allow prosecuting attorneys to take exception to any ruling or decision of the county court by presenting to the court a notice of intent to take an appeal to the district court. In re Interest of Lori S., 20 Neb. App. 152, 819 N.W.2d 736 (2012).

The language of this section requires the appeal of a county court judgment to the district court sitting as an appellate court. In re Interest of Lori S., 20 Neb. App. 152, 819 N.W.2d 736 (2012).

29-2321.

When a defendant challenges a sentence imposed by the district court as excessive and the State believes the sentence to be erroneous but has not complied with section 29-2315.01 or this section, the State may not assert such error via a cross-appeal. State v. Guzman, 305 Neb. 376, 940 N.W.2d 552 (2020).

While there is a temptation on a visceral level to conclude that anything less than incarceration depreciates the seriousness of crimes involving sexual assault of a child, it is the function of the sentencing judge, in the first instance, to evaluate the crime and the offender. State v. Gibson, 302 Neb. 833, 925 N.W.2d 678 (2019).

29-2322.

When a judge has imposed sentences for several convictions at the same time, an appellate court generally considers the aggregate sentence in considering whether a sentence is excessively lenient. State v. McGovern, 311 Neb. 705, 974 N.W.2d 595 (2022).

A sentence of probation is not excessively lenient, even though the crimes were serious with an egregious set of facts, where the offender was convicted of a Class II felony for which the law prescribed no mandatory minimum sentence, the presentence investigation report showed he is at low risk to reoffend, and the psychological evaluation recognized he was around 14 years of age at the time of the offenses and has not subsequently engaged in any other known or reported forms of sexual misconduct. State v. Pauly, 311 Neb. 418, 972 N.W.2d 907 (2022).

29-2407.

Although a judgment for costs in a criminal case is a lien upon a defendant's property, Nebraska statutes do not specifically authorize a setoff of costs owed to the court against proceeds of the defendant's bond. State v. Zamarron, 19 Neb. App. 349, 806 N.W.2d 128 (2011).

29-2412.

The credit authorized under former subsection (3) of this section is limited to the situation where the person is held in custody for nonpayment and does not provide for a $90-per-day credit against costs for "extra" time incarcerated prior to sentencing. State v. Zamarron, 19 Neb. App. 349, 806 N.W.2d 128 (2011).

29-2519.

The death penalty is imposed for a conviction of murder in the first degree only in those instances when the aggravating circumstances existing in connection with the crime outweigh the mitigating circumstances. State v. Schroeder, 305 Neb. 527, 941 N.W.2d 445 (2020).

29-2521.

Because a sentencing panel is required to consider and weigh any mitigating circumstances in imposing a sentence of death, the introduction of evidence of the existence or nonexistence of these potential mitigators has probative value to the sentence, and as such, a sentencing panel has the discretion to hear evidence to address potential mitigating circumstances regardless of whether the defendant presents evidence on that issue. State v. Schroeder, 305 Neb. 527, 941 N.W.2d 445 (2020).

The sentencing panel could consider a defendant's no contest plea and the factual basis underlying it, but it could not use it as an admission to aggravating circumstances for sentencing purposes. State v. Jenkins, 303 Neb. 676, 931 N.W.2d 851 (2019).

29-2522.

A court's proportionality review spans all previous cases in which a sentence of death is imposed and is not dependent on which cases are put forward by the parties. The proportionality review does not require that a court "color match" cases precisely, and instead, the question is simply whether the cases being compared are sufficiently similar, considering both the crime and the defendant, to provide the court with a useful frame of reference for evaluating the sentence in this case. State v. Schroeder, 305 Neb. 527, 941 N.W.2d 445 (2020).

29-2523.

Mitigating circumstances involve, in part, circumstances surrounding the underlying crime and include pressure or influences which may have weighed on the defendant, potential influence on the defendant of extreme mental or emotional disturbance at the time of the offense, potential victim participation or consent to the act, the defendant's capacity to appreciate the wrongfulness of the act at the time of the offense, and any mental illness, defect, or intoxication which may have contributed to the offense. State v. Schroeder, 305 Neb. 527, 941 N.W.2d 445 (2020).

29-2801.

After the court's jurisdiction has been invoked by a petition for habeas corpus seeking the custody of children, the children become wards of the court and their welfare lies in the hands of the court. Maria T. v. Jeremy S., 300 Neb. 563, 915 N.W.2d 441 (2018).

Courts are cautioned in habeas proceedings to follow the traditional procedure illustrated by the habeas corpus

statutes rather than make up their own procedure. Maria T. v. Jeremy S., 300 Neb. 563, 915 N.W.2d 441 (2018).

Habeas corpus is not a proper remedy to challenge a petitioner's detention pursuant to a final conviction and sentence on the basis that the statute underlying the conviction is unconstitutional. Sanders v. Frakes, 295 Neb. 374, 888 N.W.2d 514 (2016).

The State cannot collaterally attack in a habeas action a prior sentence that the court erroneously failed to enhance under the habitual criminal statutes. Meyer v. Frakes, 294 Neb. 668, 884 N.W.2d 131 (2016).

A parolee may seek relief through Nebraska's habeas corpus statute. Caton v. State, 291 Neb. 939, 869 N.W.2d 911 (2015).

The failure to attach a copy of the relevant commitment order to a petition for a writ of habeas corpus, as required by this section, does not prevent a court from exercising jurisdiction over that petition. O'Neal v. State, 290 Neb. 943, 863 N.W.2d 162 (2015).

The law-of-the-case doctrine applies to issues raised in a petition for a writ of habeas corpus if that same issue was raised in the appellate court on direct appeal. Gray v. Kenney, 22 Neb. App. 739, 860 N.W.2d 214 (2015).

29-2823.

The dismissal of a habeas corpus petition in the same action as a petition in error may be reviewed on appeal in the same manner as a civil case. Tyrrell v. Frakes, 309 Neb. 85, 958 N.W.2d 673 (2021).

29-2824.

No prepayment of fees is necessary in order to file a petition for a writ of habeas corpus based upon an issue of custody in a criminal case. Buggs v. Frakes, 298 Neb. 432, 904 N.W.2d 664 (2017).

29-3001.

The State is not required to provide a response to a motion before the court makes a ruling that the motion and the files and records of a case show that the prisoner is entitled to no relief. State v. Lessley, 312 Neb. 316, 978 N.W.2d 620 (2022).

The 1-year limitation period for filing a verified motion for postconviction relief was not tolled where the petitioner filed a motion for new trial 344 days after the conclusion of his direct appeal. State v. Hill, 310 Neb. 647, 968 N.W.2d 96 (2021).

Because there was evidence in the record supporting the court's credibility findings regarding the deposition testimony of the alibi witnesses, the court did not err in denying the appellant's request for live witnesses at the evidentiary hearing. State v. Newman, 310 Neb. 463, 966 N.W.2d 860 (2021).

The procedures a district court uses in evaluating a postconviction action are reviewed for an abuse of discretion. But the district court's discretion must comport with the specific procedural rules mandated by this section. State v. Newman, 310 Neb. 463, 966 N.W.2d 860 (2021).

The weight to be accorded to testimony given by deposition, as compared to that given orally in court, must depend, not upon its form, but upon all the circumstances affecting its credibility. State v. Newman, 310 Neb. 463, 966 N.W.2d 860 (2021).

A motion for postconviction relief cannot be used to secure review of issues that were known to the defendant and which were or could have been litigated on direct appeal. State v. Malone, 308 Neb. 929, 957 N.W.2d 892 (2021).

In the absence of allegations that would render the judgment void or voidable, the proper course is to overrule a motion for postconviction relief without an evidentiary hearing for failure to state a claim. State v. Malone, 308 Neb. 929, 957 N.W.2d 892 (2021).

Postconviction relief is a very narrow category of relief and is not intended to secure a routine review for any defendant dissatisfied with his or her sentence. State v. Malone, 308 Neb. 929, 957 N.W.2d 892 (2021).

When a motion for postconviction relief is filed, an evidentiary hearing is not required if (1) the motion does not contain factual allegations of a violation or infringement of the prisoner's constitutional rights, (2) the motion alleges

only conclusions of fact or law, or (3) the record affirmatively shows that the prisoner is entitled to no relief. State v. Malone, 308 Neb. 929, 957 N.W.2d 892 (2021).

In a postconviction proceeding, an evidentiary hearing is not required when (1) the motion does not contain factual allegations which, if proved, constitute an infringement of the movant's constitutional rights, rendering the judgment void or voidable; (2) the motion alleges only conclusions of fact or law without supporting facts; or (3) the records and files affirmatively show that the defendant is entitled to no relief. State v. Stelly, 308 Neb. 636, 955 N.W.2d 729 (2021).

Hurst v. Florida, 577 U.S. 92, 136 S. Ct. 616, 193 L. Ed. 2d 504 (2016), did not announce a new rule of law and thus cannot trigger the 1-year statute of limitations. State v. Hessler, 305 Neb. 451, 940 N.W.2d 836 (2020).

Pursuant to subsection (4) of this section, a 1-year time period for filing a verified motion for postconviction relief was not triggered by a Supreme Court case which merely applied previously recognized constitutional requirements in sentencing of capital defendants. State v. Mata, 304 Neb. 326, 934 N.W.2d 475 (2019).

The conclusion of a direct appeal occurs when a Nebraska appellate court issues the mandate in the direct appeal. State v. Koch, 304 Neb. 133, 933 N.W.2d 585 (2019).

Where none of the triggering events applied to extend the time for filing a second motion for postconviction relief, the motion was barred by the 1-year time limit. State v. Edwards, 301 Neb. 579, 919 N.W.2d 530 (2018).

The decision in *Hurst v. Florida*, 577 U.S. 92, 136 S. Ct. 616, 193 L. Ed. 2d 504 (2016), did not extend the time for filing a postconviction motion, because it did not announce a newly recognized right that has been made applicable retroactively to cases on postconviction collateral review. State v. Lotter, 301 Neb. 125, 917 N.W.2d 850 (2018).

A court looks to the allegations of the verified-postconviction motion and the files and records of the case to determine which of the triggering events applies to the determination of timeliness. State v. Torres, 300 Neb. 694, 915 N.W.2d 596 (2018).

The "time for filing a direct appeal" of subdivision (4)(a) of this section does not include time for filing a writ of certiori. If the timeliness of a postconviction motion is challenged, an inmate must raise all applicable arguments in support of timeliness to the district court to preserve them for appellate review. State v. Conn, 300 Neb. 391, 914 N.W.2d 440 (2018).

Applying the postconviction time limits to inmates whose crimes occurred prior to the enactment of the time limits does not result in ex post facto punishment. State v. Amaya, 298 Neb. 70, 902 N.W.2d 675 (2017).

If, as part of its preliminary review, a trial court finds a postconviction motion affirmatively shows it is time barred, the court is permitted, but not obligated, to sua sponte consider and rule upon the timeliness of the motion. State v. Amaya, 298 Neb. 70, 902 N.W.2d 675 (2017).

Ineffective assistance of postconviction counsel is not an impediment created by state action, because there is no constitutional right to effective assistance of counsel in a postconviction proceeding. State v. Amaya, 298 Neb. 70, 902 N.W.2d 675 (2017).

The 1-year statute of limitations for postconviction actions applies to all verified motions for postconviction relief, including successive motions. State v. Amaya, 298 Neb. 70, 902 N.W.2d 675 (2017).

After a criminal case is closed, there may be ethical duties that require prosecutors to take action upon learning of evidence that creates a reasonable likelihood the defendant did not commit the crime. But Nebraska's postconviction statutes provide relief only for constitutional violations that render a conviction void or voidable. The prosecution's disclosure duties under Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), do not apply after a defendant has been convicted in a fair trial and the presumption of innocence no longer applies. State v. Harris, 296 Neb. 317, 893 N.W.2d 440 (2017).

Civil pleading rules do not apply to postconviction proceedings. State v. Robertson, 294 Neb. 29, 881 N.W.2d 864 (2016).

A court decision that announced a new rule but did not recognize a new constitutional claim is not a triggering event under subdivision (4)(d) of this section, nor were later cases applying that court decision. State v. Harrison, 293 Neb. 1000, 881 N.W.2d 860 (2016).

The 1-year limitation period under subsection (4) of this section shall run from the date on which the constitutional

claim asserted was initially recognized, and not from the filing date of the opinion determining that the recognition the constitutional claim asserted applies retroactively. State v. Goynes, 293 Neb. 288, 876 N.W.2d 912 (2016).

The issuance of a mandate by a Nebraska appellate court is a definitive determination of the "conclusion of a direct appeal," and the "date the judgment of conviction became final," for purposes of subdivision (4)(a) of this section. State v. Huggins, 291 Neb. 443, 866 N.W.2d 80 (2015).

The 1-year period of limitation set forth in subsection (4) of this section is not a jurisdictional requirement and instead is in the nature of a statute of limitations. State v. Crawford, 291 Neb. 362, 865 N.W.2d 360 (2015).

A prisoner's motion for postconviction relief contained his signature, the date, a notary's signature, and a notary stamp, in two places: once following the concluding paragraph of the motion and again following the certificate of service. In the second signature section, it stated: "SUBSCRIBE [sic] AND SWORN TO BEFORE ME THIS 16th DAY OF JULY, 2020." This was followed by the words "NOTARY PUBLIC," which were then followed by the notary's signature and stamp. The first signature section, which contained only the prisoner's signature, the date, and the notary's signature and stamp, served only as an acknowledgment, rather than a verification. However, the language contained in the second signature section at the end of the prisoner's motion for postconviction relief was a sufficient verification. State v. Rush, 31 Neb. App. 1, 975 N.W.2d 541 (2022).

Under subdivision (4)(a) of this section, the claims raised in an amended motion for postconviction relief which is filed outside the 1-year statute of limitations must be based on the same set of facts as the claims contained in the original motion in order to relate back to the filing of the original motion. State v. Liner, 26 Neb. App. 303, 917 N.W.2d 194 (2018).

The rule that when counsel is court appointed, the defendant does not have a constitutional right to counsel of his or her choice, is equally applicable when counsel is appointed in postconviction proceedings. State v. Davis, 23 Neb. App. 536, 875 N.W.2d 450 (2016).

29-3002.

An order overruling a motion for postconviction relief as to a claim is a "final judgment" as to such claim. State v. Lotter, 301 Neb. 125, 917 N.W.2d 850 (2018).

An order ruling on a motion filed in a pending postconviction case, seeking to amend the postconviction motion to assert additional claims, is not a final judgment and is not appealable. State v. Lotter, 301 Neb. 125, 917 N.W.2d 850 (2018).

29-3003.

When presented with a motion for postconviction relief that exists simultaneously with a motion seeking relief under another remedy, a court must dismiss the postconviction motion without prejudice when the allegations, if true, would constitute grounds for relief under the other remedy sought; the question is not whether the petitioner believes he or she is entitled to the other remedy. State v. Harris, 292 Neb. 186, 871 N.W.2d 762 (2015).

29-3004.

Although appointment of counsel in postconviction cases is discretionary, this section provides that once counsel has been appointed and appointed counsel has made application to the court, the court "shall" fix reasonable expenses and fees. State v. Rice, 295 Neb. 241, 888 N.W.2d 159 (2016).

Court-appointed counsel in a postconviction proceeding may appeal to the appellate courts from an order determining expenses and fees allowed under this section. Such an appeal is a proceeding separate from the underlying postconviction proceeding. State v. Rice, 295 Neb. 241, 888 N.W.2d 159 (2016).

To determine reasonable expenses and fees under this section, a court must consider several factors: the nature of the litigation, the time and labor required, the novelty and difficulty of the questions raised, the skill required to properly conduct the case, the responsibility assumed, the care and diligence exhibited, the result of the suit, the character and standing of the attorney, and the customary charges of the bar for similar services. State v. Rice, 295 Neb. 241, 888 N.W.2d 159 (2016).

The rule that when counsel is court appointed, the defendant does not have a constitutional right to counsel of his or her choice, is equally applicable when counsel is appointed in postconviction proceedings. State v. Davis, 23 Neb. App. 536, 875 N.W.2d 450 (2016).

29-3523.

This section does not give rise to a legal duty that would subject a private person to civil tort liability for failing to act in the manner prescribed by it. Doe v. State, 312 Neb. 665, 980 N.W.2d 842 (2022).

A county court lacked jurisdiction over the defendant's motion to seal records in a criminal action filed years after her case had been dismissed. The applicable statute did not authorize filing a motion to make her criminal history record information nonpublic, but, rather, required a person to bring an action for such relief, disapproving State v. Blair, 17 Neb. App. 611, 767 N.W.2d 143 (2009). State v. Coble, 299 Neb. 434, 908 N.W.2d 646 (2018).

A county court's order overruling the defendant's motion to seal records, filed years after her case had been dismissed, was a final, appealable order, because the order ruled on a postjudgment motion and affected a substantial right. The right invoked was the statutory right to remove the record of the defendant's citation from the public record, no mere technical right. State v. Coble, 299 Neb. 434, 908 N.W.2d 646 (2018).

An order on a motion seeking to remove the record of a criminal citation from the public record under this section affects a substantial right for purposes of section 25-1902. State v. Coble, 299 Neb. 434, 908 N.W.2d 646 (2018).

An order regarding the statutory right to remove criminal record history information from the public record affects a substantial right for purposes of determining whether it is a final, appealable order. State v. Coble, 299 Neb. 434, 908 N.W.2d 646 (2018).

Section 29-3528 authorizes an aggrieved individual to bring an action, not to file a motion in the criminal case the record of which he or she seeks to seal pursuant to this section. An "action" is a distinct and separate court proceeding, governed by separate pleadings and requiring separate process. State v. Coble, 299 Neb. 434, 908 N.W.2d 646 (2018).

This section does not authorize the filing of a motion to make criminal history record information nonpublic. State v. Coble, 299 Neb. 434, 908 N.W.2d 646 (2018).

This section generally protects certain criminal history record information and prohibits, subject to exceptions, the dissemination of this information. State v. Coble, 299 Neb. 434, 908 N.W.2d 646 (2018).

29-3528.

This section does not either expressly or by overwhelming implication waive sovereign immunity for actions brought against a state agency seeking compliance with the Criminal History Information Act. State ex rel. Rhiley v. Nebraska State Patrol, 301 Neb. 241, 917 N.W.2d 903 (2018).

This section authorizes an aggrieved individual to bring an action, not to file a motion in the criminal case the record of which he or she seeks to seal pursuant to section 29-3523. An "action" is a distinct and separate court proceeding, governed by separate pleadings and requiring separate process. State v. Coble, 299 Neb. 434, 908 N.W.2d 646 (2018).

This section provides a procedure for enforcing the privacy protections of the Security, Privacy, and Dissemination of Criminal History Information Act (including section 29-3523). State v. Coble, 299 Neb. 434, 908 N.W.2d 646 (2018).

29-3801.

The procedure set out in this section, including the speedy trial provision of section 29-3805, applies only to a prisoner in the custody of the Department of Correctional Services and ceases to apply to a criminal defendant when he or she is discharged from the custody of the Department of Correctional Services. State v. Yzeta, 313 Neb. 202, 983 N.W.2d 124 (2023).

29-3805.

If a person ceases to be a prisoner before being brought to trial and has not regained that status, he or she cannot be a prisoner at the time of trial as contemplated by this section. State v. Yzeta, 313 Neb. 202, 983 N.W.2d 124 (2023).

The 180-day period for trial under this section ceases to run after a person who is imprisoned in a facility operated by the Department of Correctional Services is finally discharged (in other words, when he or she is no longer a Department of Correctional Services prisoner). State v. Yzeta, 313 Neb. 202, 983 N.W.2d 124 (2023).

A Nebraska prisoner sought relief under two different speedy trial statutes, but only this section, governing intrastate detainers, applied. State v. Kolbjornsen, 295 Neb. 231, 888 N.W.2d 153 (2016).

Good cause means a substantial reason, one that affords a legal excuse, and it is a factual question dealt with on a case-by-case basis. State v. Kolbjornsen, 295 Neb. 231, 888 N.W.2d 153 (2016).

Under some circumstances, courtroom unavailability may constitute good cause to continue a trial. State v. Kolbjornsen, 295 Neb. 231, 888 N.W.2d 153 (2016).

Form VII could not serve to trigger the 180-day period under this section, since it was only filed in the county court and not delivered to the director of the Department of Correctional Services. State v. LeFever, 30 Neb. App. 562, 970 N.W.2d 792 (2022).

The certificate contemplated by this section is not restricted to one particular form. State v. LeFever, 30 Neb. App. 562, 970 N.W.2d 792 (2022).

Whether invoked by an instate prisoner or by the prosecutor, it is the prosecutor's receipt of the statutorily required certificate from the director of the Department of Correctional Services pursuant to section 29-3803 or section 29-3804 which triggers the 180-day period for disposition of untried charges prescribed by this section. State v. LeFever, 30 Neb. App. 562, 970 N.W.2d 792 (2022).

29-3908.

An order finding a defendant to be indigent and appointing appellate counsel at the county's expense did not affect a substantial right of the parties and was not a final order for purposes of appeal, where the order did not obligate the county to pay any specific amount or set a deadline for payment, such determinations were to be the subject of future proceedings addressing the question of reasonable attorney fees, and the State had the ability to challenge the findings of indigency and recoup any subsequently expended funds from the defendant. State v. Fredrickson, 305 Neb. 165, 939 N.W.2d 385 (2020).

29-4001.01.

Following the 2009 amendments to the Sex Offender Registration Act, a sentencing court has the authority to find that a defendant committed an aggravated offense as defined in subdivision (1) of this section. State v. Wilson, 306 Neb. 875, 947 N.W.2d 704 (2020).

When a defendant pleads to an offense, such as first degree sexual assault pursuant to section 28-319, where the term "aggravated offense" is not a specifically included element of the offense, in order for lifetime community supervision to apply, a jury would need to find that the defendant had committed an aggravated offense, or the defendant must plead separately to the commission of an aggravated offense. State v. Nelson, 27 Neb. App. 748, 936 N.W.2d 32 (2019).

To constitute "direct genital touching" for purposes of finding an aggravated offense under this section, there must be evidence that the actor touched the victim's genitals under the victim's clothing. State v. Kresha, 25 Neb. App. 543, 909 N.W.2d 93 (2018).

29-4003.

A sex offender registrant's actual registration under another jurisdiction's law is conclusive evidence that the registrant was required to register within the meaning of subdivision (1)(a)(iv) of this section. State v. Clemens, 300 Neb. 601, 915 N.W.2d 550 (2018).

Under subdivision (1)(a)(iv) of this section, whether one is "required to register as a sex offender" in another jurisdiction is determined under the laws of the other jurisdiction rather than under Nebraska law. Subdivision (1)(a)(iv) of this section adds no additional requirement that registration in the other jurisdiction must be based on a "conviction" or an offense that would have required the person to register in Nebraska if the offense had been committed in Nebraska. State v. Clemens, 300 Neb. 601, 915 N.W.2d 550 (2018).

A finding under subdivision (1)(b)(i)(B) of this section must be made during the proceedings on the underlying conviction or plea and is a judgment on the issue of the Sex Offender Registration Act's application to the defendant, which must be appealed at the end of the proceeding. State v. Ratumaimuri, 299 Neb. 887, 911 N.W.2d 270 (2018).

29-4005.

Following the 2009 amendments to the Sex Offender Registration Act, a sentencing court has the authority to find that a defendant committed an aggravated offense as defined in section 29-4001.01 and to inform the defendant that he or she is thus required to register for life under subdivision (1)(b)(iii) of this section. State v. Wilson, 306 Neb. 875, 947 N.W.2d 704 (2020).

29-4006.

In carrying out its notification obligation under subsection (7) of this section, the Nebraska State Patrol cannot make a different determination regarding an offender's registration duration after a sentencing court finds an aggravated offense as defined in section 29-4001.01. State v. Wilson, 306 Neb. 875, 947 N.W.2d 704 (2020).

29-4007.

Following the 2009 amendments to the Sex Offender Registration Act, a sentencing court has the authority to find that a defendant committed an aggravated offense as defined in section 29-4001.01 and to inform the defendant that he or she is thus required to register for life under section 29-4005. State v. Wilson, 306 Neb. 875, 947 N.W.2d 704 (2020).

29-4008.

The phrase "knowingly and willfully" in this section applies only to the furnishing of false and misleading information and not to the failure to update information. State v. Clark, 22 Neb. App. 124, 849 N.W.2d 151 (2014).

29-4106.

The requirement for a convicted felon to provide a DNA sample pursuant to subdivision (1)(a) of this section exists once the convicted felon begins serving his or her sentence. State v. Weathers, 304 Neb. 402, 935 N.W.2d 185 (2019).

This section inherently authorizes the use of reasonable force to collect a DNA sample from a convicted felon. State v. Weathers, 304 Neb. 402, 935 N.W.2d 185 (2019).

29-4116.

Pursuant to the DNA Testing Act, a person in custody takes the first step toward obtaining possible relief by filing a motion in the court that entered the judgment requesting forensic DNA testing of biological material. State v. Hale, 306 Neb. 725, 947 N.W.2d 313 (2020).

The DNA Testing Act is a limited remedy providing inmates an opportunity to obtain DNA testing in order to establish innocence after a conviction. State v. Hale, 306 Neb. 725, 947 N.W.2d 313 (2020).

The DNA Testing Act does not apply to DNA testing of the defendant's person for the purpose of determining the defendant's metabolism of prescription medication. Furthermore, new evidence concerning a defendant's metabolism of prescription drugs, when such evidence has no bearing on identity, is not exculpatory under the DNA Testing Act. State v. Robbins, 297 Neb. 503, 900 N.W.2d 745 (2017).

29-4117.

The DNA Testing Act is a limited remedy providing inmates an opportunity to obtain DNA testing in order to establish innocence after a conviction. State v. Myers, 304 Neb. 789, 937 N.W.2d 181 (2020).

29-4119.

DNA testing results that excluded a prisoner as a source of semen found on the victim at the time of her death did not fit within the definition of exculpatory evidence, because the prisoner was not charged with sexual assault, and his exclusion as a source of semen was not material to whether he was guilty of murder or of using a weapon to commit a felony. State v. Buckman, 311 Neb. 304, 971 N.W.2d 791 (2022).

29-4120.

A court is not required to order DNA testing under this section if such testing would not produce exculpatory evidence. State v. Hale, 306 Neb. 725, 947 N.W.2d 313 (2020).

If the criteria in subsection (1) of this section are met, and the reviewing court finds that testing may produce noncumulative, exculpatory evidence relevant to the claim that the person was wrongfully convicted or sentenced, under subsection (5) of this section, the court must order DNA testing. State v. Hale, 306 Neb. 725, 947 N.W.2d 313 (2020).

The threshold showing required under subsection (5) of this section is relatively undemanding and will generally preclude testing only where the evidence at issue would have no bearing on the guilt or culpability of the movant. State v. Hale, 306 Neb. 725, 947 N.W.2d 313 (2020).

Under subsection (5) of this section, the court has discretion to either consider the motion on affidavits or hold a hearing. State v. Hale, 306 Neb. 725, 947 N.W.2d 313 (2020).

The statutory requirement that requested DNA testing may produce noncumulative, exculpatory evidence relevant to a movant's claim that he or she was wrongfully convicted or sentenced is relatively undemanding for the movant and will generally preclude testing only where the evidence at issue would have no bearing on the guilt or culpability of the movant. State v. Ildefonso, 304 Neb. 711, 936 N.W.2d 348 (2019).

Where a prisoner sought DNA testing to corroborate an admittedly fabricated story and where testing results would be inconclusive at best, the prisoner failed to meet his burden to show that DNA testing may produce noncumulative, exculpatory evidence relevant to his claim that he was wrongfully convicted. State v. Ildefonso, 304 Neb. 711, 936 N.W.2d 348 (2019).

The showing that must be made to obtain DNA testing presents a relatively low threshold; in determining whether to allow such testing, consideration of the higher legal standards applicable to setting aside a judgment or requiring a new trial after testing has been performed is inappropriate. State v. Myers, 301 Neb. 756, 919 N.W.2d 893 (2018).

Pursuant to subsection (5) of this section, in cases of successive motions for DNA testing, the district court must make a new determination of whether the biological material has been retained under circumstances likely to safeguard the integrity of its original physical composition, but such determination shall be limited to a review of the evidence occurring since the last motion for DNA testing. State v. Pratt, 20 Neb. App. 434, 824 N.W.2d 393 (2013).

Second, or successive, motions for DNA testing are permissible pursuant to the DNA Testing Act, specifically subsection (1)(c) of this section; however, res judicata principles would operate to bar a successive motion for DNA testing if the exact same issue was raised in both motions. State v. Pratt, 20 Neb. App. 434, 824 N.W.2d 393 (2013).

When a defendant files successive motions for DNA testing pursuant to the DNA Testing Act, specifically subsection (5) of this section, a court is required to first consider whether the DNA testing sought was effectively not available at the time of the trial; if it was not, the court must then consider whether the DNA testing was effectively not available at the time the previous DNA testing was sought by the defendant. State v. Pratt, 20 Neb. App. 434, 824 N.W.2d 393 (2013).

29-4122.

Decisions regarding appointment of counsel under the DNA Testing Act are reviewed for an abuse of discretion. State v. Myers, 304 Neb. 789, 937 N.W.2d 181 (2020).

29-4123.

The trial court did not abuse its discretion in sustaining the State's motion to dismiss where other credible evidence tied the prisoner to the crimes and the results of DNA testing—which did not detect any blood on certain items—were best regarded as inconclusive, and the results that excluded the prisoner as the source of semen were not material to the crimes charged. State v. Buckman, 311 Neb. 304, 971 N.W.2d 791 (2022).

Resentencing, absent a successful motion for new trial under this section, is not a form of relief available under the DNA Testing Act. State v. Amaya, 305 Neb. 36, 938 N.W.2d 346 (2020).

Withdrawal of a guilty or no contest plea is not an available remedy under the DNA Testing Act. State v. Amaya, 305 Neb. 36, 938 N.W.2d 346 (2020).

29-4603.

Actual innocence under the Wrongful Conviction and Imprisonment Act is akin to factual innocence, while a

self-defense claim is relevant to a claim of legal innocence. Marie v. State, 302 Neb. 217, 922 N.W.2d 733 (2019).

Claim preclusion is inapplicable in cases under the Wrongful Conviction and Imprisonment Act. Marie v. State, 302 Neb. 217, 922 N.W.2d 733 (2019).

A defendant alleging a wrongful conviction claim pursuant to this section must plead more than lack of intent to establish "actual innocence of the crime." Nadeem v. State, 298 Neb. 329, 904 N.W.2d 244 (2017).

30-809.

A wrongful death action and a survival action are two distinct causes of action which may be brought by a decedent's personal representative. Although they are frequently joined in a single action, they are conceptually separate. In re Estate of McConnell, 28 Neb. App. 303, 943 N.W.2d 722 (2020).

30-810.

Because of the binding effect of a federal court judgment, Nebraska's wrongful death statute did not apply and the county court properly ordered distribution pursuant to the federal court judgment that applied North Carolina law. In re Estate of Helms, 302 Neb. 357, 923 N.W.2d 423 (2019).

This section confers exclusive jurisdiction to the county court to approve wrongful death settlements and discretionary jurisdiction to distribute the proceeds of wrongful death claims. The beneficiaries of a wrongful death action are not entitled to be parties to the wrongful death proceeds distribution proceedings. In re Estate of Evertson, 295 Neb. 301, 889 N.W.2d 73 (2016).

This section is silent on subrogation. Accordingly, under section 48-118.04, proceedings for the fair and equitable distribution of wrongful death action proceeds subject to subrogation in workers' compensation cases must be brought in the district court. In re Estate of Evertson, 295 Neb. 301, 889 N.W.2d 73 (2016).

This section is silent on wrongful death actions. Accordingly, under section 48-118.01, wrongful death actions must be brought in the district court. In re Estate of Evertson, 295 Neb. 301, 889 N.W.2d 73 (2016).

This section does not govern the distribution of proceeds from a survival claim brought on behalf of the decedent's estate, which continued a decedent's cause of action for the decedent's injuries that occurred before death. In re Estate of Panec, 291 Neb. 46, 864 N.W.2d 219 (2015).

A wrongful death action and a survival action are two distinct causes of action which may be brought by a decedent's personal representative. Although they are frequently joined in a single action, they are conceptually separate. In re Estate of McConnell, 28 Neb. App. 303, 943 N.W.2d 722 (2020).

A wrongful death action is brought on behalf of the widow or widower and next of kin for damages they have sustained as a result of the decedent's death. Such damages include the pecuniary value of the loss of the decedent's support, society, comfort, and companionship. In re Estate of McConnell, 28 Neb. App. 303, 943 N.W.2d 722 (2020).

The next of kin may recover in a wrongful death action only those losses sustained after the injured party's death by reason of being deprived of what the next of kin would have received from the injured party from the date of his or her death, had he or she lived out a full life expectancy. In re Estate of McConnell, 28 Neb. App. 303, 943 N.W.2d 722 (2020).

The pecuniary value of the loss of the decedent's support, society, comfort, and companionship does not require evidence of the dollar value; that is a matter left to the sound discretion of the fact finder. In re Estate of McConnell, 28 Neb. App. 303, 943 N.W.2d 722 (2020).

The proceeds from a wrongful death action are not the property of a decedent's estate and are therefore not contemplated as a property right waived in a premarital agreement unless the language of the premarital agreement specifically waives such a right. In re Estate of McConnell, 28 Neb. App. 303, 943 N.W.2d 722 (2020).

Where a husband and a wife had no meaningful relationship at the time of the husband's death and a divorce was pending, the wife was not entitled to recover in a wrongful death action based on the loss of her deceased husband's society, love, affection, care, attention, companionship, comfort, or protection. In re Estate of McConnell, 28 Neb. App. 303, 943 N.W.2d 722 (2020).

Relatives absent from a decedent's life may suffer little, or no, pecuniary loss from the death and not be entitled to share in the damages recovered for a wrongful death. In re Estate of Brown-Elliott, 27 Neb. App. 196, 930 N.W.2d

51 (2019).

A wrongful death action brought in the name of a 6-year-old child's mother, as representative of the child's estate, was brought for the exclusive benefit of the child's next of kin, and thus, the child's father, as next of kin and beneficiary of the child's estate, was properly included in the court's instruction to the jury regarding the allocation of percentages of contributory negligence, even though the father was not brought into the action either as a claimant within the meaning of the statute that governed the defense of contributory negligence or as a third-party defendant. Curtis v. States Family Practice, 20 Neb. App. 234, 823 N.W.2d 224 (2012).

30-1601.

The parents of an adult incapacitated ward who appeared before county court as persons interested in his welfare and objected to the guardian's motion seeking discharge had standing to appeal from an order of discharge. In re Guardianship of Nicholas H., 309 Neb. 1, 958 N.W.2d 661 (2021).

An order ending a discrete phase of probate proceedings is a final, appealable order, but one that is merely preliminary to such an order is not. In re Estate of Larson, 308 Neb. 240, 953 N.W.2d 535 (2021).

An heir to a decedent is an interested person to a probate proceeding and may take an appeal pursuant to subsection (2) of this section from a final judgment or final order by which he or she is affected. In re Estate of Brinkman, 308 Neb. 117, 953 N.W.2d 1 (2021).

Subsection (2) of this section authorizes a protected person's close family members to appeal from a final order in a conservatorship proceeding if they filed an objection and the county court appointed a conservator. In re Conservatorship of Franke, 292 Neb. 912, 875 N.W.2d 408 (2016).

When a protected person dies pending an appeal initiated by a close family member who filed an objection, whether the protected person needed a conservator is a moot issue unless the family member asks the appellate court to take judicial notice of a proceeding that shows the issue is not moot. Absent that showing, the protected person's death abates the family member's appeal, but it does not extinguish the cause of action or affect the validity of the underlying orders appointing a conservator. In re Conservatorship of Franke, 292 Neb. 912, 875 N.W.2d 408 (2016).

30-2211.

The county courts have the power to construe wills. Brinkman v. Brinkman, 302 Neb. 315, 923 N.W.2d 380 (2019).

The probate court lacked subject matter jurisdiction under this section to address requests for reimbursement of attorney fees by an heir or devisee from another heir or devisee that were incurred while defending against actions in the district court. In re Estate of Schurman, 30 Neb. App. 259, 967 N.W.2d 734 (2021).

30-2223.

The district court did not abuse its discretion in charging a headstone to the estate, even though the decedent's surviving children had already bought one, where no headstone was purchased for approximately 6 months after his death, his mother requested a headstone be purchased, and the personal representative was unaware the children purchased a headstone. In re Estate of Larson, 311 Neb. 352, 972 N.W.2d 891 (2022).

30-2303.

Grandchildren are "issue of parents" under subsection (3) of this section according to the definition of "issue of a person" found in section 30-2209(23). In re Estate of Evans, 20 Neb. App. 602, 827 N.W.2d 314 (2013).

Modern per stirpes distribution begins division of shares of the estate at the first generation where there is living issue. In re Estate of Evans, 20 Neb. App. 602, 827 N.W.2d 314 (2013).

30-2306.

There must be at least one survivor in a degree of kinship to apply the phrase "by right of representation." In re Estate of Evans, 20 Neb. App. 602, 827 N.W.2d 314 (2013).

When an estate is divided "by representation" as provided for in this section into as many shares as there are surviving heirs in the nearest degree of kinship, the court looks first to the decedent's siblings, then to the decedent's siblings' children, and on down the generational line until reaching a generation containing surviving heirs. In re

Estate of Evans, 20 Neb. App. 602, 827 N.W.2d 314 (2013).

30-2314.

The signature of a testator's surviving spouse on a deed was evidence of a consent to transfer within the meaning of this section. In re Estate of Alberts, 293 Neb. 1, 875 N.W.2d 427 (2016).

The concepts of section 30-2722 should inform the interpretation of this section regarding the evidence necessary to establish the source of property owned by the surviving spouse. In re Estate of Ross, 19 Neb. App. 355, 810 N.W.2d 435 (2011).

When there is reason to doubt the credibility of the surviving spouse's testimony, the court need not accept his or her testimony that the source of the accounts was other than the decedent. In re Estate of Ross, 19 Neb. App. 355, 810 N.W.2d 435 (2011).

30-2315.

Under the plain language of this section, the surrounding facts and circumstances should be taken in consideration by the court in order to determine whether to authorize the filing for the elective share in the case of a protected person. In re Guardianship & Conservatorship of Kaiser, 295 Neb. 532, 891 N.W.2d 84 (2017).

30-2316.

A surviving spouse must prove both that the execution of the waiver was not voluntary and that the waiver was unconscionable when executed to prove a waiver he or she signed is unenforceable. In re Estate of Psota, 297 Neb. 570, 900 N.W.2d 790 (2017).

Subsection (d) of this section contemplates the waiving of the spouse's rights of inheritance only. Devney v. Devney, 295 Neb. 15, 886 N.W.2d 61 (2016).

This section's authorization of postnuptial estate agreements should be strictly construed, because all postnuptial agreements were void at common law. Devney v. Devney, 295 Neb. 15, 886 N.W.2d 61 (2016).

30-2327.

A document purporting to be a will, which is otherwise sufficient, will satisfy the "writing" requirement of this section, whether it is completely handwritten; partly written in ink and partly in pencil; partly typewritten and partly printed; partly printed, partly typewritten, and partly written; or on a printed form, as well as other combinations of these forms and comparable permanent techniques of writing which substantively evidence testamentary intent. In re Estate of Pluhacek, 296 Neb. 528, 894 N.W.2d 325 (2017).

There is no requirement under this section that the acknowledgment of a testator's signature on a will be duly sworn or confirmed by oath or affirmation; rather, the two witnesses must witness either the signing of the will or the testator's acknowledgment of the signature. In re Estate of Loftus, 26 Neb. App. 439, 920 N.W.2d 718 (2018).

30-2328.

A document which did not contain sufficient material provisions expressing testamentary and donative intent within the document itself could not be legally recognized as a valid holographic will. Absent a latent ambiguity, extrinsic evidence could not be considered to aid in that determination. In re Estate of Tiedeman, 25 Neb. App. 722, 912 N.W.2d 816 (2018).

A holographic will must contain sufficient material provisions, meaning words which express donative and testamentary intent. Donative intent relates to words reflecting specific bequests to particular beneficiaries, and testamentary intent concerns whether the document was intended to be a will. In re Estate of Tiedeman, 25 Neb. App. 722, 912 N.W.2d 816 (2018).

30-2341.

The intention of a testator as expressed in her will controls the legal effect of her dispositions. In re Estate of Akerson, 309 Neb. 470, 960 N.W.2d 719 (2021).

The cardinal rule in construing a will is to ascertain and effectuate the testator's intent if such intent is not contrary to the law. In re Estate of Barger, 303 Neb. 817, 931 N.W.2d 660 (2019).

30-2342.01.

Pursuant to subsection (a) of this section, no gift or devise for charitable or benevolent purposes shall be invalid or fail by reason that it is impossible to achieve. In re Estate of Akerson, 309 Neb. 470, 960 N.W.2d 719 (2021).

Pursuant to subsection (b) of this section, the court may determine and order an administration or distribution of the gift or devise in a manner as consistent as possible with the intent expressed in the document. In re Estate of Akerson, 309 Neb. 470, 960 N.W.2d 719 (2021).

30-2346.

When a conservator or guardian, not the testator, sells specifically devised property during the testator's lifetime, no ademption occurs. The proceeds of the sale are not included in the testator's residuary estate, but, rather, are given to the specific devisee to honor the specific devise. In re Guardianship & Conservatorship of Mueller, 23 Neb. App. 430, 872 N.W.2d 906 (2015).

30-2350.

Ademption by satisfaction is provided only for the devisees of a will, and if a devise is made by a will to a trust or trustee, the trust or trustee is the devisee and the beneficiaries of the trust are not devisees and ademption does not apply. In re Estate of Radford, 304 Neb. 205, 933 N.W.2d 595 (2019).

30-2401.

In Nebraska, title to both real and personal property passes immediately upon death to the decedent's devisees or heirs, subject to administration, allowances, and a surviving spouse's elective share. In re Estate of Akerson, 309 Neb. 470, 960 N.W.2d 719 (2021).

30-2404.

An otherwise valid amended complaint, filed after a complaint filed prematurely under this section but after the appointment or reappointment of a personal representative, is sufficient to commence a proceeding within the meaning of section 30-2486(2). Sparks v. Mach, 314 Neb. 724, 993 N.W.2d 119 (2023).

Under this section, a claim against a decedent's estate cannot be commenced before the county court has appointed a personal representative. Sparks v. Mach, 314 Neb. 724, 993 N.W.2d 119 (2023).

30-2405.

This section was designed to give probate courts of limited jurisdiction broad concurrent jurisdiction with courts of general jurisdiction. Eagle Partners v. Rook, 301 Neb. 947, 921 N.W.2d 98 (2018).

30-2408.

A proceeding to appoint a personal representative could be commenced more than 3 years after the decedent's death, because no formal or informal proceeding for probate or proceeding concerning the succession or administration had occurred within the 3-year period. In re Estate of Severson, 310 Neb. 982, 970 N.W.2d 94 (2022).

The exception to the 3-year statute of limitations in subsection (4) of this section is not applicable when any prior formal or informal proceeding for probate, whether completed or not, has occurred. In re Estate of Fuchs, 297 Neb. 667, 900 N.W.2d 896 (2017).

The statute of limitations in this section is self-executing and ordinarily begins to run upon the decedent's death. In re Estate of Fuchs, 297 Neb. 667, 900 N.W.2d 896 (2017).

30-2410.

Commencement of a probate case in Nebraska does not, in and of itself, preclude a decedent from having been domiciled in a different state, because venue is proper in any county in Nebraska where property of the decedent was located at the time of his or her death. In re Estate of Helms, 302 Neb. 357, 923 N.W.2d 423 (2019).

30-2420.

In the absence of qualification, the issuance of letters of personal representative as part of the appointment process is not authorized by this section. In re Estate of Severson, 310 Neb. 982, 970 N.W.2d 94 (2022).

30-2425.

Without additional facts indicating otherwise, an order appointing a special administrator pursuant to this section is not a final order. In re Estate of Abbott-Ochsner, 299 Neb. 596, 910 N.W.2d 504 (2018).

30-2429.01.

The county court, and not the district court, has jurisdiction to determine whether a personal representative or nominated personal representative should be reimbursed by the estate for attorney fees incurred in a will contest that is initiated during probate proceedings in the county court but that is transferred to the district court. In re Estate of Koetter, 312 Neb. 549, 980 N.W.2d 376 (2022).

A district court's jurisdiction to hear a will contest pursuant to this section is limited to determining validity. Bohling v. Bohling, 309 Neb. 625, 962 N.W.2d 224 (2021).

30-2429.02.

The fact that a district court has obtained, via the transfer of the will contest under subsection (3) of this section, "jurisdiction over the proceeding on the contest" does not divest the county court of its original jurisdiction in probate to protect the estate during the pendency of that will contest by considering the merits of a petition for a special administrator and request for a restraining order on the personal representative. In re Estate of Anderson, 311 Neb. 758, 974 N.W.2d 847 (2022).

30-2431.

Contestants of a will have the burden of establishing undue influence and carry the ultimate burden of persuasion. In re Estate of Clinger, 292 Neb. 237, 872 N.W.2d 37 (2015).

30-2444.

In the absence of qualification, the issuance of letters of personal representative as part of the appointment process is not authorized by this section. In re Estate of Severson, 310 Neb. 982, 970 N.W.2d 94 (2022).

Without acceptance by one appointed personal representative, there can be no qualification. In re Estate of Severson, 310 Neb. 982, 970 N.W.2d 94 (2022).

30-2454.

In order to remove a personal representative for cause, an interested person must file a petition for removal; an oral request at a hearing is insufficient for removal. In re Estate of Evans, 20 Neb. App. 602, 827 N.W.2d 314 (2013).

In the absence of a petition for removal of the personal representative and notice and hearing thereupon, the court cannot remove a personal representative. In re Estate of Evans, 20 Neb. App. 602, 827 N.W.2d 314 (2013).

Under subsection (b) of this section, the county court did not err in removing a personal representative who did not file inventory within the time period described in this section, failed to keep the remaining heirs appraised of the status of the inventory despite several requests for information, may have had a conflict of interest with the estate, failed to obtain an appraisal for the home despite requests from other heirs to do so, and claimed ownership of joint bank accounts which may have contained comingled funds. In re Estate of Webb, 20 Neb. App. 12, 817 N.W.2d 304 (2012).

30-2457.

An order denying a petition for a special administrator under this section and a concurrent request under this section for an order restraining the personal representative of the decedent's estate is a final, appealable order. In re Estate of Anderson, 311 Neb. 758, 974 N.W.2d 847 (2022).

30-2464.

The district court erred in granting summary judgment to the copersonal representatives on the claim they breached their fiduciary duties where the estate's payment of a promissory note was invalid and, as such, there was a genuine issue of material fact as to the breach claim. In re Estate of Lakin, 310 Neb. 271, 965 N.W.2d 365 (2021).

30-2473.

A motion to surcharge a personal representative is properly brought within the probate proceeding, because the facts underlying such motions ultimately concern the probate of the decedent's will and the distribution of the decedent's property. In re Estate of Graham, 301 Neb. 594, 919 N.W.2d 714 (2018).

30-2481.

The county court, and not the district court, has jurisdiction to determine whether a personal representative or nominated personal representative should be reimbursed by the estate for attorney fees incurred in a will contest that is initiated during probate proceedings in the county court but that is transferred to the district court. In re Estate of Koetter, 312 Neb. 549, 980 N.W.2d 376 (2022).

The district court did not abuse its discretion in finding that the personal representative acted in good faith in incurring attorney fees where the record showed she defended the will against vexatious litigation pursued by the decedent's children and to preserve the decedent's wishes, and her defense of the will was not primarily to increase her compensation. In re Estate of Larson, 311 Neb. 352, 972 N.W.2d 891 (2022).

This section does not allow the county court to deny fees because it finds that the personal representative or nominated personal representative who prosecuted or defended a proceeding in good faith should have known that the litigation position it took lacked merit, but the objective merits of a legal position could be relevant to whether a person defended or prosecuted a proceeding in good faith. In re Estate of Giventer, 310 Neb. 39, 964 N.W.2d 234 (2021).

30-2482.

The county court, and not the district court, has jurisdiction to determine whether a personal representative or nominated personal representative should be reimbursed by the estate for attorney fees incurred in a will contest that is initiated during probate proceedings in the county court but that is transferred to the district court. In re Estate of Koetter, 312 Neb. 549, 980 N.W.2d 376 (2022).

Under the Nebraska Probate Code, the Legislature has not expressly provided that a county is responsible for personal representative compensation. Therefore, a court lacks the authority to order a county to pay for a personal representative's fees and expenses. In re Estate of Hutton, 306 Neb. 579, 946 N.W.2d 669 (2020).

Section 30-2405 and this section are part of a scheme to give jurisdiction for the enforcement of probate claims to the county court, and that jurisdiction is concurrent with the jurisdiction of the district court to enforce such claims. Eagle Partners v. Rook, 301 Neb. 947, 921 N.W.2d 98 (2018).

The language of this section does not preclude using the probate claims procedure established in sections 30-2483 through 30-2498. Eagle Partners v. Rook, 301 Neb. 947, 921 N.W.2d 98 (2018).

30-2483.

Where the debt was for deferred wages earned by the claimant during the decedent's life, rather than wages earned after the decedent's death or an administrative expense of the estate, a claim must be filed pursuant to this section in order for the debt to be a valid debt of the estate. In re Estate of Lakin, 310 Neb. 271, 965 N.W.2d 365 (2021).

30-2484.

The two month suspension in this section means that by reason of a debtor's death, two months is added to the normal period of limitations before a debt is barred. Sparks v. Mach, 314 Neb. 724, 993 N.W.2d 119 (2023).

Under the Nebraska Probate Code, the first statute of limitations to apply will accomplish a bar. Sparks v. Mach, 314 Neb. 724, 993 N.W.2d 119 (2023).

Under this section, the running of any statute of limitations, measured from some event other than the death of and subsequent advertisement for claims against a decedent, is suspended during the two months following the

decedent's death but resumes thereafter as to claims not barred pursuant to any applicable statute of limitations. Sparks v. Mach, 314 Neb. 724, 993 N.W.2d 119 (2023).

30-2485.

Under the Nebraska Probate Code, the first statute of limitations to apply will accomplish a bar. Sparks v. Mach, 314 Neb. 724, 993 N.W.2d 119 (2023).

For purposes of this section, a demand against the trust assets is not a claim against the decedent's estate. In re Estate of Giventer, 310 Neb. 39, 964 N.W.2d 234 (2021).

Because the Nebraska Probate Code requires that all claims, whether absolute or contingent, be presented within certain time periods or be barred against the estate, a contingency's unfulfilled status does not automatically defeat a claim. In re Estate of Ryan, 302 Neb. 821, 925 N.W.2d 336 (2019).

A court cannot extend the time for filing a claim that arose after death. In re Estate of Karmazin, 299 Neb. 315, 908 N.W.2d 381 (2018).

Although identifying the amount of a claim is not statutorily required, doing so advances the purpose of this section. In re Estate of Karmazin, 299 Neb. 315, 908 N.W.2d 381 (2018).

A claimant who has a claim for the proceeds of a decedent's liability insurance under subsection (c)(2) of this section is entitled to have the estate reopened for the limited purpose of service of process in the civil action filed to establish liability and liability insurance coverage. Estate of Hansen v. Bergmeier, 20 Neb. App. 458, 825 N.W.2d 224 (2013).

Before suit can be filed, a closed estate, with a discharged personal representative, must be reopened and a personal representative appointed (or reappointed) even when seeking only liability insurance proceeds. Estate of Hansen v. Bergmeier, 20 Neb. App. 458, 825 N.W.2d 224 (2013).

The time limits under this section for presentation of claims are not applicable when the recovery sought is solely limited to the extent of insurance protection. Estate of Hansen v. Bergmeier, 20 Neb. App. 458, 825 N.W.2d 224 (2013).

This section does not allow the institution of proceedings against a discharged personal representative while the estate is closed. Estate of Hansen v. Bergmeier, 20 Neb. App. 458, 825 N.W.2d 224 (2013).

30-2486.

An otherwise valid amended complaint, filed after a complaint filed prematurely under section 30-2404 but after the appointment or reappointment of a personal representative, is sufficient to commence a proceeding within the meaning of subsection (2) of this section. Sparks v. Mach, 314 Neb. 724, 993 N.W.2d 119 (2023).

Under subsection (2) of this section, an action against a decedent's estate is not commenced unless a claimant files a lawsuit against the personal representative of the estate. Sparks v. Mach, 314 Neb. 724, 993 N.W.2d 119 (2023).

Under the Nebraska Probate Code, the first statute of limitations to apply will accomplish a bar. Sparks v. Mach, 314 Neb. 724, 993 N.W.2d 119 (2023).

The claimant failed to properly file or present a claim against the decedent's estate when he discussed a promissory note with the copersonal representative and the attorney for the personal representatives approximately 29 days after the decedent's death and mailed a copy of the note, a letter, and his calculation of interest to them the next day. In re Estate of Lakin, 310 Neb. 271, 965 N.W.2d 365 (2021).

For purposes of this section, a demand against the trust assets is not a claim against the decedent's estate. In re Estate of Giventer, 310 Neb. 39, 964 N.W.2d 234 (2021).

Although identifying the amount of a claim is not statutorily required, doing so advances the purpose of section 30-2485. In re Estate of Karmazin, 299 Neb. 315, 908 N.W.2d 381 (2018).

The Nebraska Probate Code provides two methods of presenting a claim against a decedent's estate: A claim can be presented by filing a written statement thereof with the clerk of the probate court or by commencing a proceeding against the personal representative in any court which has jurisdiction. Estate of Hansen v. Bergmeier, 20 Neb. App. 458, 825 N.W.2d 224 (2013).

30-2488.

Under the Nebraska Probate Code, the first statute of limitations to apply will accomplish a bar. Sparks v. Mach, 314 Neb. 724, 993 N.W.2d 119 (2023).

30-2494.

This section allows for the enforcement of judgment liens existing at the time of death in other proceedings outside the probate proceedings. In re Estate of Stretesky, 29 Neb. App. 338, 955 N.W.2d 1 (2021).

30-24,100.

The district court did not misapply the rules of abatement where one party was devised 50.6 percent of the property specifically devised by the will and the other party was devised 49.4 percent, and the debts and funeral and administrative expenses were apportioned 50 percent to each. In re Estate of Larson, 311 Neb. 352, 972 N.W.2d 891 (2022).

30-24,103.

A no contest clause is unenforceable if probable cause exists for instituting proceedings. In re Estate of Barger, 303 Neb. 817, 931 N.W.2d 660 (2019).

30-24,124.

To approve a compromise of any controversy as to admission to probate of any instrument offered for formal probate as the will of a decedent, the construction, validity, or effect of any probated will, the rights or interests in the estate of the decedent of any successor, or the administration of the estate, the court must follow statutory procedures of this section and find both that (1) the contest or controversy is in good faith and (2) the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable. In re Estate of Ryan, 313 Neb. 970, 987 N.W.2d 634 (2023).

30-2608.

A party seeking to establish guardianship must file a petition in county court. In re Interest of Brianna B., 21 Neb. App. 657, 842 N.W.2d 191 (2014).

30-2616.

A biological mother's failure to accept responsibility for her past misconduct indicated present unfitness. In re Guardianship of K.R., 304 Neb. 1, 932 N.W.2d 737 (2019).

Where the rights of a biological or adoptive parent are not at issue, the standard for removal of a guardian of a minor under this section is the best interests of the ward, and the burden of proof is on the moving party to establish that terminating the guardianship is in the best interests of the ward. In re Guardianship of Issaabela R., 27 Neb. App. 353, 932 N.W.2d 749 (2019).

This section governs resignation or removal proceedings in cases involving guardians of minors. In re Guardianship of Aimee S., 26 Neb. App. 380, 920 N.W.2d 18 (2018).

This section provides that a person may petition for removal of a guardian on the ground that removal would be in the best interests of the ward. In re Guardianship of Aimee S., 26 Neb. App. 380, 920 N.W.2d 18 (2018).

This section relates to the removal of a guardian when the protected person is a juvenile. In re Guardianship of Aimee S., 26 Neb. App. 380, 920 N.W.2d 18 (2018).

30-2619.

In a guardianship proceeding, where an objector has no concerns for the ward's welfare but only concerns of its own potential financial expectancy, such concerns do not give the objector standing to challenge a guardianship as "any person interested in [the ward's] welfare" under this section. In re Guardianship & Conservatorship of Barnhart, 290 Neb. 314, 859 N.W.2d 856 (2015).

30-2620.

Only after a written acceptance is filed and the guardian submits to the personal jurisdiction of the court will letters of guardianship be issued by the court. As such, one appointed who does not wish to serve as a guardian may simply refuse to accept the appointment. In re Guardianship of Nicholas H., 309 Neb. 1, 958 N.W.2d 661 (2021).

30-2620.01.

In a guardianship proceeding for a minor, no statute or recognized uniform course of procedure permits a court to assess the fees of an appointed person against a ward's estate, a county, or a petitioner. In re Guardianship & Conservatorship of J.F., 307 Neb. 452, 949 N.W.2d 496 (2020).

30-2626.

Subsection (e) of this section provides that the temporary guardianship shall terminate after 90 days or earlier if the court deems the circumstances leading to the order for temporary guardianship no longer exist or if a proper order for a permanent guardianship is entered. In re Guardianship & Conservatorship of Forster, 22 Neb. App. 478, 856 N.W.2d 134 (2014).

30-2627.

Subsection (a) of this section provides that any competent person may be appointed guardian of a person alleged to be incapacitated and that nothing in this subsection prevents spouses, adult children, parents, or relatives of the person alleged to be incapacitated from serving in that capacity. In re Guardianship of Aimee S., 26 Neb. App. 380, 920 N.W.2d 18 (2018).

Subsection (b) of this section provides that persons who are not disqualified by subsection (a) of this section and who exhibit the ability to exercise the powers to be assigned by the court have priority in the order listed. In re Guardianship of Aimee S., 26 Neb. App. 380, 920 N.W.2d 18 (2018).

Subsection (b)(4) of this section allows a parent to serve as a guardian. In re Guardianship of Aimee S., 26 Neb. App. 380, 920 N.W.2d 18 (2018).

30-2628.

Pursuant to subsection (c) of this section, if a guardian has been appointed and an attorney in fact has been designated and authorized under a valid power of attorney for health care, the attorney in fact's authority to make health care decisions supersedes the guardian's authority to make such decisions. In re Guardianship & Conservatorship of Mueller, 23 Neb. App. 430, 872 N.W.2d 906 (2015).

Subsection (c) of this section does not preclude a court from considering a ward's best interests and revoking or setting aside a health care power of attorney in favor of a guardianship when the facts support such action. In re Guardianship & Conservatorship of Mueller, 23 Neb. App. 430, 872 N.W.2d 906 (2015).

30-2633.

Where the objector has an interest in the welfare of the ward because the objector would have an obligation to support the ward during his or her lifetime if the ward's funds are mismanaged, then that objector would have standing to contest the conservatorship. In re Guardianship & Conservatorship of Barnhart, 290 Neb. 314, 859 N.W.2d 856 (2015).

30-2643.

In a conservatorship proceeding for a protected person, the court is statutorily authorized to assess the fees of an appointed person to the estate of the protected person if the protected person possesses an estate or, if not, to the county in which the proceedings are brought or the petitioner. In re Guardianship & Conservatorship of J.F., 307 Neb. 452, 949 N.W.2d 496 (2020).

30-2645.

Designation as a beneficiary in a will, prior to the testator's death, does not alone establish enough financial interest in a ward's welfare to establish standing to contest a conservatorship. In re Guardianship & Conservatorship of Barnhart, 290 Neb. 314, 859 N.W.2d 856 (2015).

In a conservatorship proceeding, where an objector has no concerns for the ward's welfare but only concerns of its own potential financial expectancy, such concerns do not give the objector standing to challenge a guardianship as "[a]ny person interested in the [ward's] welfare" under this section. In re Guardianship & Conservatorship of Barnhart, 290 Neb. 314, 859 N.W.2d 856 (2015).

30-2722.

The concepts of this section should inform the interpretation of section 30-2314 regarding the evidence necessary to establish the source of property owned by the surviving spouse. In re Estate of Ross, 19 Neb. App. 355, 810 N.W.2d 435 (2011).

30-2726.

The purpose of this section is to alert the personal representative of the need to recover nonprobate assets and to trigger the personal representative's duty and authority to initiate proceedings to do so. In re Estate of Lorenz, 292 Neb. 543, 873 N.W.2d 396 (2016).

This section protects the beneficiaries of such nonprobate assets from incurring liability for claims made against the estate more than 1 year after the death of the decedent. In re Estate of Lorenz, 292 Neb. 543, 873 N.W.2d 396 (2016).

This section requires more than notice—it requires a written demand upon the personal representative before a proceeding to recover nonprobate assets may be commenced. In re Estate of Lorenz, 292 Neb. 543, 873 N.W.2d 396 (2016).

30-3420.

Subsection (5) of this section does not preclude a court from considering a ward's best interests and revoking or setting aside a health care power of attorney in favor of a guardianship when the facts support such action. In re Guardianship & Conservatorship of Mueller, 23 Neb. App. 430, 872 N.W.2d 906 (2015).

Unless the power of attorney provides otherwise, a valid power of attorney for health care supersedes any guardianship or conservatorship proceedings to the extent the proceedings involve the right to make health care decisions for the protected person. In re Guardianship & Conservatorship of Mueller, 23 Neb. App. 430, 872 N.W.2d 906 (2015).

30-3801.

The Nebraska Uniform Trust Code statutes are derived from the Restatement (Third) of Trusts. In re William R. Zutavern Revocable Trust, 309 Neb. 542, 961 N.W.2d 807 (2021).

30-3803.

"Beneficiary" is defined as a person or class of persons that has a present or future beneficial interest in a trust, vested or contingent. The fact that a member of the class may ultimately take nothing does not prevent that beneficiary from maintaining suit; each of the beneficiaries of such a trust is in this position, for if none could sue, the trustee might commit a breach of trust with impunity. In re William R. Zutavern Revocable Trust, 309 Neb. 542, 961 N.W.2d 807 (2021).

Where a trust agreement provided limited testamentary power to appoint trust property to or for the benefit of joint descendants, the power of appointment was neither a general power of appointment nor a power of withdrawal. In re Conservatorship of Abbott, 295 Neb. 510, 890 N.W.2d 469 (2017).

30-3805.

A reasonable person acting in good faith and in the interests of the beneficiaries would not wait until an annual report was due before informing the beneficiaries that the trust assets were in danger of being lost, but would instead inform the beneficiaries of the material facts immediately in order to allow them to protect their interests. Rafert v. Meyer, 290 Neb. 219, 859 N.W.2d 332 (2015).

An attorney's duty to report any danger to the trust property becomes immediate when he or she knows or should know that such danger exists rather than when an annual report is due. Rafert v. Meyer, 290 Neb. 219, 859 N.W.2d 332 (2015).

In drafting a trust, an attorney cannot abrogate his or her duty to administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with the Nebraska Uniform Trust Code. Rafert v. Meyer, 290 Neb. 219, 859 N.W.2d 332 (2015).

In drafting a trust, an attorney cannot abrogate his or her duty under this section to keep beneficiaries of the trust reasonably informed of the material facts necessary for them to protect their interests. Rafert v. Meyer, 290 Neb. 219, 859 N.W.2d 332 (2015).

The beneficiaries alleged sufficient facts for a court to find that the trustee acted in bad faith or reckless indifference to the purposes of the trust or the interests of the beneficiaries by providing a false address to the insurers of life insurance policies, which were the sole trust property. Rafert v. Meyer, 290 Neb. 219, 859 N.W.2d 332 (2015).

The Nebraska Uniform Trust Code provides deference to the terms of the trust, but that deference does not extend to those duties described in this section or otherwise required by statute. Rafert v. Meyer, 290 Neb. 219, 859 N.W.2d 332 (2015).

30-3811.

A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust. A spendthrift provision in the terms of the trust is presumed to constitute a material purpose of the trust. In re Trust Created by McGregor, 308 Neb. 405, 954 N.W.2d 612 (2021).

Changes made to an irrevocable trust by a nonjudicial settlement agreement between the surviving spouse and her two children, which provided for distribution of the trust's assets upon the spouse's death free of trust, violated a "material purpose" of the trust established by its spendthrift provisions, and thus made the agreement invalid. In re Trust Created by McGregor, 308 Neb. 405, 954 N.W.2d 612 (2021).

If the continuance of a trust is necessary to carry out a material purpose of the trust, the beneficiaries cannot compel its termination. In re Trust Created by McGregor, 308 Neb. 405, 954 N.W.2d 612 (2021).

The material purposes of a trust are subject to the settlor's discretion, to the extent that its purposes are lawful, are not contrary to public policy, are possible to achieve, and are for the benefit of its beneficiaries. In re Trust Created by McGregor, 308 Neb. 405, 954 N.W.2d 612 (2021).

30-3825.

Under section 30-3837(b), the party seeking a modification of a trust must affirmatively demonstrate that all beneficiaries have consented to the modification. The issue of consent for unknown beneficiaries must be resolved pursuant to this section and section 30-3826. In re Trust of Shire, 299 Neb. 25, 907 N.W.2d 263 (2018).

30-3826.

Under section 30-3837(b), the party seeking a modification of a trust must affirmatively demonstrate that all beneficiaries have consented to the modification. The issue of consent for unknown beneficiaries must be resolved pursuant to section 30-3825 and this section. In re Trust of Shire, 299 Neb. 25, 907 N.W.2d 263 (2018).

30-3828.

A beneficiary must be "definite." A class of beneficiaries is not indefinite merely because it consists of a changing or shifting group, the number of whose members may increase or decrease. Typical examples of definite classes for trust beneficiaries are "children" or "grandchildren," the "issue" or "descendants," or the "heirs" or "next of kin" of a designated person. In re William R. Zutavern Revocable Trust, 309 Neb. 542, 961 N.W.2d 807 (2021).

30-3836.

A trust may expire or terminate by its own terms, thereby triggering the period for winding up the trust; the winding-up period continues to exist until the trust is fully terminated by distribution of the trust property. In re Trust Created by Augustin, 27 Neb. App. 593, 935 N.W.2d 493 (2019).

If a trustee knows or should know of circumstances that justify judicial action to modify an administrative or distributive provision of a trust because of circumstances not anticipated by the settlor, the trustee has a duty to petition the court for appropriate modification of, or deviation from, the terms of the trust. The possible imposition

of such a duty on a trustee further supports permitting a trustee to seek modification under section 30-3838 even in those instances where a trust may have terminated or expired by its own terms, but the winding up and distribution of trust property is still pending. In re Trust Created by Augustin, 27 Neb. App. 593, 935 N.W.2d 493 (2019).

If the trustees fail to distribute the property once the purpose of the trust was fulfilled, a court can enter an order fully terminating the trust with directions to distribute the trust property in accordance with the terms of the trust or, if appropriate, enter an order modifying (or reforming) the trust terms. In re Trust Created by Augustin, 27 Neb. App. 593, 935 N.W.2d 493 (2019).

Regardless of how a trust may terminate, subsection (b) of this section authorizes a trustee or beneficiary to commence a proceeding to approve or disapprove a proposed modification or termination under sections 30-3837 to 30-3842. In re Trust Created by Augustin, 27 Neb. App. 593, 935 N.W.2d 493 (2019).

The Nebraska Uniform Trust Code allows a beneficiary or trustee to petition a county court to consider modification or termination of a trust which has expired or terminated pursuant to its own terms but remains in the winding-up period, including the possible modification of, or deviation from, dispositive terms. In re Trust Created by Augustin, 27 Neb. App. 593, 935 N.W.2d 493 (2019).

The Nebraska Uniform Trust Code provides statutory options for a trustee to seek a modification of the trust during the winding-up period following the expiration or termination of a trust by its own terms. In re Trust Created by Augustin, 27 Neb. App. 593, 935 N.W.2d 493 (2019).

30-3837.

Under subsection (b) of this section, the party seeking a modification of a trust must affirmatively demonstrate that all beneficiaries have consented to the modification. The issue of consent for unknown beneficiaries must be resolved pursuant to sections 30-3825 and 30-3826. In re Trust of Shire, 299 Neb. 25, 907 N.W.2d 263 (2018).

Under subsection (e) of this section, there must be a showing that the interests of nonconsenting beneficiaries will be adequately protected by a modification. For the interests of nonconsenting beneficiaries to be adequately protected, the court must determine that modification will not affect those interests and impose safeguards to prevent them from being affected, when deemed necessary. In re Trust of Shire, 299 Neb. 25, 907 N.W.2d 263 (2018).

Although subsection (e) of this section authorizes a court to modify a trust without the consent of all beneficiaries, it can only do so if the modification is not inconsistent with a material purpose of the trust and any nonconsenting beneficiary would be adequately protected. In re Trust Created by Augustin, 27 Neb. App. 593, 935 N.W.2d 493 (2019).

While this section refers to a noncharitable irrevocable trust, and the trusts at issue here were revocable when made, this section's application is nevertheless appropriate because of the death of the last surviving grantor/settlor. A trust which is revocable when made remains revocable during the settlor's lifetime; however, a revocable trust necessarily becomes irrevocable upon the settlor's death. In re Trust Created by Augustin, 27 Neb. App. 593, 935 N.W.2d 493 (2019).

30-3838.

If a trustee knows or should know of circumstances that justify judicial action to modify an administrative or distributive provision of a trust because of circumstances not anticipated by the settlor, the trustee has a duty to petition the court for appropriate modification of, or deviation from, the terms of the trust. The possible imposition of such a duty on a trustee further supports permitting a trustee to seek modification under this section even in those instances where a trust may have terminated or expired by its own terms, but the winding up and distribution of trust property is still pending. In re Trust Created by Augustin, 27 Neb. App. 593, 935 N.W.2d 493 (2019).

This section broadens the court's ability to apply equitable deviation to modify a trust. The application of equitable deviation allows a court to modify the dispositive provisions of a trust, as well as its administrative terms. The purpose of equitable deviation is not to disregard the settlor's intent but to modify inopportune details to effectuate better the settlor's broader purpose. In re Trust Created by Augustin, 27 Neb. App. 593, 935 N.W.2d 493 (2019).

30-3841.

A document by which a settlor purports to revoke a revocable trust is a term of that trust within the meaning of this section. In re Trust of O'Donnell, 19 Neb. App. 696, 815 N.W.2d 640 (2012).

30-3855.

This section does not dictate who may petition for the removal of a trustee, but, rather, describes to whom fiduciary duties are owed. In re Conservatorship of Abbott, 295 Neb. 510, 890 N.W.2d 469 (2017).

Where a trust agreement provided for the discretionary payment of trust principal to beneficiaries for their health, maintenance, support, and education, the beneficiaries had enforceable, present interests in the trust and the trustee owed fiduciary duties to the beneficiaries. In re Conservatorship of Abbott, 295 Neb. 510, 890 N.W.2d 469 (2017).

Where a trust agreement provided limited testamentary power to appoint trust property to or for the benefit of joint descendants, the power of appointment was neither a general power of appointment nor a power of withdrawal. In re Conservatorship of Abbott, 295 Neb. 510, 890 N.W.2d 469 (2017).

Pursuant to this section, the rights of the beneficiaries of a revocable trust are subject to the continued control of the settlor. In re Trust Created by Haberman, 24 Neb. App. 359, 886 N.W.2d 829 (2016).

30-3859.

A trustee is liable for the action of another trustee if he joins in the action, fails to prevent the cotrustee from committing a serious breach of trust, or fails to compel the cotrustee to redress a serious breach of trust. In re Conservatorship of Abbott, 295 Neb. 510, 890 N.W.2d 469 (2017).

Where one cotrustee also acts as a power of attorney for a second cotrustee in managing trust affairs, that cotrustee is considered to join in all actions of the second cotrustee and may owe certain fiduciary duties as a result. In re Conservatorship of Abbott, 295 Neb. 510, 890 N.W.2d 469 (2017).

30-3862.

The petitioners qualified as beneficiaries under the Nebraska Uniform Trust Code, because a family trust granted them a contingent future beneficial interest. In re William R. Zutavern Revocable Trust, 309 Neb. 542, 961 N.W.2d 807 (2021).

Removal of bank as trustee was inconsistent with material purpose of trust, where bank was selected because settlor wanted a trustee that was independent, and settlor did not want trustee that was a part of settlor's family. In re Trust Created by Fenske, 303 Neb. 430, 930 N.W.2d 43 (2019).

Where two trusts share the same beneficiaries, trustee, and trust instrument and removal of the trustee for breach of fiduciary duty was appropriate for one of the trusts, a county court has the power in equity to determine if it is in the best interests of the beneficiaries to remove the trustee of the second trust. In re Conservatorship of Abbott, 295 Neb. 510, 890 N.W.2d 469 (2017).

30-3866.

Upon acceptance of a trusteeship, a trustee has a duty to administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with the Nebraska Uniform Trust Code. In re William R. Zutavern Revocable Trust, 309 Neb. 542, 961 N.W.2d 807 (2021).

A reasonable person acting in good faith and in the interests of the beneficiaries would not wait until an annual report was due before informing the beneficiaries that the trust assets were in danger of being lost, but would instead inform the beneficiaries of the material facts immediately in order to allow them to protect their interests. Rafert v. Meyer, 290 Neb. 219, 859 N.W.2d 332 (2015).

In drafting a trust, an attorney cannot abrogate his or her duty to administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with the Nebraska Uniform Trust Code. Rafert v. Meyer, 290 Neb. 219, 859 N.W.2d 332 (2015).

The beneficiaries alleged sufficient facts for a court to find that the trustee acted in bad faith or reckless indifference to the purposes of the trust or the interests of the beneficiaries by providing a false address to the insurers of life insurance policies, which were the sole trust property. Rafert v. Meyer, 290 Neb. 219, 859 N.W.2d 332 (2015).

30-3875.

To further help prevent conflicts of interests, trustees are required to keep adequate records of the trust administration and to keep trust property separate from the trustee's property. In re Estate of Robb, 21 Neb. App.

429, 839 N.W.2d 368 (2013).

30-3878.

A reasonable person acting in good faith and in the interests of the beneficiaries would not wait until an annual report was due before informing the beneficiaries that the trust assets were in danger of being lost, but would instead inform the beneficiaries of the material facts immediately in order to allow them to protect their interests. Rafert v. Meyer, 290 Neb. 219, 859 N.W.2d 332 (2015).

An attorney's duty to report any danger to the trust property becomes immediate when he or she knows or should know that such danger exists rather than when an annual report is due. Rafert v. Meyer, 290 Neb. 219, 859 N.W.2d 332 (2015).

In drafting a trust, an attorney cannot abrogate his or her duty under this section to keep beneficiaries of the trust reasonably informed of the material facts necessary for them to protect their interests. Rafert v. Meyer, 290 Neb. 219, 859 N.W.2d 332 (2015).

The beneficiaries alleged sufficient facts for a court to find that the trustee's actions in providing a false address to the insurers of life insurance policies, which were the sole trust property, prevented the beneficiaries from receiving material facts necessary for them to protect their interests. Rafert v. Meyer, 290 Neb. 219, 859 N.W.2d 332 (2015).

30-3880.

A trustee may exercise powers conferred by the Nebraska Uniform Trust Code, except as limited by the terms of the trust. In re William R. Zutavern Revocable Trust, 309 Neb. 542, 961 N.W.2d 807 (2021).

All powers of a trustee, whether express or implied, are held in a fiduciary capacity, and their exercise or nonexercise is subject to the fiduciary duties of trusteeship. In re William R. Zutavern Revocable Trust, 309 Neb. 542, 961 N.W.2d 807 (2021).

30-3881.

Pursuant to subsection (26) of this section, after the termination of a trust, the trustees continue to have a nonbeneficial interest in the trust for timely winding it up and distributing its assets; but their powers are limited to those that are reasonable and appropriate to the expeditious distribution of the trust property and preserving the trust property pending the winding up and distribution of that property. In re Estate of Barger, 303 Neb. 817, 931 N.W.2d 660 (2019).

30-3882.

Pursuant to subsection (b) of this section, after a trust has been terminated, a trustee must expeditiously exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it. In re Estate of Barger, 303 Neb. 817, 931 N.W.2d 660 (2019).

30-3890.

When a trustee unduly delays distributions from a trust, the trustee has breached a duty of care owed to a beneficiary, and the violation of that duty is a breach of trust. In re Trust Created by Augustin, 27 Neb. App. 593, 935 N.W.2d 493 (2019).

Under subsection (b) of this section, the court has various options available to remedy a violation by a trustee of a duty the trustee owes to a beneficiary. In re Louise v. Steinhoefel Trust, 22 Neb. App. 293, 854 N.W.2d 792 (2014).

30-3897.

An exculpatory clause in a trust agreement is invalid where the attorney who drafted the trust agreement never met with the settlor or explained the terms of the trust and the respective duties of each party. Rafert v. Meyer, 290 Neb. 219, 859 N.W.2d 332 (2015).

The beneficiaries alleged sufficient facts for a court to find that the trustee acted in bad faith or reckless indifference to the purposes of the trust or the interests of the beneficiaries by providing a false address to the insurers of life insurance policies, which were the sole trust property. Rafert v. Meyer, 290 Neb. 219, 859 N.W.2d

332 (2015).

30-38,101.

The trial court did not err in dismissing claims for a constructive trust against a purchaser, because the purchaser dealt in good faith with the trustees and had no reason to believe they participated in a breach of trust. Junker v. Carlson, 300 Neb. 423, 915 N.W.2d 542 (2018).

30-4014.

An agent under a power of attorney is in a fiduciary relationship with his or her principal. In re Estate of Adelung, 306 Neb. 646, 947 N.W.2d 269 (2020).

30-4015.

An exoneration clause in a power of attorney will not relieve an agent of liability where the agent's attorney drafted the document and the agent did not prove that the clause was fair and adequately communicated to the principal. In re Estate of Adelung, 306 Neb. 646, 947 N.W.2d 269 (2020).

30-4016.

Subsection (1)(e) of this section pertains to a "presumptive heir," which necessarily relates to a decedent's blood relatives. In re Trust of Cook, 28 Neb. App. 624, 947 N.W.2d 870 (2020).

30-4024.

Under subsection (2) of this section, for an agent who is not the ancestor, spouse, or issue of the principal to use the power of attorney to create in himself or herself an interest in the principal's property, the agent must have express authority from the principal in the power of attorney. Cisneros v. Graham, 294 Neb. 83, 881 N.W.2d 878 (2016).

30-4040.

The Nebraska Uniform Power of Attorney Act limits gifts made via a general grant of authority. In re Estate of Adelung, 306 Neb. 646, 947 N.W.2d 269 (2020).

30-4045.

The Nebraska Uniform Power of Attorney Act does not apply retroactively to an agent's actions prior to January 1, 2013. In re Estate of Adelung, 306 Neb. 646, 947 N.W.2d 269 (2020).

The provision of the Nebraska Uniform Power of Attorney Act governing retroactivity should be construed similarly to section 30-38,110, the comparable provision of the Nebraska Uniform Trust Code. In re Estate of Adelung, 306 Neb. 646, 947 N.W.2d 269 (2020).

30-4117.

Once the Office of the Public Guardian has been appointed by the court, it may be discharged on the ground its services are no longer necessary only when it shows (1) the ward is no longer incapacitated and in need of a guardian or (2) it has located a successor guardian who is qualified, available, and willing to become a guardian. In re Guardianship of Nicholas H., 309 Neb. 1, 958 N.W.2d 661 (2021).

30-4204.

This section empowers the guardian ad litem to obtain information as part of his or her investigation and permits for the admissibility of the information so collected. By its plain terms, this section addresses "material obtained by a guardian ad litem" and does not pertain to a report created by a guardian ad litem. In re Guardianship of Jill G., 312 Neb. 108, 977 N.W.2d 913 (2022).

31-224.

In this section, the phrase "at least" prior to "once a year" indicates that a landowner may have a duty to clear the ditch more than once during the specified period of March 1 to April 15, if the flow of water again becomes

obstructed during this period. Barthel v. Liermann, 21 Neb. App. 730, 842 N.W.2d 624 (2014).

There is nothing in this section that can be interpreted to require a landowner to clean a drainage ditch outside the March 1 to April 15 period if the flow of water becomes obstructed at any other time during the year. Barthel v. Liermann, 21 Neb. App. 730, 842 N.W.2d 624 (2014).

This section imposes a duty upon a landowner to clean a drainage ditch once a year, between March 1 and April 15. Barthel v. Liermann, 21 Neb. App. 730, 842 N.W.2d 624 (2014).

31-730.

A sanitary and improvement district is a legislative creature, a political subdivision of the State of Nebraska. SID No. 67 v. State, 309 Neb. 600, 961 N.W.2d 796 (2021).

A sanitary and improvement district is not a "person" having "private property" for purposes of bringing a takings claim. SID No. 67 v. State, 309 Neb. 600, 961 N.W.2d 796 (2021).

Once formed, a sanitary and improvement district has no inherent authority to hold an interest in property; it, unlike a "person," can exercise only those powers expressly granted to it by statute or necessarily implied to carry out its expressed powers. SID No. 67 v. State, 309 Neb. 600, 961 N.W.2d 796 (2021).

Statutes prescribe sanitary and improvement districts' formation as a public corporation of this state. SID No. 67 v. State, 309 Neb. 600, 961 N.W.2d 796 (2021).

32-201.

The Nebraska Supreme Court can direct the legal removal of a petition from the ballot even if it cannot direct its physical removal. Chaney v. Evnen, 307 Neb. 512, 949 N.W.2d 761 (2020).

32-207.

Because the Legislature did not intend election commissioners and chief deputies to be considered county officers, this section and section 32-209 are constitutional in light of article IX, sec. 4, of the Nebraska Constitution. State ex rel. Peterson v. Shively, 310 Neb. 1, 963 N.W.2d 508 (2021).

32-209.

Because the Legislature did not intend election commissioners and chief deputies to be considered county officers, section 32-207 and this section are constitutional in light of article IX, sec. 4, of the Nebraska Constitution. State ex rel. Peterson v. Shively, 310 Neb. 1, 963 N.W.2d 508 (2021).

32-612.

A person who has no "political party affiliation" cannot change his or her "political party affiliation." Davis v. Gale, 299 Neb. 377, 908 N.W.2d 618 (2018).

The phrase "political party affiliation" is a term of art specifically referencing an existing relationship with one of Nebraska's established political parties. Nonpartisan has no relationship with any of Nebraska's established political parties and thus has no "political party affiliation" as that phrase is used in the Election Act. Davis v. Gale, 299 Neb. 377, 908 N.W.2d 618 (2018).

32-624.

In an appeal from a proceeding under this section, a trial court's factual findings have the effect of a verdict and will not be set aside unless clearly erroneous. An appellate court does not reweigh evidence, but considers the evidence in the light most favorable to the successful party and resolves evidentiary conflicts in favor of the successful party, who is entitled to every reasonable inference deducible from the evidence. Regarding a question of law, an appellate court has an obligation to reach a conclusion independent from a judge's conclusion in an order under review. Nebraska Republican Party v. Shively, 311 Neb. 160, 971 N.W.2d 128 (2022).

The Nebraska Supreme Court or Nebraska Court of Appeals may exercise appellate jurisdiction over an appeal from a district court judge's order under this section. Nebraska Republican Party v. Shively, 311 Neb. 160, 971 N.W.2d 128 (2022).

32-628.

Under subsection (3) of this section, petition circulators are not required to read the object statement of the petition to signatories verbatim. Chaney v. Evnen, 307 Neb. 512, 949 N.W.2d 761 (2020).

32-1405.

A non-named person or entity's motivation to decline to be a named sponsor is irrelevant to the question of who must be listed as a sponsor of an initiative or referendum petition. Christensen v. Gale, 301 Neb. 19, 917 N.W.2d 145 (2018).

Defining sponsors who must be disclosed on an initiative or referendum petition as those who assume responsibility for the petition process serves the dual purposes of informing the public of (1) who may be held responsible for the petition, exposing themselves to potential criminal charges if information is falsified, and (2) who stands ready to accept responsibility to facilitate the referendum's inclusion on the ballot and defend the referendum process if challenged. Christensen v. Gale, 301 Neb. 19, 917 N.W.2d 145 (2018).

In the context of the statutory requirement that an initiative or referendum petition contain a sworn statement containing the names and street addresses of every person or entity sponsoring the petition, "sponsoring the petition" means assuming responsibility for the initiative or referendum petition process. Christensen v. Gale, 301 Neb. 19, 917 N.W.2d 145 (2018).

Limiting the category of "sponsors," in the context of the sponsor-disclosure requirement for initiative or referendum petitions, to those persons or entities who have specifically agreed to be responsible for the petition process and serve in the capacities the statutes require of sponsors, lends clarity and simplicity to the petition process, thereby facilitating and preserving its exercise. Christensen v. Gale, 301 Neb. 19, 917 N.W.2d 145 (2018).

"[S]ponsoring the petition" in the context of subsection (1) of this section means assuming responsibility for the initiative or referendum petition process. Hargesheimer v. Gale, 294 Neb. 123, 881 N.W.2d 589 (2016).

32-1410.

Pursuant to subsection (3) of this section, the district court for Lancaster County is authorized to review only the ballot title and lacks jurisdiction to alter the explanatory statement. Thomas v. Peterson, 307 Neb. 89, 948 N.W.2d 698 (2020).

Subsection (3) of this section begins with the presumption that the ballot title prepared by the Attorney General is valid, and it places the burden upon the dissatisfied party to dispel this presumption. A deferential standard is to be applied to a ballot title prepared by the Attorney General. A dissatisfied person must prove by the greater weight of the evidence that the ballot title is insufficient or unfair. Thomas v. Peterson, 307 Neb. 89, 948 N.W.2d 698 (2020).

The word "insufficient" means "inadequate; especially lacking adequate power, capacity, or competence." The word "unfair" means to be "marked by injustice, partiality, or deception." Thomas v. Peterson, 307 Neb. 89, 948 N.W.2d 698 (2020).

Whether a ballot title is insufficient or unfair is a question of law. Thomas v. Peterson, 307 Neb. 89, 948 N.W.2d 698 (2020).

32-1412.

The Nebraska Supreme Court can direct the legal removal of a petition from the ballot even if it cannot direct its physical removal. Chaney v. Evnen, 307 Neb. 512, 949 N.W.2d 761 (2020).

33-103.

A trial court's order requiring a habeas petitioner to pay, in advance, fees to docket an appeal from the denial of a petition, did not comply with the statute requiring payment of fees in advance, except in habeas corpus proceedings, and the appellate rule that fees in habeas corpus proceedings be collected at the conclusion of the proceeding. Jones v. Nebraska Dept. of Corr. Servs., 21 Neb. App. 206, 838 N.W.2d 51 (2013).

33-125.

A county court does not lack subject matter jurisdiction of an original proceeding on the basis that no filing fee

was assessed and paid. In re Estate of Adelung, 306 Neb. 646, 947 N.W.2d 269 (2020).

34-112.02.

A statutory fence dispute action seeking only contribution survives a party's death. Muller v. Weeder, 313 Neb. 639, 986 N.W.2d 38 (2023).

34-301.

An action to ascertain and permanently establish corners and boundaries of land under this section is an equity action. Curry v. Furby, 20 Neb. App. 736, 832 N.W.2d 880 (2013).

An action to ascertain and permanently establish corners and boundaries of land under this section is an equity action. Oppliger v. Vineyard, 19 Neb. App. 172, 803 N.W.2d 786 (2011).

Nebraska law provides that boundaries that have been mutually recognized and acquiesced in for a period of 10 years can be legal boundaries. Oppliger v. Vineyard, 19 Neb. App. 172, 803 N.W.2d 786 (2011).

36-103.

An oral land installment contract, on its own, does not create an interest in land. Kauk v. Kauk, 310 Neb. 329, 966 N.W.2d 45 (2021).

An exception is outside of this section, but a reservation must comply with this section. Walters v. Sporer, 298 Neb. 536, 905 N.W.2d 70 (2017).

The acceptance of a deed operates to satisfy the requirement that a contract creating an interest in land must be signed by the party to be charged therewith. Walters v. Sporer, 298 Neb. 536, 905 N.W.2d 70 (2017).

To establish the part performance exception to the statute of frauds, the alleged acts of performance must speak for themselves. Ficke v. Wolken, 291 Neb. 482, 868 N.W.2d 305 (2015).

It is the general rule that an oral agreement for the transfer of title to real estate is voidable under the statute of frauds. Ficke v. Wolken, 22 Neb. App. 587, 858 N.W.2d 249 (2014).

36-105.

An oral land installment contract, on its own, is not within this section. Kauk v. Kauk, 310 Neb. 329, 966 N.W.2d 45 (2021).

Where the owner of one property sought to bind a purchaser of another property to the terms of a 50-year lease agreement entered into between different parties, the owner's breach of contract claim was barred by the statute of frauds because there was no privity of contract or an express assumption of the lease. Brick Development v. CNBT II, 301 Neb. 279, 918 N.W.2d 824 (2018).

It is the general rule that an oral agreement for the transfer of title to real estate is voidable under the statute of frauds. Ficke v. Wolken, 22 Neb. App. 587, 858 N.W.2d 249 (2014).

36-106.

The proponent of an oral land installment contract fails to satisfy his or her burden to prove the terms of the contract were clear, satisfactory, and unequivocal if he or she does not refute evidence that the parties to the contract never came to a final agreement on its terms. Kauk v. Kauk, 310 Neb. 329, 966 N.W.2d 45 (2021).

36-202.

To determine whether an oral agreement falls within the one year provision of the statute of frauds, a court considers only the terms of the agreement to decide whether the contract is capable of being performed within one year of its formation; a court does not ask whether the contract may, or probably will, not be performed within one year. Bruce Lavalleur, P.C. v. Guarantee Group, 314 Neb. 698, 992 N.W.2d 736 (2023).

The "leading object rule" applied as an exception to the statute of frauds in this case and rendered the oral promise to pay the debt of another enforceable. Under the leading object rule, a promise to answer for the debt of another will be valid, although not in writing, when the principal object of the party promising to pay the debt is to promote

his or her own interests—and not to become a guarantor or surety—and when the promise is made on sufficient consideration. Alliance Group v. NGC Group, 30 Neb. App. 439, 970 N.W.2d 505 (2021).

36-702.

A blanket security agreement does not convey an asset under the Uniform Fraudulent Transfer Act if everything subject to ownership that is described as collateral therein is fully encumbered by other creditors with superior claims at the time of the alleged transfer. Korth v. Luther, 304 Neb. 450, 935 N.W.2d 220 (2019).

A security agreement by the debtor in favor of an alleged transferee is not the "asset" itself. Korth v. Luther, 304 Neb. 450, 935 N.W.2d 220 (2019).

Creditors are not entitled to avoid as fraudulent a conveyance of property to which the debtor had no title at all or no such title as they could have subjected to payment of their claims. Korth v. Luther, 304 Neb. 450, 935 N.W.2d 220 (2019).

Liens and encumbrances do not exist independently of the interests they attach to, and the reference in subsection (12) of this section to liens or other encumbrances does not modify the express requirement that there be an "asset" before there can be a "transfer." Korth v. Luther, 304 Neb. 450, 935 N.W.2d 220 (2019).

Where the focus of a fraudulent transfer action is a security agreement by the debtor in favor of the alleged transferee, the question is what identifiable and legitimate claim of entitlement the debtor had, in which the debtor transferred an interest via the security agreement. Korth v. Luther, 304 Neb. 450, 935 N.W.2d 220 (2019).

Whether there is a subject of ownership constituting property that can be an asset depends on a legitimate and identifiable claim of entitlement. Korth v. Luther, 304 Neb. 450, 935 N.W.2d 220 (2019).

37-522.

A conviction for violating an Oklahoma statute prohibiting the transportation of a loaded pistol, rifle, or shotgun in a landborne motor vehicle over a public highway was sufficiently similar to this section to justify the denial of a concealed handgun permit application under section 69-2433(8). Shurigar v. Nebraska State Patrol, 293 Neb. 606, 879 N.W.2d 25 (2016).

37-729.

A lake owners' association, and not its members who owned homes within the association, owned the lake, and thus, a cause of action by a member's guest against a member and her parents for an alleged failure to warn of the dangerous condition of the lake was not one for premises liability; therefore, Nebraska's Recreation Liability Act did not apply to bar recovery against the member for catastrophic injuries sustained when the guest dove into the lake from the member's pontoon. Hodson v. Taylor, 290 Neb. 348, 860 N.W.2d 162 (2015).

The members of a lake owners' association had no control over the lake and, thus, were not occupants of the lake, as required for a cause of action brought by a member's guest for an alleged failure to warn of the dangerous condition of the lake to sound in premises liability; therefore, Nebraska's Recreation Liability Act did not apply to bar the guest's recovery against the member for catastrophic injuries sustained when the guest dove into the lake from the member's pontoon. Hodson v. Taylor, 290 Neb. 348, 860 N.W.2d 162 (2015).

37-730.

The Recreation Liability Act applies to bar liability only in premises liability cases. Hodson v. Taylor, 290 Neb. 348, 860 N.W.2d 162 (2015).

38-805.

A chiropractor's opinion that a patient suffered traumatic brain injury was not admissible because the diagnostic methods used to reach the diagnosis fell outside the scope of statutorily defined chiropractic practice. Yagodinski v. Sutton, 309 Neb. 179, 959 N.W.2d 541 (2021).

38-2137.

A mental health practitioner is not liable for failing to warn of a patient's threatened violent behavior where the patient communicated a serious threat of physical violence to persons at random in a city with 300,000 or more inhabitants. Holloway v. State, 293 Neb. 12, 875 N.W.2d 435 (2016).

38-3132.

A psychologist is not liable for failing to warn of a patient's threatened violent behavior where the patient communicated a serious threat of physical violence to persons at random in a city with 300,000 or more inhabitants. Holloway v. State, 293 Neb. 12, 875 N.W.2d 435 (2016).

39-301.

A public road includes the entire area within the county's right-of-way. County of Cedar v. Thelen, 305 Neb. 351, 940 N.W.2d 521 (2020).

It is in the interest of the public to prevent obstructions of the public roads, both for their maintenance and more direct safety, and the mere fact that the Legislature has enacted a criminal law addressing the subject does not mean that the subject matter is preempted. County of Cedar v. Thelen, 305 Neb. 351, 940 N.W.2d 521 (2020).

39-1327.

Any rights or claims to air, light, and view that were held by a previous property owner terminate with the purchase of that portion of the property by the department. Craig v. State, 19 Neb. App. 78, 805 N.W.2d 663 (2011).

39-1345.

This section describes the authority and responsibilities of the Nebraska Department of Transportation regarding temporary closures of state highways. Porter v. Knife River, Inc., 310 Neb. 946, 970 N.W.2d 104 (2022).

39-1801.

A motorist commits a misdemeanor by proceeding down a county road that has been temporarily closed and has suitable barricades and signs posted, thus giving an officer probable cause to stop the vehicle. State v. Morrissey, 19 Neb. App. 590, 810 N.W.2d 195 (2012).

40-104.

Transfer on death deeds are not subject to the requirements of this section, because they are not encumbrances or conveyances of the homestead by a married person. Chambers v. Brinkenberg, 309 Neb. 888, 963 N.W.2d 37 (2021).

Issue preclusion and judicial estoppel may supply the statutory requirements set forth in this section for encumbrances of a homestead. Jordan v. LSF8 Master Participation Trust, 300 Neb. 523, 915 N.W.2d 399 (2018).

A valid acknowledgment of both spouses must appear on the face of an instrument purporting to convey or encumber the homestead of a married person or the instrument is void. Mutual of Omaha Bank v. Watson, 297 Neb. 479, 900 N.W.2d 545 (2017).

An acknowledgment is essential when conveying a homestead. An instrument purporting to convey or encumber the homestead of a married person is void if it is not executed and acknowledged by both the husband and the wife. Mutual of Omaha Bank v. Watson, 297 Neb. 479, 900 N.W.2d 545 (2017).

In cases where a contract of sale, deed of conveyance, or encumbrance of a homestead was found void for failing to comply with execution requirements, the homestead right already existed. But when a purchaser must obtain a purchase-money mortgage to acquire real property, the purchaser cannot show a present right of occupancy or possession until after he or she gives the lender the security interest. Accordingly, it is the general rule that restrictions on the encumbrance of a homestead without a spouse's consent or signature do not invalidate a security interest in the property that a purchaser concurrently gives for its purchase price. Mutual of Omaha Bank v. Watson, 297 Neb. 479, 900 N.W.2d 545 (2017).

42-103.

A marriage that is void is not valid for any legal purpose. State v. Johnson, 310 Neb. 527, 967 N.W.2d 242 (2021).

It is generally held that a marriage is not void unless the statutes expressly so declare and that courts should not so construe it unless the legislative intent to such effect is clear and unequivocal. State v. Johnson, 310 Neb. 527, 967 N.W.2d 242 (2021).

42-114.

An ordained minister was authorized to perform a valid marriage ceremony where there was no evidence casting doubt on the minister's authority to solemnize the marriage and where the purported wife believed she had been lawfully joined in marriage. State v. Johnson, 310 Neb. 527, 967 N.W.2d 242 (2021).

42-117.

If Texas law applied to a situation where a Nebraska marriage license was obtained but the solemnization occurred in Texas, and if Texas would recognize the marriage as valid, then Nebraska would also recognize the marriage as valid. State v. Johnson, 310 Neb. 527, 967 N.W.2d 242 (2021).

If a marriage is valid where it was contracted, it will be held to be valid everywhere, and if invalid by lex loci contractus, it will be invalid wherever question may arise. Nelson v. Richardson-Nelson, 30 Neb. App. 15, 964 N.W.2d 463 (2021).

42-118.

A marriage is voidable when it has legal imperfections in its establishment which can be inquired into only during the lives of both of the parties in a proceeding by annulment to obtain a judgment of a competent court declaring its invalidity. State v. Johnson, 310 Neb. 527, 967 N.W.2d 242 (2021).

42-347.

Subdivision (3) of this section, which provides that to dissolve a marriage, a court need only find it is irretrievably broken, does not violate the procedural due process provisions of the U.S. and Nebraska Constitutions. Dycus v. Dycus, 307 Neb. 426, 949 N.W.2d 357 (2020).

42-349.

Domicile is obtained only through a person's physical presence, accompanied by the present intention to remain indefinitely at a location or site, or by the present intention to make a location or site the person's permanent or fixed home. The absence of either presence or intention thwarts the establishment of domicile. Lasu v. Lasu, 28 Neb. App. 478, 944 N.W.2d 773 (2020).

In order to effect a change of domicile, there must not only be a change of residence, but an intention to permanently abandon the former home. The mere residing at a different place, although evidence of a change, is, however long continued, per se insufficient. A brief move to another location to see if living with one's spouse will succeed may not indicate present intent to change one's domicile. Lasu v. Lasu, 28 Neb. App. 478, 944 N.W.2d 773 (2020).

Once established, domicile continues until a new domicile is perfected. Lasu v. Lasu, 28 Neb. App. 478, 944 N.W.2d 773 (2020).

The language of this section requiring an "actual residence in this state" means that one party is required to have a bona fide domicile in Nebraska for 1 year before commencement of a dissolution action. Lasu v. Lasu, 28 Neb. App. 478, 944 N.W.2d 773 (2020).

A plaintiff satisfied Nebraska's residency requirement to obtain a divorce where he alleged in the complaint that he had lived in Nebraska for more than 1 year with the intent of making this state a permanent home. Metzler v. Metzler, 25 Neb. App. 757, 913 N.W.2d 733 (2018).

The language of this section requiring an "actual residence in this state" means that one party is required to have a bona fide domicile in Nebraska for 1 year before commencement of a dissolution action. Metzler v. Metzler, 25 Neb. App. 757, 913 N.W.2d 733 (2018).

In order to maintain an action for divorce in Nebraska, one of the parties must have had actual residence in this state with a bona fide intention of making this state his or her permanent home for at least 1 year prior to the filing of the complaint. Catlett v. Catlett, 23 Neb. App. 136, 869 N.W.2d 368 (2015).

The requirement that one party have "actual residence in this state" means that one party must have a "bona fide domicile" in the state for 1 year before the commencement of a dissolution action. Catlett v. Catlett, 23 Neb. App. 136, 869 N.W.2d 368 (2015).

42-351.

The court had continuing jurisdiction to provide for orders regarding parenting time or other access where, following the filing of a notice of appeal, the court held further hearings but did not make new determinations about the identical issues being appealed; rather, the court entered a purge order setting forth terms to be complied with in order to gain release from jail. Yori v. Helms, 307 Neb. 375, 949 N.W.2d 325 (2020).

Pursuant to subsection (2) of this section, a trial court may retain jurisdiction to provide for an order concerning custody and parenting time even while an appeal is pending; however, a court does not retain authority to hear and determine anew the very issues then pending on appeal and to enter permanent orders addressing these issues during the appeal process. Becher v. Becher, 302 Neb. 720, 925 N.W.2d 67 (2019).

The trial court was not divested of jurisdiction to enter an order modifying child custody where orders that were pending on appeal did not address custody. Burns v. Burns, 293 Neb. 633, 879 N.W.2d 375 (2016).

An order helping a party pay for his or her attorney's work on appeal is an order in aid of the appeal process under subsection (2) of this section. Brozek v. Brozek, 292 Neb. 681, 874 N.W.2d 17 (2016).

A district court had subject matter jurisdiction to adjudicate a husband's divorce because his complaint for dissolution of marriage fell within the court's jurisdiction, even though there were no marital assets in Nebraska. Metzler v. Metzler, 25 Neb. App. 757, 913 N.W.2d 733 (2018).

Generally, once an appeal has been perfected, the trial court no longer has jurisdiction, although the district court retains jurisdiction under subsection (2) of this section for certain matters. Furstenfeld v. Pepin, 23 Neb. App. 673, 875 N.W.2d 468 (2016).

Subsection (2) of this section does not grant authority to hear and determine anew the very issues then pending on appeal and to enter permanent orders addressing these issues during the appeal process. Furstenfeld v. Pepin, 23 Neb. App. 673, 875 N.W.2d 468 (2016).

The word "support" in this section is not limited to child support and, in fact, applies to spousal support. Furstenfeld v. Pepin, 23 Neb. App. 673, 875 N.W.2d 468 (2016).

Satisfaction of the residency requirement in section 42-349 is required to confer subject matter jurisdiction on a district court hearing a dissolution proceeding. Catlett v. Catlett, 23 Neb. App. 136, 869 N.W.2d 368 (2015).

42-352.

A district court had jurisdiction to dissolve a parties' marriage where the plaintiff satisfied procedural due process by complying with the process service requirements for dissolution proceedings under this section and also satisfied Nebraska residency requirements. Metzler v. Metzler, 25 Neb. App. 757, 913 N.W.2d 733 (2018).

42-353.

Because the husband's complaint contained each of the allegations required by this section, he stated a claim upon which the district court could grant relief, and the court erred in granting the wife's motion to dismiss for failure to state a claim. Metzler v. Metzler, 25 Neb. App. 757, 913 N.W.2d 733 (2018).

42-358.

Subsection (1) of this section permits the district court to order the county to pay attorney fees and expenses only when a responsible party is indigent. White v. White, 296 Neb. 772, 896 N.W.2d 600 (2017).

When an indigence hearing takes place after the appointment of a guardian ad litem and the ordering of fees, a trial court's determination of indigence should depend upon a party's finances at the time of the indigence hearing. White v. White, 293 Neb. 439, 884 N.W.2d 1 (2016).

42-358.02.

The district court did not have discretion to reduce the amount of accrued interest on a father's child support arrearage. Ybarra v. Ybarra, 28 Neb. App. 216, 943 N.W.2d 447 (2020).

42-362.

The trial court did not abuse its discretion in awarding continuing monthly spousal support in favor of the wife until either party died or the wife remarried or was no longer mentally ill, even though the spousal-support obligation might place the husband at or near his net income level; the wife was in an even more difficult financial position given that she had no ability to work. Onstot v. Onstot, 298 Neb. 897, 906 N.W.2d 300 (2018).

42-364.

Pursuant to subdivision (1)(b) of this section, a court must determine physical custody based upon the best interests of a child and such determination shall be made by incorporating (i) a parenting plan developed by the parties, if approved by the court, or (ii) a parenting plan developed by the court based upon evidence produced after a hearing in open court if no parenting plan is developed by the parties and approved by the court. Blank v. Blank, 303 Neb. 602, 930 N.W.2d 523 (2019).

Pursuant to subsection (3) of this section, a joint physical custody award is allowed if (a) both parents agree to such an arrangement in the parenting plan and the court determines that such an arrangement is in the best interests of the child or (b) the court specifically finds, after a hearing in open court, that joint physical custody or joint legal custody, or both, is in the best interests of the minor child regardless of any parental agreement or consent. Blank v. Blank, 303 Neb. 602, 930 N.W.2d 523 (2019).

Pursuant to subsection (3) of this section, a trial court's decision to award joint legal or physical custody can be made without parental agreement or consent so long as it is in the child's best interests. Blank v. Blank, 303 Neb. 602, 930 N.W.2d 523 (2019).

In an action for dissolution of marriage involving the custody of minor children, the court is required to make a determination of legal and physical custody based upon the children's best interests. Such determinations shall be made by incorporation into the decree of a parenting plan, developed either by the parties as approved by the court or by the court after an evidentiary hearing. Dooling v. Dooling, 303 Neb. 494, 930 N.W.2d 481 (2019).

A juvenile court lacks statutory authority to transfer a proceeding back to the district court under subsection (5) of this section where: (1) The district court, having subject matter jurisdiction of a modification proceeding under subsection (6) of this section in which termination of parental rights has been placed in issue and having personal jurisdiction of the parties to that proceeding, has transferred jurisdiction of the proceeding to the appropriate juvenile court; (2) termination of parental rights remains in issue and unadjudicated in the transferred proceeding; (3) the State is not involved in the proceeding and has not otherwise asserted jurisdiction over the child or children involved in the modification proceeding; and (4) the juvenile court has not otherwise been deprived of jurisdiction. Christine W. v. Trevor W., 303 Neb. 245, 928 N.W.2d 398 (2019).

Although joint physical custody generally should be reserved for those cases where the parties can communicate and cooperate with one another, a court may order joint custody in the absence of parental agreement if, after a hearing in open court, it finds that such custody is in the child's best interests. Leners v. Leners, 302 Neb. 904, 925 N.W.2d 704 (2019).

When making a determination of child support under this section, the court must take into account and give effect to an existing order of support under section 43-512.04. The court may order the existing order to remain in effect without modification after considering whether modification is warranted. Fetherkile v. Fetherkile, 299 Neb. 76, 907 N.W.2d 275 (2018).

Summons is required to be served on the defendant in a modification proceeding. Burns v. Burns, 293 Neb. 633, 879 N.W.2d 375 (2016).

The district court did not abuse its discretion by denying joint legal custody when the parties did not communicate and the mother thwarted any meaningful and appropriate contact between the father and the child. Kashyap v. Kashyap, 26 Neb. App. 511, 921 N.W.2d 835 (2018).

This section, which provides that a court may order joint custody, regardless of any parental agreement or consent, if the court specifically finds, after a hearing in open court, that joint physical custody or joint legal custody, or both, is in the best interests of the minor child, may be applied to custody disputes in paternity actions. State on behalf of Carter W. v. Anthony W., 24 Neb. App. 47, 879 N.W.2d 402 (2016).

The requirement in this section that a court make a specific finding of best interests before awarding joint custody does not apply in paternity actions where the parties were never married. Aguilar v. Schulte, 22 Neb. App. 80, 848 N.W.2d 644 (2014).

Subsection (3)(b) of this section requires that in dissolution cases, if the parties do not agree to joint custody in a

parenting plan, the trial court can award joint custody if it specifically finds, after a hearing in open court, that it is in the best interests of the child. Hill v. Hill, 20 Neb. App. 528, 827 N.W.2d 304 (2013).

Although there was no evidence that the mother was currently engaged in abusive behaviors or an abusive relationship, the trial court acted within its discretion in finding that the father's custody was in the best interests of the child based on the mother's history of domestic violence, the previous removal of a child, and the mother's questionable rehabilitation. State on behalf of Keegan M. v. Joshua M., 20 Neb. App. 411, 824 N.W.2d 383 (2012).

42-364.08.

The basic subsistence limitation under the child support guidelines was not applicable to reduce the amount being withheld from a father's monthly Social Security benefits to pay his child support arrearages. Ybarra v. Ybarra, 28 Neb. App. 216, 943 N.W.2d 447 (2020).

42-364.15.

Modifications to a parenting plan made after finding the father in contempt were remedial measures to gain compliance and were part of the equitable relief that the court was authorized to provide. Yori v. Helms, 307 Neb. 375, 949 N.W.2d 325 (2020).

A motion to show cause gave the custodial parent notice that she could be found in contempt for denying parenting time which also gave notice of a possible modification pursuant to this section. Martin v. Martin, 294 Neb. 106, 881 N.W.2d 174 (2016).

42-364.16.

Though the Nebraska Child Support Guidelines are to be applied as a rebuttable presumption, offering flexibility and guidance rather than a stringent formula, the guidelines generally cannot be construed to allow for a deviation that is contrary to one of its specific provisions. Donald v. Donald, 296 Neb. 123, 892 N.W.2d 100 (2017).

In general, child support payments should be set according to the Nebraska Child Support Guidelines. Ybarra v. Ybarra, 28 Neb. App. 216, 943 N.W.2d 447 (2020).

Generally, child support payments should be set according to the guidelines. McDonald v. McDonald, 21 Neb. App. 535, 840 N.W.2d 573 (2013).

42-364.17.

Provisions in a decree or judgment related to child-related expenses listed in this section are modifiable when there has been a material change in circumstances, as such expenses are a subset of child support. Windham v. Kroll, 307 Neb. 947, 951 N.W.2d 744 (2020).

Court erred in not addressing each party's responsibility for the reasonable and necessary expenses of the children based on the record. Dooling v. Dooling, 303 Neb. 494, 930 N.W.2d 481 (2019).

The decree, together with the attached parenting plan, allocated the parties' responsibility for the necessary child expenses. Leners v. Leners, 302 Neb. 904, 925 N.W.2d 704 (2019).

Supervision of children in the form of day camps, lessons, or activities may under the circumstances constitute childcare for purposes of child support so long as such supervision is reasonable, in the child's best interests, and necessary due to employment or for education or training to obtain a job or enhance earning potential. Moore v. Moore, 302 Neb. 588, 924 N.W.2d 314 (2019).

Because the broader, more general terms contained in section 42-369(3) preceded the adoption of the Nebraska Child Support Guidelines and the passage of this section, the guidelines and this section are construed to control what categories of expenses can be ordered in addition to the monthly child support obligation determined under the guidelines. Kelly v. Kelly, 29 Neb. App. 198, 952 N.W.2d 207 (2020).

A trial court has the authority to order a parent to pay the categories of expenses specified in this section, in addition to the monthly child support obligation calculated under the guidelines. Smith v. King, 29 Neb. App. 152, 953 N.W.2d 258 (2020).

Because the broader, more general terms contained in section 42-369(3) preceded the adoption of the Nebraska Child Support Guidelines and the passage of this section, the guidelines and this section are construed to control

what categories of expenses can be ordered in addition to the monthly child support obligation determined under the guidelines. Smith v. King, 29 Neb. App. 152, 953 N.W.2d 258 (2020).

42-365.

The purpose of a property division is to equitably distribute marital assets and nothing in the language of this section prevents the court from ordering an equalization payment without awarding liquid assets from the marital estate. Karas v. Karas, 314 Neb. 857, 993 N.W.2d 473 (2023).

The active appreciation rule applies to agricultural land, and the owning spouse has the burden to prove the extent to which marital contributions did not cause the appreciation. Parde v. Parde, 313 Neb. 779, 986 N.W.2d 504 (2023).

Where the parties have not expressly precluded or limited modification of alimony pursuant to section 42-366(7), an alimony provision that was agreed to by the parties as part of a property settlement agreement may later be modified in accordance with this section. Grothen v. Grothen, 308 Neb. 28, 952 N.W.2d 650 (2020).

A district court need not choose one single date to value the entire marital estate, so long as the valuation date rationally relates to the property being valued. Rohde v. Rohde, 303 Neb. 85, 927 N.W.2d 37 (2019).

The Nebraska Child Support Guidelines exclude alimony between parents from their total monthly income for the purpose of calculating child support obligations for their children. Hotz v. Hotz, 301 Neb. 102, 917 N.W.2d 467 (2018).

Equitable property division is a three-step process. The first step is to classify the parties' property as marital or nonmarital. The second step is to value the marital assets and liabilities of the parties. The third step is to calculate and divide the net marital estate between the parties in accordance with the principles contained in this section. Osantowski v. Osantowski, 298 Neb. 339, 904 N.W.2d 251 (2017).

Equitable property division is a three-step process. The first step is to classify the parties' property as marital or nonmarital. The second step is to value the marital assets and liabilities of the parties. The third step is to calculate and divide the net marital estate between the parties in accordance with the principles contained in this section. Gangwish v. Gangwish, 267 Neb. 901, 678 N.W.2d 503 (2004); Mathews v. Mathews, 267 Neb. 604, 676 N.W.2d 42 (2004); Sughroue v. Sughroue, 19 Neb. App. 912, 815 N.W.2d 210 (2012); Ging v. Ging, 18 Neb. App. 145, 775 N.W.2d 479 (2009).

Pursuant to this section, alimony orders may be modified or revoked for good cause shown. Gregg v. Gregg, 31 Neb. App. 417, 980 N.W.2d 906 (2022).

In considering alimony under this section, a court should consider (1) the circumstances of the parties, (2) the duration of the marriage, (3) the history of contributions, and (4) the ability of the supported party to engage in gainful employment without interfering with the interests of any minor children in the custody of each party. In addition, a court should consider the income and earning capacity of each party and the general equities of the situation. Hamann v. Hamann, 31 Neb. App. 131, 977 N.W.2d 687 (2022).

The equitable division of property under this section is a three-step process. The first step is to classify the parties' property as marital or nonmarital, setting aside the nonmarital property to the party who brought that property to the marriage. The second step is to value the marital assets and marital liabilities of the parties. The third step is to calculate and divide the net marital estate between the parties in accordance with the principles contained in this section. Hamann v. Hamann, 31 Neb. App. 131, 977 N.W.2d 687 (2022).

The purpose of a property division under this section is to distribute the marital assets equitably between the parties. There is no mathematical formula by which property awards can be precisely determined, but as a general rule, a spouse should be awarded one-third to one-half of the marital estate, the polestar being fairness and reasonable as determined by the facts of each case. Hamann v. Hamann, 31 Neb. App. 131, 977 N.W.2d 687 (2022).

The purpose of alimony is to provide for the continued maintenance or support of one party by the other when the relative economic circumstances make it appropriate. Hamann v. Hamann, 31 Neb. App. 131, 977 N.W.2d 687 (2022).

In addition to the criteria listed in this section, in considering alimony upon a dissolution of marriage, a trial court is to consider the income and earning capacity of each party, as well as the general equities of each situation. The ultimate criterion is one of reasonableness. Montegut v. Mosby-Montegut, 31 Neb. App. 107, 977 N.W.2d 671 (2022).

The equitable division of property under this section is a three-step process. The first step is to classify the parties' property as marital or nonmarital, setting aside the nonmarital property to the party who brought that property to the marriage. The second step is to value the marital assets and marital liabilities of the parties. The third step is to calculate and divide the net marital estate between the parties in accordance with the principles contained in this section. Montegut v. Mosby-Montegut, 31 Neb. App. 107, 977 N.W.2d 671 (2022).

In addition to the specific criteria listed in this section, a court should consider the income and earning capacity of each party and the general equities of the situation. Nelson v. Richardson-Nelson, 30 Neb. App. 15, 964 N.W.2d 463 (2021).

Any given property can constitute a mixture of marital and nonmarital interests; a portion of an asset can be marital property while another portion can be separate property. Ramsey v. Ramsey, 29 Neb. App. 688, 958 N.W.2d 447 (2021).

Debts, like property, ought to also be considered in dividing marital property upon dissolution. Ramsey v. Ramsey, 29 Neb. App. 688, 958 N.W.2d 447 (2021).

Generally, all property accumulated and acquired by either spouse during a marriage is part of the marital estate. Exceptions include property that a spouse acquired before the marriage, or by gift or inheritance. Ramsey v. Ramsey, 29 Neb. App. 688, 958 N.W.2d 447 (2021).

Separate property becomes marital property by commingling if it is inextricably mixed with marital property or with the separate property of the other spouse. But if the separate property remains segregated or is traceable into its product, commingling does not occur. The burden of proof rests with the party claiming that property is nonmarital. Ramsey v. Ramsey, 29 Neb. App. 688, 958 N.W.2d 447 (2021).

When one party's nonmarital debt is repaid with marital funds, the value of the debt repayments ought to reduce that party's property award upon dissolution. Ramsey v. Ramsey, 29 Neb. App. 688, 958 N.W.2d 447 (2021).

The equitable division of property is a three-step process: (1) classify the parties' property as marital or nonmarital, setting aside the nonmarital property to the party who brought that property to the marriage; (2) value the marital assets and marital liabilities of the parties; and (3) calculate and divide the net marital estate between the parties in accordance with the principles contained in this section. Cook v. Cook, 26 Neb. App. 137, 918 N.W.2d 1 (2018).

Alimony should not be used to equalize the incomes of the parties or to punish one of the parties. Patton v. Patton, 20 Neb. App. 51, 818 N.W.2d 624 (2012).

Disparity in income or potential income may partially justify an award of alimony. Patton v. Patton, 20 Neb. App. 51, 818 N.W.2d 624 (2012).

In addition to the specific criteria listed in this section, in considering alimony upon a dissolution of marriage, a court is to consider the income and earning capacity of each party, as well as the general equities of each situation. Patton v. Patton, 20 Neb. App. 51, 818 N.W.2d 624 (2012).

In determining whether alimony should be awarded, in what amount, and over what period of time, the ultimate criterion is one of reasonableness. Patton v. Patton, 20 Neb. App. 51, 818 N.W.2d 624 (2012).

The equitable division of property is a three-step process. The first step is to classify the parties' property as marital or nonmarital. The second step is to value the marital assets and marital liabilities of the parties. The third step is to calculate and divide the net marital estate between the parties in accordance with the principles contained in this section. Patton v. Patton, 20 Neb. App. 51, 818 N.W.2d 624 (2012).

In addition to the specific criteria listed in this section, in dividing property and considering alimony upon a dissolution of marriage, a court is to consider the income and earning capacity of each party, as well as the general equities of each situation. Titus v. Titus, 19 Neb. App. 751, 811 N.W.2d 318 (2012); Grams v. Grams, 9 Neb. App. 994, 624 N.W.2d 42 (2001).

Factors which should be considered by a court in determining alimony include: (1) the circumstances of the parties; (2) the duration of the marriage; (3) the history of contributions to the marriage, including contributions to the care and education of the children, and interruption of personal careers or educational opportunities; and (4) the ability of the supported party to engage in gainful employment without interfering with the interests of any minor children in the custody of each party. Zoubenko v. Zoubenko, 19 Neb. App. 582, 813 N.W.2d 506 (2012).

The criteria listed in this statute are not an exhaustive list, and the income and earning capacity of each party as well as the general equities of each situation must be considered. Zoubenko v. Zoubenko, 19 Neb. App. 582, 813

N.W.2d 506 (2012).

42-366.

Where the parties have not expressly precluded or limited modification of alimony pursuant to subsection (7) of this section, an alimony provision that was agreed to by the parties as part of a property settlement agreement may later be modified in accordance with section 42-365. Grothen v. Grothen, 308 Neb. 28, 952 N.W.2d 650 (2020).

Agreements regarding the custody and support of minor children are not binding on dissolution courts, and child support orders are always subject to modification and review. Windham v. Kroll, 307 Neb. 947, 951 N.W.2d 744 (2020).

To the extent employment benefits such as unused sick time, vacation time, and comp time have been earned during the marriage, they constitute deferred compensation benefits under subsection (8) of this section and are considered part of the marital estate subject to equitable division. Dooling v. Dooling, 303 Neb. 494, 930 N.W.2d 481 (2019).

Appreciation or income of a nonmarital asset during the marriage is marital insofar as it was caused by the efforts of either spouse or both spouses. Stephens v. Stephens, 297 Neb. 188, 899 N.W.2d 582 (2017).

An agreement between a husband and wife concerning the disposition of their property, not made in connection with the separation of the parties or the dissolution of their marriage, is not binding upon the courts during a later dissolution proceeding. Devney v. Devney, 295 Neb. 15, 886 N.W.2d 61 (2016).

Investment earnings accrued during the marriage on the nonmarital portion of a retirement account may be classified as nonmarital where the party seeking the classification proves: (1) The growth is readily identifiable and traceable to the nonmarital portion of the account and (2) the growth is due solely to inflation, market forces, or guaranteed rate rather than the direct or indirect effort, contribution, or fund management of either spouse. Stanosheck v. Jeanette, 294 Neb. 138, 881 N.W.2d 599 (2016).

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 section 84-1301(17). Therefore, such increase was not marital property. Coufal v. Coufal, 291 Neb. 378, 866 N.W.2d 74 (2015).

An increase in value in the separate property of a spouse, not attributable in any manner to any contribution of funds, property, or effort by either of the spouses, constitutes separate property. Coufal v. Coufal, 291 Neb. 378, 866 N.W.2d 74 (2015).

In order to determine what portion of a party's retirement account is nonmarital property in a divorce, the court examines to what extent the appreciation in the separate premarital portion of the retirement account was caused by the funds, property, or efforts of either spouse. Coufal v. Coufal, 291 Neb. 378, 866 N.W.2d 74 (2015).

Deferred compensation, including pension plans, retirement plans, and annuities, is property for purposes of determining the marital estate under subsection (8) of this section. Wiech v. Wiech, 23 Neb. App. 370, 871 N.W.2d 570 (2015).

42-367.

A court may direct costs against either party in an action for dissolution of marriage. Barth v. Barth, 22 Neb. App. 241, 851 N.W.2d 104 (2014).

42-369.

Because the broader, more general terms contained in subsection (3) of this section preceded the adoption of the Nebraska Child Support Guidelines and the passage of section 42-364.17, the guidelines and section 42-364.17 are construed to control what categories of expenses can be ordered in addition to the monthly child support obligation determined under the guidelines. Kelly v. Kelly, 29 Neb. App. 198, 952 N.W.2d 207 (2020).

Section 42-364.17 provides categories of expenses incurred by a child which can be ordered by a trial court in addition to the monthly child support calculation determined under the guidelines. Kelly v. Kelly, 29 Neb. App. 198, 952 N.W.2d 207 (2020).

To construe subsection (3) of this section to require a parent to pay for basic necessities such as shelter, food, and

clothing in addition to a monthly child support obligation which has been calculated using the Nebraska Child Support Guidelines basic net income and support calculation, worksheet 1, would make inexplicable what the monthly child support was otherwise intended to cover in terms of a child's needs. Kelly v. Kelly, 29 Neb. App. 198, 952 N.W.2d 207 (2020).

A trial court has the authority to order a parent to pay the categories of expenses specified in section 42-364.17, in addition to the monthly child support obligation calculated under the guidelines. Smith v. King, 29 Neb. App. 152, 953 N.W.2d 258 (2020).

Because the broader, more general terms contained in subsection (3) of this section preceded the adoption of the Nebraska Child Support Guidelines and the passage of section 42-364.17, the guidelines and section 42-364.17 are construed to control what categories of expenses can be ordered in addition to the monthly child support obligation determined under the guidelines. Smith v. King, 29 Neb. App. 152, 953 N.W.2d 258 (2020).

42-371.

An appearance bond deposited by the defendant into the court registry to secure the defendant's appearance in a criminal proceeding was not personal property registered with a county office, within the meaning of the statute creating a lien on personal property of a child support obligor registered with a county office; statute limited personal property subject to lien for unpaid child support as tangible goods and chattels, and money was neither good nor chattel, but, rather, was intangible property. State v. McColery, 301 Neb. 516, 919 N.W.2d 153 (2018).

42-378.

This section does not apply merely because a party believes that he or she is validly married or has a subjective desire to be married; rather, the parties must enter into the contract of marriage. Seivert v. Alli, 309 Neb. 246, 959 N.W.2d 777 (2021).

42-903.

Not only is the recipient or target of a credible threat a "victim" of abuse eligible for a domestic abuse protection order under section 42-924, so too are those family members for whose safety the target reasonably fears because of the threat. Robert M. on behalf of Bella O. v. Danielle O., 303 Neb. 268, 928 N.W.2d 407 (2019).

Subsection (1) of this section does not impose any limitation on the time during which a victim of domestic abuse resulting in bodily injury can file a petition and affidavit seeking a protection order. However, this does not mean that the remoteness of the abuse is irrelevant to the issue of whether a protection order is warranted. Sarah K. v. Jonathan K., 23 Neb. App. 471, 873 N.W.2d 428 (2015).

The term "physical menace" within the meaning of the abuse definition means a physical threat or act and requires more than mere words. Beemer v. Hammer, 20 Neb. App. 579, 826 N.W.2d 599 (2013).

42-924.

A new act of abuse is not a prerequisite for renewal of a domestic abuse protection order; however, it may be considered in determining the continuing likelihood of future harm. Garrison v. Otto, 311 Neb. 94, 970 N.W.2d 495 (2022).

An evidentiary hearing on the petition for renewal should be held, unless the respondent fails to appear or indicates he or she does not contest the renewal. Garrison v. Otto, 311 Neb. 94, 970 N.W.2d 495 (2022).

Because the question of the likelihood of future harm and the relative equities of the case pertain to a different effective period of time, the court's prior determinations of these matters are not law of the case. Garrison v. Otto, 311 Neb. 94, 970 N.W.2d 495 (2022).

The purpose of a hearing on the petition for renewal is to receive evidence so that the court may reweigh the burdens the order will inflict against its benefits in light of all the relevant circumstances, including what has or has not changed since its issuance. Garrison v. Otto, 311 Neb. 94, 970 N.W.2d 495 (2022).

The requisite past act of domestic abuse is necessarily found in relation to the underlying protection order; it is law of the case and not to be relitigated simply because the petitioner seeks a renewal of the order. Garrison v. Otto, 311 Neb. 94, 970 N.W.2d 495 (2022).

Not only is the recipient or target of a credible threat a "victim" of abuse eligible for a domestic abuse protection

order under this section, so too are those family members for whose safety the target reasonably fears because of the threat. Robert M. on behalf of Bella O. v. Danielle O., 303 Neb. 268, 928 N.W.2d 407 (2019).

Even though a court has subject matter jurisdiction to hear a request for a domestic abuse protection order, the defendant may file to transfer the action to a more appropriate venue pursuant to section 25-403.01. Jacobo v. Zoltenko, 30 Neb. App. 44, 965 N.W.2d 32 (2021).

A protection order pursuant to this section is analogous to an injunction. Hronek v. Brosnan, 20 Neb. App. 200, 823 N.W.2d 204 (2012).

42-925.

In considering whether to continue an ex parte domestic abuse protection order following a finding that domestic abuse has occurred, a court is not limited to considering only whether the ex parte order was proper, but may also consider a number of factors pertinent to the likelihood of future harm. Maria A. on behalf of Leslie G. v. Oscar G., 301 Neb. 673, 919 N.W.2d 841 (2018).

Whether domestic abuse occurred is a threshold issue in determining whether an ex parte protection order should be affirmed; absent abuse as defined by the Protection from Domestic Abuse Act, a protection order may not remain in effect. Maria A. on behalf of Leslie G. v. Oscar G., 301 Neb. 673, 919 N.W.2d 841 (2018).

When a petition and affidavit for a domestic abuse protection order satisfy the requirements of section 42-924, the court is required to issue an ex parte domestic abuse protection order or schedule an evidentiary hearing. Jacobo v. Zoltenko, 30 Neb. App. 44, 965 N.W.2d 32 (2021).

The 5-day period to file a show cause hearing request as set forth in subsection (1) of this section is directory and not mandatory. Accordingly, failing to file a request for a show cause hearing within that 5-day period does not preclude the later filing of a motion to bring the matter back before the court, including the filing of a motion to vacate an ex parte order. Courtney v. Jimenez, 25 Neb. App. 75, 903 N.W.2d 41 (2017).

42-1002.

The parties' premarital agreement providing that each party would retain "full and complete ownership of all real and personal property that they now own" and "full and complete ownership of all property which shall come into their possession as the result of each party's work and labor, investments, inheritance or otherwise" was enforceable. Cook v. Cook, 26 Neb. App. 137, 918 N.W.2d 1 (2018).

42-1004.

The proceeds from a wrongful death action are not the property of a decedent's estate and are therefore not contemplated as a property right waived in a premarital agreement unless the language of the premarital agreement specifically waives such a right. In re Estate of McConnell, 28 Neb. App. 303, 943 N.W.2d 722 (2020).

The parties' premarital agreement providing that each party would retain "full and complete ownership of all real and personal property that they now own" and "full and complete ownership of all property which shall come into their possession as the result of each party's work and labor, investments, inheritance or otherwise" was enforceable. Cook v. Cook, 26 Neb. App. 137, 918 N.W.2d 1 (2018).

42-1006.

The proceeds from a wrongful death action are not the property of a decedent's estate and are therefore not contemplated as a property right waived in a premarital agreement unless the language of the premarital agreement specifically waives such a right. In re Estate of McConnell, 28 Neb. App. 303, 943 N.W.2d 722 (2020).

43-101.

The plain language of this section allows a same-sex married couple to adopt a minor child. In re Adoption of Yasmin S., 308 Neb. 771, 956 N.W.2d 704 (2021).

43-102.

This section and sections 43-103 and 43-104, construed together, require that before a county court entertains a decision on the merits in an adoption proceeding, all those statutorily required to consent have done so. In re Adoption of Chase T., 295 Neb. 390, 888 N.W.2d 507 (2016).

Under this section, a county court or juvenile court will ordinarily have jurisdiction over an adoption proceeding. But district courts have inherent equity jurisdiction to resolve custody disputes, and they have jurisdiction over habeas proceedings challenging adoption proceedings. Accordingly, a county court's statutory jurisdiction over an adoption petition does not give it exclusive jurisdiction to resolve challenges to Nebraska's adoption statutes that could have foreclosed the adoption. In re Adoption of Jaelyn B., 293 Neb. 917, 883 N.W.2d 22 (2016).

43-103.

This section and sections 43-102 and 43-104, construed together, require that before a county court entertains a decision on the merits in an adoption proceeding, all those statutorily required to consent have done so. In re Adoption of Chase T., 295 Neb. 390, 888 N.W.2d 507 (2016).

43-104.

Under the Nebraska adoption statutes, a voluntary relinquishment is effective when a parent executes a written instrument and the Department of Health and Human Services or an agency, in writing, accepts responsibility for the child. In re Interest of Donald B. & Devin B., 304 Neb. 239, 933 N.W.2d 864 (2019).

Evidence of a parent's conduct, either before or after the statutory period, may be considered because this evidence is relevant to a determination of whether the purpose and intent of that parent was to abandon his or her child or children. In re Adoption of Micah H., 301 Neb. 437, 918 N.W.2d 834 (2018).

The critical period of time during which abandonment must be shown is the 6 months immediately preceding the filing of the adoption petition. In re Adoption of Micah H., 301 Neb. 437, 918 N.W.2d 834 (2018).

This section and sections 43-102 and 43-103, construed together, require that before a county court entertains a decision on the merits in an adoption proceeding, all those statutorily required to consent have done so. In re Adoption of Chase T., 295 Neb. 390, 888 N.W.2d 507 (2016).

Subsection (4) of this section does not apply to an acknowledged, legal father under another state's paternity determination. In re Adoption of Jaelyn B., 293 Neb. 917, 883 N.W.2d 22 (2016).

A finding of abandonment under subdivision (2)(b) of this section in an ongoing adoption proceeding is not a final, appealable order; such a finding does not terminate parental rights or standing in the proceedings, but merely eliminates the need for the abandoning parent's consent and authorizes the execution of substitute consent, and such a finding has no real and immediate effect on parental obligations, visitation, custody, or other matters pertaining to the parent's contact with the child during the pendency of the final judgment granting or denying the petition for adoption. In re Adoption of Madysen S. et al., 293 Neb. 646, 879 N.W.2d 34 (2016).

43-104.05.

Subsection (1) of this section details how a party goes about commencing an action for paternity and includes how venue of an action is determined. Peterson v. Jacobitz, 309 Neb. 486, 961 N.W.2d 258 (2021).

Subsection (4) of this section deals with the timing and duration of a court's authority and does not confer jurisdiction. Peterson v. Jacobitz, 309 Neb. 486, 961 N.W.2d 258 (2021).

Subsection (3) of this section does not authorize a county court to disestablish an acknowledged father's parental rights under another state's paternity determination. In re Adoption of Jaelyn B., 293 Neb. 917, 883 N.W.2d 22 (2016).

Subsection (1) of this section specifies the appropriate venue for an objection to adoption to be litigated and is not a statute conferring jurisdiction. Peterson v. Jacobitz, 29 Neb. App. 486, 955 N.W.2d 329 (2021).

Subsection (1) of this section specifies the proper venue for an objection to adoption. Peterson v. Jacobitz, 29 Neb. App. 486, 955 N.W.2d 329 (2021).

43-104.22.

An acknowledged, legal father who has the right to consent to an adoption under another state's paternity determination is not a "man" within the meaning of subsection (11) of this section. Jesse B. v. Tylee H., 293 Neb. 973, 883 N.W.2d 1 (2016); In re Adoption of Jaelyn B., 293 Neb. 917, 883 N.W.2d 22 (2016).

Subsection (11) of this section does not authorize a county court to disestablish an acknowledged father's parental rights under another state's paternity determination. Jesse B. v. Tylee H., 293 Neb. 973, 883 N.W.2d 1 (2016); In re Adoption of Jaelyn B., 293 Neb. 917, 883 N.W.2d 22 (2016).

43-106.01.

A duly executed revocation of a relinquishment and consent to adoption delivered to a licensed child placement agency within a reasonable time after execution of the relinquishment and before the agency has, in writing, accepted full responsibility for the child, as required by statute, is effective to invalidate the original relinquishment and consent. In re Interest of Nery V. et al., 20 Neb. App. 798, 832 N.W.2d 909 (2013).

The rights of the relinquishing parent are terminated when the Nebraska Department of Health and Human Services, or a licensed child placement agency, accepts responsibility for the child in writing. In re Interest of Nery V. et al., 20 Neb. App. 798, 832 N.W.2d 909 (2013).

There are four requirements for a valid and effective revocation of a relinquishment of parental rights: (1) There must be a duly executed revocation of a relinquishment, (2) the revocation must be delivered to a licensed child placement agency or the Nebraska Department of Health and Human Services, (3) delivery of the revocation must be within a reasonable time after execution of the relinquishment, and (4) delivery of the revocation must occur before the agency has, in writing, accepted full responsibility for the child. In re Interest of Nery V. et al., 20 Neb. App. 798, 832 N.W.2d 909 (2013).

When a parent's attempted revocation of his or her relinquishment of parental rights is not done in a reasonable time after the relinquishment, the relinquishment becomes irrevocable. In re Interest of Nery V. et al., 20 Neb. App. 798, 832 N.W.2d 909 (2013).

43-109.

In determining whether adoption is in a child's best interests, a court may consider the effect of adoption on preexisting family attachments and weigh the alternative of continuing the status quo of a guardianship. In re Adoption of Faith F., 313 Neb. 491, 984 N.W.2d 640 (2023).

Reducing best interests to whether the first person to the courthouse with an adoption petition is good enough to carry out parental responsibilities for a child is inconsistent with the comprehensive and individualized consideration traditionally expected of trial courts in determining a child's best interests. In re Adoption of Faith F., 313 Neb. 491, 984 N.W.2d 640 (2023).

The best interests of the child who is the subject of an adoption petition must remain a flexible and unique determination based on specific evidence relating to that child. In re Adoption of Faith F., 313 Neb. 491, 984 N.W.2d 640 (2023).

43-111.

The parental preference doctrine applies in a habeas proceeding to obtain custody of a child who is the subject of an adoption proceeding if the parent's relinquishment is invalid or void. A court in a habeas proceeding may not deprive a parent of custody of his or her minor child unless a party affirmatively shows that the parent is unfit or has forfeited the right to perform his or her parental duties. The best interests standard is subject to the overriding recognition that the relationship between parent and child is constitutionally protected. Jesse B. v. Tylee H., 293 Neb. 973, 883 N.W.2d 1 (2016).

Under this section, it is the adoption itself which terminates the parental rights, and until the adoption is granted, the parental rights are not terminated. When a parent's relinquishment of his or her child is invalid or void, this section governs when the parent's rights are terminated. Jesse B. v. Tylee H., 293 Neb. 973, 883 N.W.2d 1 (2016).

43-246.01.

Pursuant to subdivision (3)(c) of this section, whether a juvenile court has jurisdiction over a person is determined not by the person's age at the time of the offense, but, rather, by the person's age at the time he or she is charged for the offense. State v. Pauly, 311 Neb. 418, 972 N.W.2d 907 (2022).

County courts have not been given authority to decide motions to transfer to juvenile court in cases in which they lack jurisdiction to try the case. State v. A.D., 305 Neb. 154, 939 N.W.2d 484 (2020).

A city or county attorney has authority to seek a transfer to the criminal court when both the juvenile court and

the criminal court have statutory jurisdiction; the county court and district court have statutory jurisdiction over criminal matters, except in those instances where the Legislature has preserved such matters to the exclusive jurisdiction of the juvenile court, such as in subdivision (1) of this section. In re Interest of Luis D., 29 Neb. App. 495, 956 N.W.2d 25 (2021).

A juvenile fitting into the categories described in subdivisions (1) and (2) of this section must always be commenced in the juvenile court; however, proceedings initiated under subdivision (2) of this section are subject to transfer to the county or district court for further proceedings under the criminal code. In re Interest of Luis D., 29 Neb. App. 495, 956 N.W.2d 25 (2021).

Actions involving juveniles fitting into categories under subdivision (3) of this section may be initiated either in the juvenile court or in the county or district court and may be transferred as provided in section 43-274. In re Interest of Luis D., 29 Neb. App. 495, 956 N.W.2d 25 (2021).

Proceedings fitting under subdivision (1) of this section must always be filed via a juvenile petition and must always proceed to completion in the juvenile court. In re Interest of Luis D., 29 Neb. App. 495, 956 N.W.2d 25 (2021).

Subsection (3) of this section grants concurrent jurisdiction to the juvenile court and the county or district court over juvenile offenders who (1) are 11 years of age or older and commit a traffic offense that is not a felony or (2) are 14 years of age or older and commit a Class I, IA, IB, IC, ID, II, or IIA felony. State v. Comer, 26 Neb. App. 270, 918 N.W.2d 13 (2018).

43-246.02.

A bridge order is not final for purposes of section 25-1902. In re Interest of Kamille C. & Kamiya C., 302 Neb. 226, 922 N.W.2d 739 (2019).

A bridge order "shall only address matters of legal and physical custody and parenting time," but it is not a domestic relations custody decree. In re Interest of Kamille C. & Kamiya C., 302 Neb. 226, 922 N.W.2d 739 (2019).

In enacting this section authorizing bridge orders, the Legislature crafted a solution for temporary continuity when the child is no longer in need of the juvenile court's protection; the juvenile court has made, through a dispositional order, a custody determination in the child's best interests; and the juvenile court does not wish to enter a domestic relations custody decree under the power granted by subsection (3) of section 25-2740. In re Interest of Kamille C. & Kamiya C., 302 Neb. 226, 922 N.W.2d 739 (2019).

The custody determination made by the juvenile court has no legally preclusive effect and will be made anew by the district court if either parent is discontent with the custody arrangement originally set forth by the bridge order. In re Interest of Kamille C. & Kamiya C., 302 Neb. 226, 922 N.W.2d 739 (2019).

A bridge order might, in some instances, be a reasonable alternative to termination of parental rights, but there is no burden on the State to prove that termination is the only reasonable alternative available. The only burden on the State is to prove, by clear and convincing evidence, that termination of parental rights is in the best interests of the child and that one or more of the conditions set out in section 43-292 exists. In re Interest of Madison T. et al., 30 Neb. App. 470, 970 N.W.2d 122 (2022).

Subdivision (1)(d) of this section indicates that a bridge order is appropriate only when the juvenile case can safely be closed. In this case, wherein the State sought to terminate the mother's parental rights to her children, placement of the children with their respective fathers may have been the best alternative while these cases were pending, but the record was not sufficient to conclude that the children's fathers should have been awarded permanent custody, at least at that time. Thus, it was not in the children's best interests for the juvenile court to terminate its jurisdiction over them. Because subdivision (1)(d) of this section had not been met, bridge orders were not in the children's best interests. In re Interest of Madison T. et al., 30 Neb. App. 470, 970 N.W.2d 122 (2022).

43-247.

The determination of whether an individual is a "juvenile" within the provisions of this section should be based on the individual's age on the date when that individual was charged with an offense. If an individual is a "juvenile" on the date he or she is charged with an offense, the juvenile court may exercise jurisdiction over that individual under the relevant subsection and may continue to exercise jurisdiction under subsection (12) of this section until the individual reaches the age of majority. State v. Aldana Cardenas, 314 Neb. 544, 990 N.W.2d 915 (2023).

The purpose of the adjudication phase is to protect the interests of the child. The parents' rights are determined at the dispositional phase, not at the adjudication phase. At the adjudication stage, in order for a juvenile court to

assume jurisdiction of minor children under subdivision (3)(a) of this section, the State must prove the allegations of the petition by a preponderance of the evidence. In re Interest of Xandria P., 311 Neb. 591, 973 N.W.2d 692 (2022).

Pursuant to subdivision (12) of this section, whether a juvenile court has jurisdiction over a person is determined not by the person's age at the time of the offense, but, rather, by the person's age at the time he or she is charged for the offense. State v. Pauly, 311 Neb. 418, 972 N.W.2d 907 (2022).

Pursuant to subdivision (8) of this section, it was not necessary for the State to file a second supplemental petition to return two wards to the custody of the Department of Health and Human Services after their guardianships were disrupted because the juvenile court retained jurisdiction over the wards pursuant to section 43-1312.01(3). In re Interest of Mekhi S. et al., 309 Neb. 529, 960 N.W.2d 732 (2021).

At the adjudication stage, pursuant to subdivision (3)(a) of this section, in order for a juvenile court to assume jurisdiction of minor children, the State must prove the allegations of the petition by a preponderance of the evidence. In re Interest of Prince R., 308 Neb. 415, 954 N.W.2d 294 (2021).

To obtain jurisdiction over a juvenile at the adjudication stage, the court's only concern is whether the conditions in which the juvenile presently finds himself or herself fit within the asserted subdivision of this section. In re Interest of Prince R., 308 Neb. 415, 954 N.W.2d 294 (2021).

In the context of denying parental preference in a placement decision during proceedings under subdivision (3)(a) of this section, reasonable notice must include the factual bases for seeking to prove that the parent is unfit or has forfeited parental rights or that exceptional circumstances exist involving serious physical or psychological harm to the child or a substantial likelihood of such harm. In re Interest of A.A. et al., 307 Neb. 817, 951 N.W.2d 144 (2020).

There is no presumption that a disabled parent is unfit, that a disabled parent has forfeited parental rights, or that exceptional circumstances exist involving serious physical or psychological harm to the child or a substantial likelihood of such harm because a parent is disabled. In re Interest of A.A. et al., 307 Neb. 817, 951 N.W.2d 144 (2020).

To obtain jurisdiction over a juvenile and the juvenile's parents, the court's only concern is whether the condition in which the juvenile presently finds himself or herself fits within the asserted subdivision of this section. In re Interest of A.A. et al., 307 Neb. 817, 951 N.W.2d 144 (2020).

When the allegations of a petition for adjudication invoking the jurisdiction of the juvenile court are against one parent only, the State cannot deny the request of the other parent—who has acquired constitutionally protected parental status—for temporary physical custody in lieu of a foster care placement, unless it pleads and proves by a preponderance of the evidence that the other parent is unfit or has forfeited custody or that there are exceptional circumstances involving serious physical or psychological harm to the child or a substantial likelihood of such harm. In re Interest of A.A. et al., 307 Neb. 817, 951 N.W.2d 144 (2020).

"Parental" as used in the phrase "lacks proper parental care" describes the type and nature of care rather than the relationship of the person providing it. In re Interest of Jeremy U. et al., 304 Neb. 734, 936 N.W.2d 733 (2020).

"Proper parental care" includes providing a home, support, subsistence, education, and other care necessary for the health, morals, and well-being of the child. It commands special care for the children in special need because of mental condition. It commands that the child not be placed in situations dangerous to life or limb, and not be permitted to engage in activities injurious to his or her health or morals. In re Interest of Jeremy U. et al., 304 Neb. 734, 936 N.W.2d 733 (2020).

The factual allegations of a petition seeking to adjudicate a child must give a parent notice of the bases for seeking to prove that the child is within the meaning of the statute. In re Interest of Jeremy U. et al., 304 Neb. 734, 936 N.W.2d 733 (2020).

The juvenile court properly declined to adjudicate two children who received proper parental care from their grandmother and were not at risk of harm from their mother; however, the court erred in failing to adjudicate a newborn, who lacked proper parental care as demonstrated by his mother's drug use during pregnancy until the time of his birth. In re Interest of Jeremy U. et al., 304 Neb. 734, 936 N.W.2d 733 (2020).

While the State need not prove that a child has actually suffered physical harm to assert jurisdiction, Nebraska case law is clear that at a minimum, the State must establish that without intervention, there is a definite risk of future harm. In re Interest of Jeremy U. et al., 304 Neb. 734, 936 N.W.2d 733 (2020).

A parent's absenteeism cannot defeat the juvenile court's authority to promote and protect a juvenile's best interests

under subdivision (3)(b) of this section. In re Interest of Reality W., 302 Neb. 878, 925 N.W.2d 355 (2019).

A juvenile court may not, under section 43-285(2), change a juvenile's permanency plan from family reunification to guardianship unless there has been a prior adjudication of the juvenile under subdivision (3)(a) of this section, which adjudication is a requirement under section 43-1312.01 for establishing a juvenile guardianship. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

An order changing a permanency plan in a juvenile case adjudicated under subdivision (3)(a) of this section does not necessarily affect a substantial right of the parent for purposes of the final order statute, section 25-1902, when the order continues prior orders directed at family preservation and reunification or remedying the reasons that led to the adjudication. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

In a juvenile adjudication under subdivision (3)(c) of this section, no determination is made of a parent's ability to care for his or her child. Nor does the parent have the opportunity to respond to the allegations in the petition, because the allegations relate only to the juvenile and not to the parent. The absence of an opportunity for parents to respond to allegations about their fitness to raise their children implicates their due process rights. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

In a juvenile case adjudicated under subdivision (3)(a) of this section, a parent has both the opportunity and the incentive to contest and appeal the adjudication, which the parent does not have when the child is adjudicated under subdivision (3)(c) of this section. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

In a juvenile case adjudicated under subdivision (3)(a) of this section, a parent has the opportunity to deny a petition's allegations, whereas in an adjudication under subdivision (3)(c), the juvenile responds but parents have no statutory right to respond. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

In a juvenile case adjudicated under subsection (3)(a) of this section, an order that continues prior dispositional orders but changes the permanency objective from family reunification to another objective, is a final, appealable order under the final order statute, section 25-1902, only if the parent's ability to achieve rehabilitation and family reunification has been clearly eliminated, because such an order affects a substantial right. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

Subdivision (3)(c) of this section is substantially different from subsection (3)(a), which, generally speaking, applies to situations in which a juvenile lacks proper parental care, support, or supervision. Because a subdivision (3)(a) adjudication addresses the issue of parental fitness, significant legal consequences can flow from such an adjudication and greater procedural protections are required. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

Subsequent review orders in a juvenile case adjudicated under subdivision (3)(a) of this section do not typically affect a substantial right for purposes of appeal under the final order statute, section 25-1902, because the parent has been given the full and fair opportunity to respond to the allegations at the adjudication stage. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

Prior to adjudicating a child under this section, a juvenile court lacks jurisdiction over the juvenile's parents, guardians, or custodians. In re Interest of Marquee N., 30 Neb. App. 862, 974 N.W.2d 26 (2022).

The county attorney's coordinated effort with the school and its letter referring the family to various available community-based resources, including website resources, as well as specific contact information for a "Truancy Resource Specialist," complied with the "reasonable efforts" requirement of subsection (2) of section 43-276 as applied to the habitual truancy provision of subdivision (3)(b) of this section. In re Interest of Hla H., 25 Neb. App. 118, 903 N.W.2d 664 (2017).

At the adjudication stage, in order for a juvenile court to assume jurisdiction of a minor child, the State must prove the allegations of the petition by a preponderance of the evidence, and the court's only concern is whether the conditions in which the juvenile presently finds himself or herself fit within the asserted subsection of this section. In re Interest of Darius A., 24 Neb. App. 178, 884 N.W.2d 457 (2016).

Under this section, once a minor is adjudged to be within the jurisdiction of the juvenile court, the juvenile court shall have exclusive jurisdiction as to any such juvenile and as to the parent, guardian, or custodian of the juvenile. In re Interest of Miah T. & DeKandyce H., 23 Neb. App. 592, 875 N.W.2d 1 (2016).

This section grants to the juvenile court exclusive jurisdiction as to any juvenile defined in subsection (3) and, under subsection (5), jurisdiction over the parent, guardian, or custodian who has custody of such juvenile. In re Interest of Trenton W. et al., 22 Neb. App. 976, 865 N.W.2d 804 (2015).

Subsection (3)(a) of this section requires that the State prove the allegations set forth in the adjudication petition by a preponderance of the evidence in cases involving both non-Indian and Indian children. In re Interest of Mischa S., 22 Neb. App. 105, 847 N.W.2d 749 (2014).

The juvenile court shall have exclusive original jurisdiction as to the parties and proceedings provided in subsections (5), (6), and (8) of this section. In re Interest of Jordana H. et al., 22 Neb. App. 19, 846 N.W.2d 686 (2014).

At the adjudication stage, in order for a juvenile court to assume jurisdiction of a minor child under subsection (3)(a) of this section, the State must prove the allegations of the petition by a preponderance of the evidence, and the court's only concern is whether the conditions in which the juvenile presently finds himself or herself fit within the asserted subsection of this section. In re Interest of Laticia S., 21 Neb. App. 921, 844 N.W.2d 841 (2014).

Compulsory education statutes and juvenile code statutes regarding the neglect of children generally do not pertain to the same subject matter and should not be construed in pari materia. In re Interest of Laticia S., 21 Neb. App. 921, 844 N.W.2d 841 (2014).

Subsection (3)(a) of this section establishes the juvenile court's jurisdiction over a minor child, while sections 79-201 and 79-210 make the minor child's parents or legal guardians culpable for the child's truancy. The county attorney is free to decide whether to proceed utilizing the juvenile code or the compulsory education laws. In re Interest of Laticia S., 21 Neb. App. 921, 844 N.W.2d 841 (2014).

The school's duty to provide services in an attempt to address excessive absenteeism comes from section 79-209, relating to compulsory attendance and the possibility of a parent's being subjected to a criminal sanction. The school has no duty to provide reasonable efforts before an adjudication under subsection (3)(a) of this section of the juvenile code. In re Interest of Laticia S., 21 Neb. App. 921, 844 N.W.2d 841 (2014).

Subsection (9) of this section provides the juvenile court jurisdiction over the guardianship proceedings of a juvenile described elsewhere within the code. In re Interest of Brianna B., 21 Neb. App. 657, 842 N.W.2d 191 (2014).

Although the State need not prove that the juvenile has suffered physical harm to find the juvenile to be within the meaning of subsection (3)(a) of this section, the State must establish that without intervention, there is a definite risk of future harm. In re Interest of Chloe P., 21 Neb. App. 456, 840 N.W.2d 549 (2013).

Evidence that a child's mother took an unprescribed morphine pill was insufficient to adjudicate the child when there was no evidence that the child was affected by the mother's ingestion of the pill or any other evidence that the mother's taking the pill placed the child at risk for harm. In re Interest of Taeven Z., 19 Neb. App. 831, 812 N.W.2d 313 (2012).

Evidence that a nearly 2-year-old child was left unsupervised outside for a few minutes was insufficient to establish a definite risk of future harm. In re Interest of Taeven Z., 19 Neb. App. 831, 812 N.W.2d 313 (2012).

43-250.

The State's failure to comply with the statutory requirements relating to the entry of an ex parte temporary detention order does not deprive the juvenile court of jurisdiction. In re Interest of Xandria P., 311 Neb. 591, 973 N.W.2d 692 (2022).

43-251.01.

A youth was at serious risk of harm and detriment due to his refusal to attend school and develop basic life skills while living in the family home. In re Interest of Dana H., 299 Neb. 197, 907 N.W.2d 730 (2018).

"Harm," as defined by this section, encompasses not only physical injury and hurt, but also any material or tangible detriment. In re Interest of Dana H., 299 Neb. 197, 907 N.W.2d 730 (2018).

This section's exhaustion requirement demands evidence establishing that no other community-based resources have a reasonable possibility for success or that all options for community-based services have been thoroughly considered and none are feasible. In re Interest of Dana H., 299 Neb. 197, 907 N.W.2d 730 (2018).

The exhaustion requirement of subdivision (7)(a) of this section demands evidence establishing that no other community-based resources have a reasonable possibility for success or that all options for community-based services have been thoroughly considered and none are feasible. In re Interest of Robert W., 27 Neb. App. 11, 925 N.W.2d 714 (2019).

43-258.

Juveniles who face adjudication for a status offense must be competent to participate in the proceedings. In re Interest of Victor L., 309 Neb. 21, 958 N.W.2d 413 (2021).

The procedure for protecting a juvenile's right to be competent to participate in juvenile proceedings is left to the sound discretion of the juvenile court, based on the best interests of the juvenile. In re Interest of Victor L., 309 Neb. 21, 958 N.W.2d 413 (2021).

43-271.

An appellate court's criminal speedy trial jurisprudence with respect to the calculations of the running of the speedy trial clock is applicable in the juvenile context. In re Interest of Shaquille H., 20 Neb. App. 141, 819 N.W.2d 741 (2012).

Juveniles being held in custody are to receive an adjudication hearing as soon as *possible*, whereas juveniles not being held in custody are to receive an adjudication hearing as soon as *practicable*; both sets of juveniles should receive an adjudication hearing within a 6-month period after the petition is filed pursuant to this section, but a statutory scheduling preference is granted to those juveniles that are in custody pending adjudication. In re Interest of Shaquille H., 20 Neb. App. 141, 819 N.W.2d 741 (2012).

43-272.01.

This section has long provided that a guardian ad litem in certain juvenile cases has certain duties, which may include filing petitions on behalf of juveniles, presenting evidence and witnesses, and cross-examining witnesses at all evidentiary hearings. In re Guardianship of Aimee S., 26 Neb. App. 380, 920 N.W.2d 18 (2018).

43-273.

Orders fixing fees for a court-appointed counsel in juvenile cases are final orders because they are made in a special proceeding and affect a substantial right. In re Claim of Roberts for Attorney Fees, 307 Neb. 346, 949 N.W.2d 299 (2020).

This section does not require that a county be notified when a fee application is filed by court-appointed counsel, nor does it require that an evidentiary hearing be routinely held on such an application. In re Claim of Roberts for Attorney Fees, 307 Neb. 346, 949 N.W.2d 299 (2020).

When a juvenile case is appealed, the appointed counsel should apply to the juvenile court, not the appellate court, for payment of services performed on appeal. In re Claim of Roberts for Attorney Fees, 307 Neb. 346, 949 N.W.2d 299 (2020).

43-274.

An order granting transfer from juvenile court to county court or district court is reviewed de novo on the record for an abuse of discretion. In re Interest of Steven S., 299 Neb. 447, 908 N.W.2d 391 (2018).

In determining whether a case should be transferred from juvenile court to criminal court, a juvenile court should consider those factors set forth in section 43-276; there are no weighted factors and no prescribed method by which more or less weight is assigned to a specific factor. In re Interest of Steven S., 299 Neb. 447, 908 N.W.2d 391 (2018).

Actions involving juveniles fitting into categories under section 43-246.01(3) may be initiated either in the juvenile court or in the county or district court and may be transferred as provided in this section. In re Interest of Luis D., 29 Neb. App. 495, 956 N.W.2d 25 (2021).

When the prosecution seeks to transfer a juvenile offender's case to criminal court, the juvenile court must retain the matter unless a preponderance of the evidence shows that the proceeding should be transferred to the county court or district court. The prosecution has the burden by a preponderance of the evidence to show why such proceeding should be transferred. In re Interest of William E., 29 Neb. App. 44, 950 N.W.2d 392 (2020).

The mandate that allegations under section 43-247(1), (2), and (4) be made with the same specificity as a criminal complaint merely reconciles the pleading practice regarding juvenile offenders with that of adult criminals. In re Interest of Taeven Z., 19 Neb. App. 831, 812 N.W.2d 313 (2012).

The pleading standard for allegations under section 43-247(3) stems from the requirements of due process, and the factual allegations must give a parent notice of the bases for seeking to prove that the child is within the meaning of section 43-247(3)(a). In re Interest of Taeven Z., 19 Neb. App. 831, 812 N.W.2d 313 (2012).

A guardian ad litem appointed by the juvenile court does not have the authority to initiate a juvenile court case by filing a petition alleging that a child is within the meaning of section 43-247(3)(a). In re Interest of David M. et al., 19 Neb. App. 399, 808 N.W.2d 357 (2011).

43-276.

Subsection (2) of this section requires the county attorney to make reasonable efforts to refer the juvenile and family to community-based resources. In re Interest of Reality W., 302 Neb. 878, 925 N.W.2d 355 (2019).

In deciding whether to grant the requested waiver and to transfer the proceedings to juvenile court, the court having jurisdiction over a pending criminal prosecution must carefully consider the juvenile's request in the light of the criteria or factors set forth in this section. State v. Tyler P., 299 Neb. 959, 911 N.W.2d 260 (2018).

Pursuant to section 29-1816(3)(a), after considering the evidence and the criteria set forth in this section, the court shall transfer the case to juvenile court unless a sound basis exists for retaining the case in county court or district court. State v. Tyler P., 299 Neb. 959, 911 N.W.2d 260 (2018).

There is no arithmetical computation or formula required in a court's consideration of the statutory criteria or factors. Also, there are no weighted factors. It is a balancing test by which public protection and societal security are weighed against the practical and nonproblematical rehabilitation of the juvenile. State v. Tyler P., 299 Neb. 959, 911 N.W.2d 260 (2018).

In determining whether a case should be transferred from juvenile court to criminal court, a juvenile court should consider those factors set forth in this section; there are no weighted factors and no prescribed method by which more or less weight is assigned to a specific factor. In re Interest of Steven S., 299 Neb. 447, 908 N.W.2d 391 (2018).

A juvenile court has concurrent jurisdiction over a person charged in the district court who is younger than 18 years of age when the allegedly committed acts constitute Class I, IA, IB, IC, ID, II, and IIA felonies and who has not yet reached the age of majority during the course of the proceedings requesting transfer from the district court to the juvenile court. State v. Burris, 30 Neb. App. 109, 965 N.W.2d 828 (2021).

This section sets forth 15 factors for a juvenile court to consider in making the determination of whether to transfer a case to county court or district court. In re Interest of William E., 29 Neb. App. 44, 950 N.W.2d 392 (2020).

The district court abused its discretion in granting the transfer of two criminal cases to the juvenile court because there was substantial evidence supporting the retention of the cases in the district court for the sake of public safety and societal security, and there was a lack of evidence demonstrating that any further rehabilitation through the juvenile system would be practical and nonproblematical in the limited time left under the juvenile court's jurisdiction. State v. Esai P., 28 Neb. App. 226, 942 N.W.2d 416 (2020).

Denial of a motion to transfer without a specific finding with regard to subdivision (1)(h) of this section does not constitute an abuse of discretion. State v. Comer, 26 Neb. App. 270, 918 N.W.2d 13 (2018).

In determining whether a case should be transferred to juvenile court, a court should consider those factors set forth in this section. State v. Comer, 26 Neb. App. 270, 918 N.W.2d 13 (2018).

Second degree murder and use of a deadly weapon charges filed against a 15-year-old were retained in the district court; the trial court's denial of a motion to transfer to the juvenile court is reviewed for an abuse of discretion. State v. Leroux, 26 Neb. App. 76, 916 N.W.2d 903 (2018).

The county attorney's coordinated effort with the school and its letter referring the family to various available community-based resources, including website resources, as well as specific contact information for a "Truancy Resource Specialist," complied with the "reasonable efforts" requirement of subsection (2) of this section as applied to the habitual truancy provision of subdivision (3)(b) of section 43-247. In re Interest of Hla H., 25 Neb. App. 118, 903 N.W.2d 664 (2017).

Considering the statutory factors on a motion to transfer to juvenile court is a balancing test by which public protection and societal security are weighed against the practical and nonproblematical rehabilitation of the juvenile. State v. Landera, 20 Neb. App. 24, 816 N.W.2d 20 (2012).

In case involving multiple counts of possession of child pornography, the district court properly weighed all applicable statutory factors in denying juvenile defendant's motion to transfer his case to juvenile court; in addition to the fact that there would likely be insufficient time to treat the defendant in the juvenile system before he aged out of the juvenile court's jurisdiction, the district court considered the defendant's maturity, as well as the fact that the motivation for the offenses appeared to be the desire to view and distribute pornography, predominantly involving young children, which preference was potentially associated with someone afflicted with pedophilia. State v. Landera, 20 Neb. App. 24, 816 N.W.2d 20 (2012).

In order to retain juvenile proceedings in the district court, the court does not need to resolve every statutory factor against the juvenile; moreover, there are no weighted factors and no prescribed method by which more or less weight is assigned to each specific factor. State v. Landera, 20 Neb. App. 24, 816 N.W.2d 20 (2012).

43-278.

This section is directory, not mandatory. As such, this section does not mandate that a case be dismissed if the adjudication is not completed within ninety days. In re Interest of Draygon W. et al., 31 Neb. App. 400, 980 N.W.2d 648 (2022).

43-279.01.

A father's due process rights were not violated where he was advised during the adjudication phase of the proceedings of his rights listed in this section and was advised of the nature of the juvenile court proceedings and possible consequences, including the possibility that his parental rights could ultimately be terminated, but he was not advised again during the termination of parental rights phase, nor was the court required to do so. In re Interest of Aaliyah M. et al., 21 Neb. App. 63, 837 N.W.2d 98 (2013).

A juvenile court need not necessarily advise a parent during the parent's initial appearance in court, or during an initial detention hearing, of the nature of the proceedings, of the parent's rights, or of the possible consequences after adjudication, pursuant to the statutory language. Instead, a juvenile court must provide this advisement prior to or at an adjudication hearing where a parent enters a plea to the allegations in the petition. In re Interest of Damien S., 19 Neb. App. 917, 815 N.W.2d 648 (2012).

An incarcerated father's due process rights were violated in a proceeding in which a motion was made to terminate his parental rights where he was not represented by counsel, he was not present at the adjudication and termination hearing, and he did not waive those rights, and the juvenile court otherwise failed to provide him an opportunity to refute or defend against the allegations of the petition, such as implementing procedures to afford him an opportunity to participate in the hearing, confront or cross-examine adverse witnesses, or present evidence on his behalf; although the juvenile court issued transport orders and a summons to enable the father to attend, the court not only took no further action upon receipt of the sheriff's request for a writ of habeas corpus rather than a transport order, but it also proceeded with the hearing without comment on the record as to either the father's or his attorney's absence. In re Interest of Davonest D. et al., 19 Neb. App. 543, 809 N.W.2d 819 (2012).

43-283.01.

The term "aggravated circumstances" embodies the concept that the nature of the abuse or neglect must have been so severe or repetitive that to attempt reunification would jeopardize and compromise the safety of the child and would place the child in a position of an unreasonable risk to be reabused. In re Interest of Jade H. et al., 25 Neb. App. 678, 911 N.W.2d 276 (2018).

Once a plan of reunification has been ordered to correct the conditions underlying an adjudication, the plan must be reasonably related to the objective of reuniting the parents with the children. In re Interest of Ethan M., 19 Neb. App. 259, 809 N.W.2d 804 (2011).

43-284.

When a juvenile is adjudicated under subsection (3) of section 43-247, the juvenile court may permit the juvenile to remain in his or her own home subject to supervision or may make an order committing the juvenile to the care and custody of the Department of Health and Human Services. In re Interest of Alex F. & Tony F., 23 Neb. App. 195, 870 N.W.2d 150 (2015).

43-285.

A juvenile court may not, under subsection (2) of this section, change a juvenile's permanency plan from family

reunification to guardianship unless there has been a prior adjudication of the juvenile under section 43-247(3)(a), which adjudication is a requirement under section 43-1312.01 for establishing a juvenile guardianship. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

Under subsection (2) of this section, following the adjudication of a juvenile, the juvenile court may order the Department of Health and Human Services to prepare and file with the court a proposed plan for the care, placement, services, and permanency which are to be provided to such juvenile and his or her family, and the court may approve the plan, modify the plan, order an alternative plan, or implement another plan that is in the juvenile's best interests. In re Interest of Alex F. & Tony F., 23 Neb. App. 195, 870 N.W.2d 150 (2015).

Under subsection (3) of this section, the juvenile court is authorized to establish guardianships for juveniles in the custody of the Department of Health and Human Services without resorting to a proceeding under the probate code. In re Interest of Brianna B., 21 Neb. App. 657, 842 N.W.2d 191 (2014).

The State has the burden of proving that a case plan proposed by the Department of Health and Human Services is in the child's best interests. In re Interest of Ethan M., 19 Neb. App. 259, 809 N.W.2d 804 (2011).

43-286.

The language of this section contemplates a nonexhaustive list of examples of terms and conditions that a juvenile court may order, and thus, the juvenile court had the authority to order restitution for medical expenses as long as such order was in the interest of the juvenile's reformation or rehabilitation. In re Interest of Seth C., 307 Neb. 862, 951 N.W.2d 135 (2020).

The reference to restitution for stolen or damaged property is merely one example of an offense for which the juvenile court could order restitution. In re Interest of Seth C., 307 Neb. 862, 951 N.W.2d 135 (2020).

This section does not limit the types of restitution a juvenile court may order to only restitution for property stolen or damaged. In re Interest of Seth C., 307 Neb. 862, 951 N.W.2d 135 (2020).

When the State withdrew its motion to revoke probation prior to the motion's being heard, the juvenile court lacked authority to extend the juvenile's probation and to supply an additional condition of probation. In re Interest of Josue G., 299 Neb. 784, 910 N.W.2d 159 (2018).

Before a juvenile court can commit a juvenile to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center, the Office of Probation Administration must review and consider thoroughly any reliable alternatives to that commitment and provide the court with a report that supports one of two conclusions: (1) There are untried conditions of probation or community-based services that have a reasonable possibility for success or (2) all levels of probation and options for community-based services have been studied thoroughly and none are feasible. In re Interest of Alan L., 294 Neb. 261, 882 N.W.2d 682 (2016).

In considering whether the State has shown that a juvenile should be placed at a youth rehabilitation and treatment center, a juvenile court is not required to repeat measures that were previously unsuccessful. In re Interest of Alan L., 294 Neb. 261, 882 N.W.2d 682 (2016).

Once a juvenile court has entered a delinquency disposition under this section, it is plain error for the court to change that disposition when the State has not complied with the procedural requirements under subsection (5) of this section—unless the record shows that the juvenile was not denied any of the statutory procedural protections that the juvenile would have received if the State had followed the proper procedures. In re Interest of Alan L., 294 Neb. 261, 882 N.W.2d 682 (2016).

Under subsection (1) of this section, the State can file a motion to commit a juvenile to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center at only three points in a delinquency proceeding: (1) before a court enters an original disposition, (2) before a court enters a new disposition following a new adjudication, and (3) before a court enters a new disposition following a motion to revoke probation or court supervision. In re Interest of Alan L., 294 Neb. 261, 882 N.W.2d 682 (2016).

When a juvenile court has already entered a disposition under subdivision (1)(a) of this section, a commitment to the Office of Juvenile Services under subdivision (1)(b) of this section must be consistent with the procedures for a new disposition under subsection (5) of this section. In re Interest of Alan L., 294 Neb. 261, 882 N.W.2d 682 (2016).

When the State files successive motions to change a juvenile's disposition under this section, a juvenile court can compare the facts as they existed when it entered a previous order to new facts arising after that order to determine whether a change in circumstances warrants a different decision. In re Interest of Alan L., 294 Neb. 261, 882 N.W.2d 682 (2016).

A juvenile court may not change a disposition unless the juvenile has violated a term of probation or supervision or the juvenile has violated an order of the court and the procedures established in subdivision (5)(b) of this section have been satisfied. In re Interest of Iyana P., 25 Neb. App. 439, 907 N.W.2d 333 (2018).

Subsection (5) of this section sets forth the procedures for changing an existing disposition. In re Interest of Iyana P., 25 Neb. App. 439, 907 N.W.2d 333 (2018).

This section sets out a juvenile court's disposition options for juveniles who have been adjudicated under subdivision (1), (2), or (4) of section 43-247. In re Interest of Iyana P., 25 Neb. App. 439, 907 N.W.2d 333 (2018).

43-288.

A juvenile court's order that children under its jurisdiction have their immunizations brought up to date was within the power of that court, even where the Department of Health and Human Services did not indicate concern about the children's health or immunization history. In re Interest of Becka P. et al., 298 Neb. 98, 902 N.W.2d 697 (2017).

43-290.

The Nebraska Child Support Guidelines apply in juvenile cases where child support is ordered. In re Interest of Cayden R. et al., 27 Neb. App. 242, 929 N.W.2d 913 (2019).

43-292.

Although the term "unfitness" is not expressly stated in this section, it derives from the fault and neglect subdivisions and from an assessment of the child's best interests. In re Interest of Mateo L. et al., 309 Neb. 565, 961 N.W.2d 516 (2021).

Out-of-home placement is itself defined by the Legislature as an independent ground for termination, since children cannot, and should not, be suspended in foster care or be made to await uncertain parental maturity. In re Interest of Mateo L. et al., 309 Neb. 565, 961 N.W.2d 516 (2021).

Parental obligation requires a continuing interest in the children and a genuine effort to maintain communication and association with the children. In re Interest of Mateo L. et al., 309 Neb. 565, 961 N.W.2d 516 (2021).

Parental unfitness means a personal deficiency or incapacity that has prevented, or will probably prevent, performance of a reasonable parental obligation in child rearing and that has caused, or probably will result in, detriment to a child's well-being. In re Interest of Mateo L. et al., 309 Neb. 565, 961 N.W.2d 516 (2021).

Reasonable efforts to reunify a family are required under the juvenile code only when termination is sought under subdivision (6) of this section. In re Interest of Mateo L. et al., 309 Neb. 565, 961 N.W.2d 516 (2021).

Showing that termination of parental rights is in the best interests of the child is necessarily a particularly high bar, since a parent's right to raise his or her children is constitutionally protected. The Due Process Clause of the U.S. Constitution would be offended if a state were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness. In re Interest of Mateo L. et al., 309 Neb. 565, 961 N.W.2d 516 (2021).

Subdivision (7) of this section operates mechanically and, unlike the other subdivisions of this section, does not require the State to adduce evidence of any specific fault on the part of a parent. In re Interest of Mateo L. et al., 309 Neb. 565, 961 N.W.2d 516 (2021).

Termination based on the ground that a child has been in out-of-home placement for 15 of the past preceding 22 months is not in a child's best interests when the record demonstrates that a parent is making efforts toward reunification and has not been given a sufficient opportunity for compliance with a reunification plan. In re Interest of Mateo L. et al., 309 Neb. 565, 961 N.W.2d 516 (2021).

That the foster parents might provide a higher standard of living does not defeat the parent's right to maintain the constitutionally protected relationship with his or her child. In re Interest of Mateo L. et al., 309 Neb. 565, 961 N.W.2d 516 (2021).

The best interests and parental unfitness analyses in the context of a termination of parental rights case require separate, fact-intensive inquiries, but each examines essentially the same underlying facts. In re Interest of Mateo L. et al., 309 Neb. 565, 961 N.W.2d 516 (2021).

The period of 15 out of 22 months' out-of-home placement as a ground for termination of parental rights was set by the Legislature as a guideline for what would be a reasonable time for parents to rehabilitate themselves to a minimum degree of fitness. In re Interest of Mateo L. et al., 309 Neb. 565, 961 N.W.2d 516 (2021).

There is a rebuttable presumption that it is in the child's best interests to share a relationship with his or her parent. That presumption can only be overcome by a showing that the parent is either unfit to perform the duties imposed by the relationship or has forfeited that right. In re Interest of Mateo L. et al., 309 Neb. 565, 961 N.W.2d 516 (2021).

This section contains 11 separate subdivisions, any one of which can serve as a basis for terminating parental rights when coupled with evidence that termination is in the best interests of the child. In re Interest of Mateo L. et al., 309 Neb. 565, 961 N.W.2d 516 (2021).

To terminate parental rights, it is the State's burden to show by clear and convincing evidence both that one of the statutory bases exists and that termination is in the child's best interests. In re Interest of Mateo L. et al., 309 Neb. 565, 961 N.W.2d 516 (2021).

Whereas the statutory grounds for termination are based on a parent's past conduct, the best interests inquiry focuses on the future well-being of the child. In re Interest of Mateo L. et al., 309 Neb. 565, 961 N.W.2d 516 (2021).

The evidence supported terminating the parental rights of a mother who, due in part to continued drug use and an abusive relationship, failed to put herself in a position to have her children returned to her care within a reasonable time. In re Interest of Leyton C. & Landyn C., 307 Neb. 529, 949 N.W.2d 773 (2020).

Although a therapist testified that the mother and child had a bond and recommended that a relationship between them continue, the State adduced clear and convincing evidence that termination of the mother's parental rights was in the child's best interests. In re Interest of Alec S., 294 Neb. 784, 884 N.W.2d 701 (2016).

A court reviewing a termination of parental rights case on the ground of abandonment need not consider the 6-month period in a vacuum. Instead, the court may consider evidence of a parent's conduct, either before or after the statutory period, in determining whether the purpose and intent of that parent was to abandon his or her children. In re Interest of Isabel P. et al., 293 Neb. 62, 875 N.W.2d 848 (2016).

"Abandonment" is a parent's intentionally withholding from a child, without just cause or excuse, the parent's presence, care, love, protection, maintenance, and the opportunity for the display of parental affection for the child. In re Interest of Isabel P. et al., 293 Neb. 62, 875 N.W.2d 848 (2016).

So long as a parent was afforded due process of law, a defect during the adjudication phase does not preclude consideration of termination of parental rights. In re Interest of Isabel P. et al., 293 Neb. 62, 875 N.W.2d 848 (2016).

In order to terminate an individual's parental rights, the State must prove by clear and convincing evidence that one of the statutory grounds enumerated in this section exists and that termination is in the children's best interests. In re Interest of Joshua R. et al., 265 Neb. 374, 657 N.W.2d 209 (2003); In re Interest of Michael B. et al., 258 Neb. 545, 604 N.W.2d 405 (2000); In re Interest of Kalie W., 258 Neb. 46, 601 N.W.2d 753 (1999); In re Interest of Emerald C. et al., 19 Neb. App. 608, 810 N.W.2d 750 (2012); In re Interest of Stacey D. & Shannon D., 12 Neb. App. 707, 684 N.W.2d 594 (2004).

Terminating parental rights requires both clear and convincing evidence that one of the statutory grounds enumerated in this section exists and clear and convincing evidence that termination is in the best interests of the children. Kitsmiller v. Kitsmiller, 31 Neb. App. 473, 983 N.W.2d 147 (2022).

Any one of the bases for termination codified by this section can serve as a basis for termination of parental rights when coupled with evidence that termination is in the best interests of the children. In re Interest of Jay'Oni W. et al., 31 Neb. App. 302, 979 N.W.2d 290 (2022).

Subsection (7) of this section operates mechanically and does not require the State to adduce evidence of any specific fault on the part of the parent. In re Interest of Jay'Oni W. et al., 31 Neb. App. 302, 979 N.W.2d 290 (2022).

Terminating parental rights requires both clear and convincing evidence that one of the statutory grounds enumerated in this section exists and clear and convincing evidence that termination is in the best interests of the children. In re Interest of Jay'Oni W. et al., 31 Neb. App. 302, 979 N.W.2d 290 (2022).

The 15-month condition contained in subsection (7) of this section provides a reasonable timetable for parents to rehabilitate themselves. In re Interest of Jay'Oni W. et al., 31 Neb. App. 302, 979 N.W.2d 290 (2022).

A child's best interests are presumed to be served by having a relationship with his or her parent, which presumption is overcome only when the State has proved that the parent is unfit. In re Interest of Destiny H. et al., 30 Neb. App. 885, 974 N.W.2d 343 (2022).

A termination of parental rights is a final and complete severance of the child from the parent and removes the entire bundle of parental rights, and parental rights should be terminated only in the absence of any reasonable alternative and as a last resort. In re Interest of Destiny H. et al., 30 Neb. App. 885, 974 N.W.2d 343 (2022).

Any one of the bases for termination of parental rights codified by this section can serve as a basis for termination of parental rights when coupled with evidence that termination is in the best interests of the children. In re Interest of Destiny H. et al., 30 Neb. App. 885, 974 N.W.2d 343 (2022).

Rather than requiring perfection of a parent, courts should look for the parent's continued improvement in parenting skills and a beneficial relationship between parent and child. In re Interest of Destiny H. et al., 30 Neb. App. 885, 974 N.W.2d 343 (2022).

Subdivision (7) of this section operates mechanically and does not require the State to adduce evidence of any specific fault on the part of the parent. In re Interest of Destiny H. et al., 30 Neb. App. 885, 974 N.W.2d 343 (2022).

Whereas statutory grounds for termination of parental rights are based on a parent's past conduct, the best interests inquiry focuses on the future well-being of the child. In re Interest of Destiny H. et al., 30 Neb. App. 885, 974 N.W.2d 343 (2022).

Although a statutory ground did exist to terminate the father's parental rights in this case, the State did not meet its burden to prove by clear and convincing evidence that the father was unfit or that it was in the child's best interests for the father's parental rights to be terminated at that time. Given the impact of the COVID-19 pandemic on institutional programming and availability, case manager communications, and visitations, along with the short timeframe before the father's release from incarceration, the father should have been given some additional time to show he could make progress on his case goals and parent his child before the State sought to terminate his parental rights. In re Interest of Xaiden N., 30 Neb. App. 378, 968 N.W.2d 856 (2021).

An incarcerated parent does not need to be physically present at a hearing to terminate parental rights, so long as the parent is afforded procedural due process. In re Interest of Joezia P., 30 Neb. App. 281, 968 N.W.2d 101 (2021).

In termination of parental rights cases, it is proper to consider a parent's inability to perform his or her parental obligations because of imprisonment and the nature of the crime committed, as well as the person against whom the criminal act was perpetrated. In re Interest of Joezia P., 30 Neb. App. 281, 968 N.W.2d 101 (2021).

The juvenile court may consider the following factors when determining whether to allow an incarcerated parent to be present at a hearing to terminate parental rights: (1) the anticipated delay, (2) the need for prompt disposition, (3) the length of time during which the case has been pending, (4) the expense of transportation, (5) the inconvenience or detriment to the parties or witnesses, (6) the potential danger or security risk, (7) the availability of the parent's testimony through means other than physical attendance, and (8) the best interests of the child. In re Interest of Joezia P., 30 Neb. App. 281, 968 N.W.2d 101 (2021).

To terminate parental rights under this section, the State must prove, by clear and convincing evidence, that one or more of the statutory grounds is satisfied and that termination is in the best interests of the child. In re Interest of Joezia P., 30 Neb. App. 281, 968 N.W.2d 101 (2021).

Whether a parent who is incarcerated or otherwise confined in custody has been afforded procedural due process for a hearing to terminate parental rights is within the discretion of the trial court, whose decision on appeal will be upheld in the absence of an abuse of discretion. In re Interest of Joezia P., 30 Neb. App. 281, 968 N.W.2d 101 (2021).

While incarceration alone is not a basis for termination of parental rights, a parent's incarceration may be considered along with other factors in determining whether parental rights can be terminated based on neglect. In re Interest of Joezia P., 30 Neb. App. 281, 968 N.W.2d 101 (2021).

Aggravated circumstances exist when a child suffers severe, intentional physical abuse. In re Interest of Ky'Ari J., 29 Neb. App. 124, 952 N.W.2d 715 (2020).

Where the circumstances created by the parent's conduct create an unacceptably high risk to the health, safety, and welfare of the child, they are aggravated. In re Interest of Ky'Ari J., 29 Neb. App. 124, 952 N.W.2d 715 (2020).

If an appellate court determines that a lower court correctly found that termination of parental rights is appropriate

under one of the statutory grounds set forth in this section, the appellate court need not further address the sufficiency of the evidence to support termination under any other statutory ground. In re Interest of Aly T. & Kazlynn T., 26 Neb. App. 612, 921 N.W.2d 856 (2018).

In Nebraska statutes, the bases for termination of parental rights are codified in this section. In re Interest of Aly T. & Kazlynn T., 26 Neb. App. 612, 921 N.W.2d 856 (2018).

In order to terminate parental rights under subdivision (6) of this section, the State must prove by clear and convincing evidence that (1) the parent has failed to comply, in whole or in part, with a reasonable provision material to the rehabilitative objective of the plan and (2) in addition to the parent's noncompliance with the rehabilitative plan, termination of parental rights is in the best interests of the child. In re Interest of Aly T. & Kazlynn T., 26 Neb. App. 612, 921 N.W.2d 856 (2018).

The State must prove the facts by clear and convincing evidence when showing a factual basis exists under any of the 11 subdivisions of this section. In re Interest of Aly T. & Kazlynn T., 26 Neb. App. 612, 921 N.W.2d 856 (2018).

The term "unfitness" is not expressly used in this section but the concept is generally encompassed by the fault and neglect subsections of this section, and also through a determination of the child's best interests. In re Interest of Aly T. & Kazlynn T., 26 Neb. App. 612, 921 N.W.2d 856 (2018).

This section provides 11 separate conditions, any one of which can serve as the basis for the termination of parental rights when coupled with evidence that termination is in the best interests of the child. In re Interest of Aly T. & Kazlynn T., 26 Neb. App. 612, 921 N.W.2d 856 (2018).

Reasonable efforts to reunify a family are required under the juvenile code only when termination is sought under subdivision (6) of this section. In re Interest of Jade H. et al., 25 Neb. App. 678, 911 N.W.2d 276 (2018).

Subdivision (9) of this section allows for terminating parental rights when the parent of the juvenile has subjected the juvenile or another minor child to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse. In re Interest of Jade H. et al., 25 Neb. App. 678, 911 N.W.2d 276 (2018).

Whether aggravated circumstances under subdivision (9) of this section exist is determined on a case-by-case basis. In re Interest of Jade H. et al., 25 Neb. App. 678, 911 N.W.2d 276 (2018).

Without other evidence of a parent's neglect of his or her children, incarceration alone is insufficient to justify termination of parental rights under subdivision (2) of this section. In re Interest of Lizabella R., 25 Neb. App. 421, 907 N.W.2d 745 (2018).

For purposes of subdivision (1) of this section, "abandonment" is a parent's intentionally withholding from a child, without just cause or excuse, the parent's presence, care, love, protection, maintenance, and the opportunity for the display of parental affection for the child. In re Interest of Austin G., 24 Neb. App. 773, 898 N.W.2d 385 (2017).

Under subdivision (2) of this section, the State must establish that the parental neglect required to terminate a parent's rights to a minor child was substantial and continuous or repeated; a handful of incidents, none of which resulted in permanent or serious injury to the children, is insufficient. In re Interest of Elijah P. et al., 24 Neb. App. 521, 891 N.W.2d 330 (2017).

Under subdivision (9) of this section, the "aggravated circumstances" required for terminating parental rights are based on severe, intentional actions on the part of the parent; a single act of negligent conduct is insufficient. In re Interest of Elijah P. et al., 24 Neb. App. 521, 891 N.W.2d 330 (2017).

Any one of the 11 separate codified grounds can serve as the basis for the termination of parental rights when coupled with evidence that termination is in the best interests of the child. In re Interest of Giavonna G., 23 Neb. App. 853, 876 N.W.2d 422 (2016).

If an appellate court determines that the lower court correctly found that termination of parental rights is appropriate under one of the statutory grounds, the appellate court need not further address the sufficiency of the evidence to support termination under any other statutory ground. In re Interest of Giavonna G., 23 Neb. App. 853, 876 N.W.2d 422 (2016).

When parental rights are terminated based on the parent subjecting the juvenile or another minor child to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse, pursuant to subsection (9) of this section, a prior adjudication order is not required. In re Interest of Gavin S. & Jordan S., 23 Neb. App. 401, 873 N.W.2d 1 (2015).

Generally, when termination is sought under subsections of this section other than subsection (7), the evidence adduced to prove the statutory grounds for termination will also be highly relevant to the best interests of the juvenile, as it would show abandonment, neglect, unfitness, or abuse; however, this is not always the case, as statutory grounds are based on a parent's past conduct, but the best interests element focuses on the future well-being of the child. In re Interest of Mya C. et al., 23 Neb. App. 383, 872 N.W.2d 56 (2015).

The State needs to provide reasonable efforts to reunify a family only when terminating parental rights under subsection (6) of this section. In re Interest of Mya C. et al., 23 Neb. App. 383, 872 N.W.2d 56 (2015).

A defective adjudication does not preclude a termination of parental rights under subsections (1) through (5) of this section, because no adjudication is required to terminate pursuant to those subsections, as long as due process safeguards are met. In re Interest of Keisha G., 21 Neb. App. 472, 840 N.W.2d 562 (2013).

The State failed to prove that the parent's drug use was detrimental to the child, and thus, there was insufficient evidence to support a termination of parental rights under subsection (4) of this section. In re Interest of Keisha G., 21 Neb. App. 472, 840 N.W.2d 562 (2013).

In a hearing on the termination of parental rights without a prior adjudication hearing, where such termination is sought under subsections (1) through (5) of this section, such proceedings must be accompanied by due process safeguards. In re Interest of Aaliyah M. et al., 21 Neb. App. 63, 837 N.W.2d 98 (2013).

Generally, when termination of parental rights is sought under subsections of this section other than subsection (7), the evidence adduced to prove the statutory grounds for termination will also be highly relevant to the best interests of the juvenile. In re Interest of Emerald C. et al., 19 Neb. App. 608, 810 N.W.2d 750 (2012).

If a parent has been afforded procedural due process for a hearing to terminate parental rights, allowing a parent who is incarcerated or otherwise confined in custody of a government to attend the termination hearing is within the discretion of the trial court, whose opinion on appeal will be upheld in the absence of an abuse of discretion. In re Interest of Davonest D. et al., 19 Neb. App. 543, 809 N.W.2d 819 (2012).

Parental physical presence is unnecessary for a hearing to terminate parental rights, provided that the parent has been afforded procedural due process for the hearing. In re Interest of Davonest D. et al., 19 Neb. App. 543, 809 N.W.2d 819 (2012).

43-292.01.

A guardian ad litem appointed for a parent pursuant to this section is entitled to participate fully in the proceeding to terminate parental rights. In re Interest of Emerald C. et al., 19 Neb. App. 608, 810 N.W.2d 750 (2012).

43-293.

Under the Nebraska Juvenile Code, in order to terminate parental rights, the court must take judicial action. In re Interest of Donald B. & Devin B., 304 Neb. 239, 933 N.W.2d 864 (2019).

43-295.

While an appeal is pending, this section provides for the juvenile court's continuing jurisdiction over the custody or care of the child, which includes visitation. In re Interest of Angeleah M. & Ava M., 23 Neb. App. 324, 871 N.W.2d 49 (2015).

43-2,106.01.

Under this section, the adjudicated child's aunt lacked standing to appeal the juvenile court's order changing the child's placement and permanency plan. In re Interest of Joseph C., 299 Neb. 848, 910 N.W.2d 773 (2018).

Appellate courts in Nebraska have jurisdiction to hear appeals from final orders issued by juvenile courts in the same manner as appeals from the district courts. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

This section controls who has the right to appeal from a juvenile court's placement order. It does not authorize an adjudicated child's sibling to appeal from an adverse placement order. In re Interest of Nettie F., 295 Neb. 117, 887 N.W.2d 45 (2016).

Neither foster parents nor grandparents, as such, have a statutory right to appeal from a juvenile court order. In re

Interest of Jackson E., 293 Neb. 84, 875 N.W.2d 863 (2016).

Had the Legislature intended that appeals under subsection (2)(d) of this section be made to the Court of Appeals, that subsection would have referred to sections 29-2315.01 to 29-2316, instead of to sections 29-2317 to 29-2319. In re Interest of Lori S., 20 Neb. App. 152, 819 N.W.2d 736 (2012).

Most cases arising under subsection (1) of this section are governed by section 25-1912, which sets forth the requirements for appealing district court decisions. In re Interest of Lori S., 20 Neb. App. 152, 819 N.W.2d 736 (2012).

Once jeopardy has attached in a delinquency case, an appeal may only be taken under the procedures of sections 29-2317 to 29-2319. In re Interest of Lori S., 20 Neb. App. 152, 819 N.W.2d 736 (2012).

The plain language of subsection (2)(d) of this section carves out an exception for delinquency cases in which jeopardy has attached. In re Interest of Lori S., 20 Neb. App. 152, 819 N.W.2d 736 (2012).

43-2,106.02.

Courts have the power to vacate or modify their own judgments and orders at any time during the term at which they were pronounced. But this power may not be used to circumvent the Legislature's power to fix the time limit to take an appeal. A court may not vacate an order or judgment and reinstate it at a later date just for the purpose of extending the time for appeal. One exception to this rule against using a court's power to vacate as a tool to extend the time for appeal is where a clerk fails to provide notice of a judgment to a party, thereby impairing the party's ability to appeal. In re Interest of Luz P. et al., 295 Neb. 814, 891 N.W.2d 651 (2017).

Juvenile courts have the power to vacate or modify their own judgments and orders during or after the term in which they were made in the same manner as provided for district courts under section 25-2001. In re Interest of Luz P. et al., 295 Neb. 814, 891 N.W.2d 651 (2017).

43-512.03.

The remedy specified in this section is a means by which the State, as the real party in interest, may recover amounts which it has paid or is obligated to pay on behalf of a dependent child. Thus, the State's right to sue under this section is conditioned upon the payment of public assistance benefits for a minor child. State on behalf of Elijah K. v. Marceline K., 28 Neb. App. 772, 949 N.W.2d 531 (2020).

The Nebraska Court of Appeals has found no authority stating that the request from the Department of Health and Human Services is necessary evidence for the State to have standing in a contempt action under this section. House v. House, 24 Neb. App. 595, 894 N.W.2d 362 (2017).

43-512.04.

Any order imposing an obligation of child support is necessarily a legal determination of paternity. Fetherkile v. Fetherkile, 299 Neb. 76, 907 N.W.2d 275 (2018).

When making a determination of child support under section 42-364, the court must take into account and give effect to an existing order of support under this section. The court may order the existing order to remain in effect without modification after considering whether modification is warranted. Fetherkile v. Fetherkile, 299 Neb. 76, 907 N.W.2d 275 (2018).

43-532.

State policy is to assist juveniles in the least restrictive method consistent with their needs. In re Interest of Skylar E., 20 Neb. App. 725, 831 N.W.2d 358 (2013).

43-533.

While the beneficial permanency of adoption is an important consideration that must be weighed in a best interests analysis under an adoption petition, subsection (5) of this section does not set forth a legal presumption controlling a best interests analysis, nor does it limit the factors a trial court may consider in deciding whether granting a petition for adoption is in the child's best interests. In re Adoption of Faith F., 313 Neb. 491, 984 N.W.2d 640 (2023).

43-1238.

When presented with a motion for special findings pursuant to this section, the state court should concern itself only with the determinations that have been requested and are supported by sufficient evidence, and not with the ultimate merits or purpose of the juvenile's application for special immigrant juvenile status. Hernandez v. Dorantes, 314 Neb. 905, 994 N.W.2d 46 (2023).

When special immigrant juvenile status findings are requested in a dissolution action, it is ordinarily appropriate to apply a preponderance of the evidence standard. Hernandez v. Dorantes, 314 Neb. 905, 994 N.W.2d 46 (2023).

Mother had a significant connection to the country of Togo because she had been married there, had family living there, and voluntarily sent the minor child to live there. DeLima v. Tsevi, 301 Neb. 933, 921 N.W.2d 89 (2018).

A 2018 amendment to subsection (b) of this section clarifies that courts with jurisdiction over an "initial child custody determination" as that term is used in subsection (a) of this section also have jurisdiction and authority to make special findings of fact similar to those contemplated by 8 U.S.C. 1101(a)(27)(J) (Supp. V 2018). In re Guardianship of Carlos D., 300 Neb. 646, 915 N.W.2d 581 (2018).

Because a 2018 amendment to subsection (b) of this section merely clarifies the authority and procedure for making the factual findings in child custody cases, it is a procedural amendment, and applies to pending cases. In re Guardianship of Carlos D., 300 Neb. 646, 915 N.W.2d 581 (2018).

On appeal from a dissolution of marriage decree that awarded primary physical custody of the children to the father, the Court of Appeals could not review, upon the mother's request, an Illinois court's prior decision to not exercise jurisdiction over the parties' child custody dispute under the Uniform Child Custody Jurisdiction and Enforcement Act; the only decision made by the district court was to accept jurisdiction in the matter after the Illinois court declined to exercise jurisdiction over the matter, and any claim of error by the Illinois court would have to be appealed to the appellate courts of that state. Bryant v. Bryant, 28 Neb. App. 362, 943 N.W.2d 742 (2020).

In order for a state to exercise jurisdiction over a child custody dispute, that state must be the home state as defined by the Uniform Child Custody Jurisdiction and Enforcement Act or fall under limited exceptions to the home state requirement specified by the act. Floerchinger v. Floerchinger, 24 Neb. App. 120, 883 N.W.2d 419 (2016).

Unlike the Nebraska Child Custody Jurisdiction Act, the Uniform Child Custody Jurisdiction and Enforcement Act does not contain the alternative analysis allowing jurisdiction to be established in Nebraska when it is not the child's home state but when it is in the best interests of the child to exercise jurisdiction. Floerchinger v. Floerchinger, 24 Neb. App. 120, 883 N.W.2d 419 (2016).

43-1239.

When North Dakota made the initial child custody determination concerning a child in the parents' divorce, exclusive and continuing jurisdiction remained with that court under the Uniform Child Custody Jurisdiction and Enforcement Act, either until a determination was made under subsection (a) of this section or until the court declined to exercise jurisdiction under section 43-1244 on the basis of being an inconvenient forum. In re Interest of Kirsten H., 25 Neb. App. 909, 915 N.W.2d 815 (2018).

Exclusive and continuing jurisdiction remains with the district court under the Uniform Child Custody Jurisdiction and Enforcement Act either until jurisdiction is lost under subsection (a) of this section or until the court declines to exercise jurisdiction under section 43-1244 on the basis of being an inconvenient forum. Floerchinger v. Floerchinger, 24 Neb. App. 120, 883 N.W.2d 419 (2016).

The Uniform Child Custody Jurisdiction and Enforcement Act lists evidence concerning the child's care, protection, training, and personal relationships as relevant evidence regarding custody. Floerchinger v. Floerchinger, 24 Neb. App. 120, 883 N.W.2d 419 (2016).

43-1243.

Since a child custody proceeding had been commenced in North Dakota, the Nebraska court should have stayed its juvenile proceeding and communicated with the North Dakota court. In re Interest of Kirsten H., 25 Neb. App. 909, 915 N.W.2d 815 (2018).

43-1244.

When North Dakota made the initial child custody determination concerning a child in the parents' divorce, exclusive and continuing jurisdiction remained with that court under the Uniform Child Custody Jurisdiction and

Enforcement Act, either until a determination was made under subsection (a) of section 43-1239 or until the court declined to exercise jurisdiction under this section on the basis of being an inconvenient forum. In re Interest of Kirsten H., 25 Neb. App. 909, 915 N.W.2d 815 (2018).

Exclusive and continuing jurisdiction remains with the district court under the Uniform Child Custody Jurisdiction and Enforcement Act either until jurisdiction is lost under section 43-1239(a) or until the court declines to exercise jurisdiction under this section on the basis of being an inconvenient forum. Floerchinger v. Floerchinger, 24 Neb. App. 120, 883 N.W.2d 419 (2016).

43-1252.

When the registration procedure of this section has been followed and the registration is either not contested or, after a hearing, none of the statutory grounds have been established, the registering court shall confirm the registered order. Hollomon v. Taylor, 303 Neb. 121, 926 N.W.2d 670 (2019).

43-1266.

The Uniform Child Custody Jurisdiction and Enforcement Act became operative on January 1, 2004, and establishes that all motions made in a child custody proceeding commenced prior to this date are governed by the prior law in effect at that time. The law governing child custody jurisdiction prior to the effective date of the Uniform Child Custody Jurisdiction and Enforcement Act was the Nebraska Child Custody Jurisdiction Act. Floerchinger v. Floerchinger, 24 Neb. App. 120, 883 N.W.2d 419 (2016).

43-1311.01.

Despite the Legislature's creation of new duties for the Department of Health and Human Services to preserve sibling relationships, it has not created a private right of action for an adjudicated child's sibling to enforce the department's duties under section 43-1311.02 and this section. Instead, section 43-1311.02(3) specifically limits the right to enforce these duties to parties. In re Interest of Nizigiyimana R., 295 Neb. 324, 889 N.W.2d 362 (2016).

Under this section and section 43-1311.02, the Department of Health and Human Services' duties to make reasonable efforts to implement a joint-sibling placement do not depend upon the continued existence of the parent-child relationship with each of the siblings. The department's duties exist even if the siblings' custody orders were entered at separate times, even if a court has terminated a parent's relationship with each child, and even if the siblings have not previously lived together. Additionally, the department's duties regarding siblings do not depend on whether both siblings are adjudicated under section 43-247 or whether the department has placement authority for both siblings. Instead, the Legislature intended for the department to develop and maintain an adjudicated child's sibling relationships in a variety of circumstances. In re Interest of Nizigiyimana R., 295 Neb. 324, 889 N.W.2d 362 (2016).

43-1311.02.

"Sibling," under the Foster Care Review Act generally and under subsection (9) of this section specifically, means a person with whom one shares a common parent or parents. In re Interest of Jordon B., 312 Neb. 827, 981 N.W.2d 242 (2022).

Despite the Legislature's creation of new duties for the Department of Health and Human Services to preserve sibling relationships, it has not created a private right of action for an adjudicated child's sibling to enforce the department's duties under section 43-1311.01 and this section. Instead, subsection (3) of this section specifically limits the right to enforce these duties to parties. In re Interest of Nizigiyimana R., 295 Neb. 324, 889 N.W.2d 362 (2016).

Under this section and section 43-1311.01, the Department of Health and Human Services' duties to make reasonable efforts to implement a joint-sibling placement do not depend upon the continued existence of the parent-child relationship with each of the siblings. The department's duties exist even if the siblings' custody orders were entered at separate times, even if a court has terminated a parent's relationship with each child, and even if the siblings have not previously lived together. Additionally, the department's duties regarding siblings do not depend on whether both siblings are adjudicated under section 43-247 or whether the department has placement authority for both siblings. Instead, the Legislature intended for the department to develop and maintain an adjudicated child's sibling relationships in a variety of circumstances. In re Interest of Nizigiyimana R., 295 Neb. 324, 889 N.W.2d 362 (2016).

43-1312.01.

A juvenile court may not, under section 43-285(2), change a juvenile's permanency plan from family reunification to guardianship unless there has been a prior adjudication of the juvenile under section 43-247(3)(a), which adjudication is a requirement under this section for establishing a juvenile guardianship. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

The elements under subsection (1) of this section form a conjunctive list, each of which must be met before a juvenile guardianship may be established. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

43-1314.

Under this section, a preadoptive parent in a dependency proceeding is a foster parent whom a juvenile court has approved for a future adoption because a child's parent has surrendered his or her parental rights, a court-approved permanency plan does not call for the child's reunification with his or her parent, or the parents' parental rights have been or will be terminated. In re Interest of Nizigiyimana R., 295 Neb. 324, 889 N.W.2d 362 (2016).

A foster parent has the right to participate under this section whether or not the foster parent is a party in the juvenile case. In re Interest of Enyce J. & Eternity M., 291 Neb. 965, 870 N.W.2d 413 (2015).

A foster parent's right to participate under this section does not extend to discovery, questioning, cross-examining, or calling witnesses beyond what is personally applicable to the foster parent's own qualifications. In re Interest of Enyce J. & Eternity M., 291 Neb. 965, 870 N.W.2d 413 (2015).

43-1402.

When an acknowledgment of paternity has been executed by the parties, the district court has the inherent authority to consider the issue of child custody, and this section authorizes the filing of an action for child custody and support. Benjamin M. v. Jeri S., 307 Neb. 733, 950 N.W.2d 381 (2020).

Under this section, establishment of paternity by acknowledgment is the equivalent of establishment of paternity by a judicial proceeding. In re Adoption of Jaelyn B., 293 Neb. 917, 883 N.W.2d 22 (2016).

43-1406.

It is not contrary to Nebraska's public policy to recognize an acknowledged father's parental rights under another state's statutes when a Nebraska court has recognized an acknowledged father's parental rights under Nebraska's statutes. Jesse B. v. Tylee H., 293 Neb. 973, 883 N.W.2d 1 (2016).

The Full Faith and Credit Clause requires states to give the same effect to a judgment in the forum state that it has in the state where the court rendered the judgment. This section extends that requirement for judgments to a sister state's paternity determination established through a voluntary acknowledgment. Jesse B. v. Tylee H., 293 Neb. 973, 883 N.W.2d 1 (2016); In re Adoption of Jaelyn B., 293 Neb. 917, 883 N.W.2d 22 (2016).

Whether a paternity acknowledgment in a sister state gives an acknowledged father the right to block an adoption in Nebraska depends upon whether the acknowledgment confers that right in the state where it was made. Jesse B. v. Tylee H., 293 Neb. 973, 883 N.W.2d 1 (2016); In re Adoption of Jaelyn B., 293 Neb. 917, 883 N.W.2d 22 (2016).

43-1409.

A father whose paternity is established by a final, voluntary acknowledgment has the same right to seek custody as the child's biological mother. Benjamin M. v. Jeri S., 307 Neb. 733, 950 N.W.2d 381 (2020).

A previous paternity determination, including a properly executed and undisturbed acknowledgment, must be set aside before a third party's paternity may be considered. Tyler F. v. Sara P., 306 Neb. 397, 945 N.W.2d 502 (2020).

The proper legal effect of a signed, notarized acknowledgment of paternity is a finding that the individual who signed as the father is in fact the legal father. Tyler F. v. Sara P., 306 Neb. 397, 945 N.W.2d 502 (2020).

In cases where a defendant has signed a notarized acknowledgment of paternity but properly challenges the acknowledgment, due process requires that an indigent defendant be furnished appointed counsel at public expense, even if the case was not commenced as a paternity case. State on behalf of Mia G. v. Julio G., 303 Neb. 207, 927 N.W.2d 817 (2019).

While a genetic test result may be evidence of paternity and can establish a rebuttable presumption of paternity under section 43-1415, it is not in itself a legal determination of paternity in the same way as a signed and notarized

acknowledgment of paternity may be under this section; as such, the four-year statute of limitations set forth in section 43-1411 applies to an action to establish paternity using genetic test results. Evan S. v. Laura H., 31 Neb. App. 750, 990 N.W.2d 27 (2023).

43-1411.

An alleged father may not institute a proceeding under this section to establish the paternity of a child born in wedlock. Chatterjee v. Chatterjee, 313 Neb. 710, 986 N.W.2d 283 (2023).

The 4-year statute of limitations on paternity actions does not bar an action for child custody and child support for a father who executed an acknowledgment of paternity. Benjamin M. v. Jeri S., 307 Neb. 733, 950 N.W.2d 381 (2020).

The definition of "child" in this section means a child under the age of 18 years born out of wedlock. State on behalf of Miah S. v. Ian K., 306 Neb. 372, 945 N.W.2d 178 (2020).

The State may not bring an action under this section to establish the paternity of a child born in wedlock. State on behalf of Miah S. v. Ian K., 306 Neb. 372, 945 N.W.2d 178 (2020).

An emotional bond with one's biological father is not the type of relationship contemplated by this section, nor is it the type of support with which the State has a reasonable interest. Bryan M. v. Anne B., 292 Neb. 725, 874 N.W.2d 824 (2016).

This section does not violate the Equal Protection Clause because a mother can bring paternity actions on behalf of the child for up to 18 years, while fathers have only 4 years to bring paternity actions; this section treats mothers and putative fathers identically by imposing a 4-year limitations period on paternity actions brought by parents asserting their own rights. Bryan M. v. Anne B., 292 Neb. 725, 874 N.W.2d 824 (2016).

While a genetic test result may be evidence of paternity and can establish a rebuttable presumption of paternity under section 43-1415, it is not in itself a legal determination of paternity in the same way as a signed and notarized acknowledgment of paternity may be under section 43-1409; as such, the four-year statute of limitations set forth in this section applies to an action to establish paternity using genetic test results. Evan S. v. Laura H., 31 Neb. App. 750, 990 N.W.2d 27 (2023).

A guardian, next friend of the child, or the State is authorized to bring a paternity action on behalf of a child under subsection (2) of this section within 18 years after the child's birth. This section does not extend the statute of limitations for anyone other than the minor child involved. State on behalf of Elijah K. v. Marceline K., 28 Neb. App. 772, 949 N.W.2d 531 (2020).

In an action filed by the State under this section, the minor child is the real party in interest, and the State is authorized by statute to bring the action on the child's behalf. State on behalf of Elijah K. v. Marceline K., 28 Neb. App. 772, 949 N.W.2d 531 (2020).

Pursuant to this section, the State, in its parens patriae role, may bring a paternity action on behalf of a minor child for future support. The State's right to sue under this section is not conditioned upon the payment of public assistance benefits for the minor child. State on behalf of Elijah K. v. Marceline K., 28 Neb. App. 772, 949 N.W.2d 531 (2020).

This section applies in proceedings that solely seek to establish the paternity of a child or parental support for a child, but not when custody and/or visitation of a child is at issue. Wolter v. Fortuna, 27 Neb. App. 166, 928 N.W.2d 416 (2019).

A biological parent is barred from bringing a paternity action as his or her child's next friend under subdivision (2) of this section when the parent fails to show that the child is without a guardian because the child is living with a biological parent. Tyler F. v. Sara P., 24 Neb. App. 370, 888 N.W.2d 537 (2016).

A parent's right to initiate paternity actions under this section is barred after 4 years, but actions brought by a guardian or next friend on behalf of children born out of wedlock may be brought within 18 years after the child's birth. Tyler F. v. Sara P., 24 Neb. App. 370, 888 N.W.2d 537 (2016).

43-1412.

Retroactive support is included in the support that the trial court may order under subsection (3) of this section. State on behalf of Elijah K. v. Marceline K., 28 Neb. App. 772, 949 N.W.2d 531 (2020).

43-1412.01.

This section provides support for the conclusion that an acknowledgment legally establishes paternity and grants the individual named as the father the legal status of a parent to the child, regardless of genetic factors. Benjamin M. v. Jeri S., 307 Neb. 733, 950 N.W.2d 381 (2020).

A properly executed acknowledgment of paternity cannot be set aside merely by DNA testing which later shows the identified individual is not the child's biological father. Tyler F. v. Sara P., 306 Neb. 397, 945 N.W.2d 502 (2020).

The State is not an "individual" who may file a complaint to disestablish paternity under this section. State on behalf of Miah S. v. Ian K., 306 Neb. 372, 945 N.W.2d 178 (2020).

The disestablishment provisions of this section presuppose a legal determination of paternity and are not applicable until after a final judgment or other legal determination of paternity has been entered. Erin W. v. Charissa W., 297 Neb. 143, 897 N.W.2d 858 (2017).

This section permits, but does not require, a court to set aside a child support obligation when paternity has been disestablished. It does not authorize any change in child support without such disestablishment of paternity. Stacy M. v. Jason M., 290 Neb. 141, 858 N.W.2d 852 (2015).

43-1415.

While a genetic test result may be evidence of paternity and can establish a rebuttable presumption of paternity under this section, it is not in itself a legal determination of paternity in the same way as a signed and notarized acknowledgment of paternity may be under section 43-1409; as such, the four year statute of limitations set forth in section 43-1411 applies to an action to establish paternity using genetic test results. Evan S. v. Laura H., 31 Neb. App. 750, 990 N.W.2d 27 (2023).

43-1503.

A guardianship proceeding qualified as a "foster care placement" as defined by the federal Indian Child Welfare Act of 1978 and subdivision (3)(a) of this section, where the proceeding was initiated by a grandparent of an Indian child, and the object of the proceeding was to remove custody from the Indian child's parent and place custody with the Indian child's grandparent who would serve as guardian. In re Guardianship of Eliza W., 304 Neb. 995, 938 N.W.2d 307 (2020).

There is no precise formula for active efforts; the active efforts standard requires a case-by-case analysis and should be judged by the individual circumstances. In re Adoption of Micah H., 301 Neb. 437, 918 N.W.2d 834 (2018).

43-1504.

The applicability of the Nebraska Indian Child Welfare Act to an adoption proceeding turns not on the Indian status of the person who invoked the acts but on whether an "Indian child" is involved. In re Adoption of Micah H., 295 Neb. 213, 887 N.W.2d 859 (2016).

A determination that the proceeding is at an advanced stage is no longer a valid basis for finding good cause to deny a motion to transfer jurisdiction to a tribal court. In re Interest of Tavian B., 292 Neb. 804, 874 N.W.2d 456 (2016).

A motion to transfer to tribal court was not made at an advanced stage of the termination of parental rights proceedings where a previous motion for termination was dismissed for failure to include the Nebraska Indian Child Welfare Act allegations; thus, the current motion for termination constituted a separate and distinct proceeding, and the motion to transfer was filed very shortly after the filing of the current motion for termination. In re Interest of Jayden D. & Dayten J., 21 Neb. App. 666, 842 N.W.2d 199 (2014).

A denial of a transfer to tribal court under the Indian Child Welfare Act is reviewed for an abuse of discretion. In re Interest of Melaya F. & Melysse F., 19 Neb. App. 235, 810 N.W.2d 429 (2011); In re Interest of Brittany C. et al., 13 Neb. App. 411, 693 N.W.2d 592 (2005).

That a state court may take jurisdiction under the Indian Child Welfare Act does not necessarily mean that it should do so, because the court should consider the rights of the child, the rights of the tribe, and the conflict of law principles, and should balance the interests of the state and the tribe. In re Interest of Melaya F. & Melysse F., 19

Neb. App. 235, 810 N.W.2d 429 (2011); In re Interest of Brittany C. et al., 13 Neb. App. 411, 693 N.W.2d 592 (2005).

The party opposing a transfer of jurisdiction to the tribal courts under the Indian Child Welfare Act has the burden of establishing that good cause not to transfer the matter exists. In re Interest of Melaya F. & Melysse F., 19 Neb. App. 235, 810 N.W.2d 429 (2011); In re Interest of Brittany C. et al., 13 Neb. App. 411, 693 N.W.2d 592 (2005).

43-1505.

In addition to the requirements under the adoption statutes, the Nebraska Indian Child Welfare Act adds two elements to adoption proceedings involving Indian children. First, subsection (4) of this section sets forth an "active efforts" element. Second, subsection (6) of this section sets forth a "serious emotional or physical damage" element. In re Adoption of Micah H., 295 Neb. 213, 887 N.W.2d 859 (2016).

Subsection (6) of this section requires that the qualified expert's opinion must support the ultimate finding of the court, i.e., that continued custody by the parent will likely result in serious emotional or physical damage to the child. In re Interest of Audrey T., 26 Neb. App 822, 924 N.W.2d 72 (2019).

In a foster care placement determination involving an Indian child, the failure to make findings under subsection (4) of this section is harmless error where a de novo review indicates that evidence supports these findings. In re Interest of Mischa S., 22 Neb. App. 105, 847 N.W.2d 749 (2014).

In adjudication cases, the standard of proof for the active efforts element in subsection (4) of this section is proof by a preponderance of the evidence. In re Interest of Mischa S., 22 Neb. App. 105, 847 N.W.2d 749 (2014).

The active efforts standard contained in this section requires more than the reasonable efforts standard that applies in cases not involving the Indian Child Welfare Act. In re Interest of Shayla H. et al., 22 Neb. App. 1, 846 N.W.2d 668 (2014).

If an Indian child's tribe was not given proper notice of proceedings resulting in termination of parental rights to the child, the termination proceedings conducted were invalid and the order of termination must be vacated. In re Interest of Nery V. et al., 20 Neb. App. 798, 832 N.W.2d 909 (2013).

43-1506.

The provisions relating to the withdrawal of a relinquishment provided for in this section of the Nebraska Indian Child Welfare Act do not apply to a relinquishment signed prior to the applicability of the act. In re Interest of Nery V. et al., 20 Neb. App. 798, 832 N.W.2d 909 (2013).

43-1508.

Good cause for deviation from the statutory placement preferences was not shown where the record showed that the Department of Health and Human Services was unsuccessful in locating relative placements for the children but did not detail what efforts had been made, the record did not show why the children had not been placed with intervenor grandmother, the grandmother made no argument that such placement should occur and did not assert that the children's nonrelative placements were not in their best interests, and the record did not show if the children's placements met any of the other statutory claims of preference. In re Interest of Enrique P. et al., 19 Neb. App. 778, 813 N.W.2d 513 (2012).

43-1512.

In a child custody proceeding involving an Indian child, this section applies only when "any petitioner" improperly removes or retains custody of the Indian child; it does not apply where a court order brings about the removal of the Indian child and a petitioner merely follows that order. In re Guardianship of Eliza W., 304 Neb. 995, 938 N.W.2d 307 (2020).

43-1613.

When a referee makes a report and no exception is filed, the district court reviews the referee's report de novo on the record; however, if an exception is filed, the party filing an exception is entitled to a hearing and the district court as a court of equity has the discretion to allow the presentation of new or additional evidence at an exception hearing. State on behalf of Lockwood v. Laue, 24 Neb. App. 909, 900 N.W.2d 582 (2017).

43-1801.

Under this section, "context" means the context of the statutory language and not the factual circumstances of an individual's case. As such, persons who acted as grandparents but were not the "biological or adoptive parent of [the] minor child's biological or adoptive parent" have no right to grandparent visitation under the grandparent visitation statutes. Heiden v. Norris, 300 Neb. 171, 912 N.W.2d 758 (2018).

Grandparents' standing is predicated upon their satisfying the statutory definition of "grandparent" at the time they filed their action for grandparent visitation. Dean D. v. Rachel S., 26 Neb. App. 678, 923 N.W.2d 87 (2018).

43-1802.

Pursuant to subdivision (1)(b) of this section, the fact that the granting of a petition for grandparent visitation might be unconstitutional as applied does not deprive a court of subject matter jurisdiction over a petition; rather, it simply means that the grandparent visitation statutes cannot be constitutionally applied to a particular scenario. Kane v. Kane, 311 Neb. 657, 974 N.W.2d 312 (2022).

Modification of grandparent visitation may be ordered pursuant to subsection (3) of this section, subject to the parties' receiving notice and having an opportunity to be heard. Krejci v. Krejci, 304 Neb. 302, 934 N.W.2d 179 (2019).

Because the order for temporary grandparent visitation at issue was not a final, appealable order, the appellate court could not address whether such orders were permissible. Simms v. Friel, 302 Neb. 1, 921 N.W.2d 369 (2019).

The grandparents' standing is predicated upon their satisfying the statutory definition of "grandparent" at the time they filed their action for grandparent visitation. Dean D. v. Rachel S., 26 Neb. App. 678, 923 N.W.2d 87 (2018).

When grandparents sought grandparent visitation under subdivision (1)(b) of this section, their legally cognizable interest was predicated upon the divorce of their grandchild's parents. The grandparents' legal basis for visitation still existed because the grandchild's parents remained divorced. Thus, the grandparents' application for grandparent visitation did not become moot, because they continued to have a legally cognizable interest in the outcome of litigation, they sought to determine a question upon existing facts and rights, and the issues presented were still alive. Dean D. v. Rachel S., 26 Neb. App. 678, 923 N.W.2d 87 (2018).

A court can order grandparent visitation only if the petitioning grandparent proves by clear and convincing evidence that (1) there is, or has been, a significant beneficial relationship between the grandparent and the child; (2) it is in the best interests of the child that such relationship continue; and (3) such visitation will not adversely interfere with the parent-child relationship. Gatzemeyer v. Knihal, 25 Neb. App. 897, 915 N.W.2d 630 (2018).

At the commencement of the case, grandparents had standing to seek visitation; however, the case became moot when, during the pendency of the proceedings, the statutory requirements for grandparent visitation ceased to exist. Muzzey v. Ragone, 20 Neb. App. 669, 831 N.W.2d 38 (2013).

Pursuant to subsection (2) of this section, a grandparent seeking visitation over the objection of a natural parent must satisfy the statutory burden of proof to establish the existence of a significant beneficial relationship with the child and that it will be in the best interests of the child to continue the relationship; the notion that a relationship with biological grandparents is axiomatically in the best interests of a child is not sufficient. Vrtatko v. Gibson, 19 Neb. App. 83, 800 N.W.2d 676 (2011).

43-1803.

Pursuant to subsection (1) of this section, the fact that the granting of a petition for grandparent visitation might be unconstitutional as applied does not deprive a court of subject matter jurisdiction over a petition; rather, it simply means that the grandparent visitation statutes cannot be constitutionally applied to a particular scenario. Kane v. Kane, 311 Neb. 657, 974 N.W.2d 312 (2022).

In an action for grandparent visitation, the noncustodial father has a statutory right to be served with a copy of the petition and to be given notice of the trial. Davis v. Moats, 308 Neb. 757, 956 N.W.2d 682 (2021).

It is clear from the language of subdivision (2) of this section that both parents should be served with a copy of the petition in an action for grandparent visitation. Davis v. Moats, 308 Neb. 757, 956 N.W.2d 682 (2021).

A noncustodial parent is entitled to be served and participate in grandparent visitation proceedings by virtue of both subdivision (2) of this section and the parent's constitutionally protected parental rights. A noncustodial parent is an indispensable party to grandparent visitation actions, and when the parent is not joined as a party, the court lacks jurisdiction to consider such action. Morse v. Olmer, 29 Neb. App. 346, 954 N.W.2d 638 (2021).

43-2101.

Unless married, persons under 19 years of age are declared to be minors pursuant to subsection (1) of this section. Johnson v. Johnson, 308 Neb. 623, 956 N.W.2d 261 (2021).

43-2922.

In the absence of an explicit contrary definition in a parenting plan, the term "joint legal custody" must be construed according to its statutory definition in the Parenting Act. Vyhlidal v. Vyhlidal, 311 Neb. 495, 973 N.W.2d 171 (2022).

The definitions in the Parenting Act of "legal custody" and "joint legal custody" are terms of art having clear and unambiguous meaning. Vyhlidal v. Vyhlidal, 311 Neb. 495, 973 N.W.2d 171 (2022).

Under the Parenting Act, joint legal custody involves mutual authority and responsibility of the parents while legal custody does not. Vyhlidal v. Vyhlidal, 311 Neb. 495, 973 N.W.2d 171 (2022).

In a case where parents shared joint legal custody of the minor child, and neither parent had final decisionmaking authority, the mother's unilateral decision to change the minor child's school was a willful violation of the decree of dissolution of marriage. As such, this is a matter to be considered at an evidentiary hearing where the father could offer evidence to demonstrate both that a violation of the court order occurred and that the violation was willful. Vyhlidal v. Vyhlidal, 309 Neb. 376, 960 N.W.2d 309 (2021).

Joint legal custody is the joint authority and responsibility for making major decisions regarding the child's welfare, while sole legal custody essentially establishes that one party will have the final say in such decisions. Vyhlidal v. Vyhlidal, 309 Neb. 376, 960 N.W.2d 309 (2021).

The mother's decision to move the child 4 hours away deprived the father of his court-ordered parenting time. Thus, the district court abused its discretion in failing to issue an order to show cause as to why the mother did not willfully violate the decree of dissolution in regard to the father's parenting time. Vyhlidal v. Vyhlidal, 309 Neb. 376, 960 N.W.2d 309 (2021).

Where the parenting plan indicates the parties were to share joint legal custody of the minor child, and where neither party was granted exclusive final decisionmaking authority, it is undisputed that the parties share mutual authority for making fundamental decisions regarding the minor child's welfare, including choices regarding education, such as where the minor child will attend school. Vyhlidal v. Vyhlidal, 309 Neb. 376, 960 N.W.2d 309 (2021).

"Domestic intimate partner abuse," pursuant to subdivision (8) of this section, requires both attempting to cause or intentionally and knowingly causing bodily injury with or without a dangerous instrument to a family or household member and a pattern or history of abuse. Blank v. Blank, 303 Neb. 602, 930 N.W.2d 523 (2019).

Joint legal custody is separate and distinct from joint physical custody, and an appellate court will address each separately. Donald v. Donald, 296 Neb. 123, 892 N.W.2d 100 (2017).

Pursuant to subdivision (17) of this section, the parental relationship should be found to exist only if the facts and circumstances show that the individual means to take the place of the lawful parent, not only in providing support but also with reference to the natural parent's office of educating and instructing and caring for the general welfare of the child. The mother's former boyfriend did not stand in loco parentis to the child because he had a minimal role in fulfilling parenting functions during the parties' relationship and after their separation; his role primarily entailed playing with the child and looking after her for brief periods of time. Peister v. Eurek, 30 Neb. App. 366, 969 N.W.2d 134 (2021).

An order governing custody was an award of "joint physical custody," rather than an award of "sole physical custody" to the mother, although the trial court referred to it as an award of "sole physical custody," where the custody order granted the father parenting time that amounted to seven overnights out of fourteen, and each parent was granted continuous blocks of parenting time for significant periods. State on behalf of Emery W. v. Michael W., 28 Neb. App. 956, 951 N.W.2d 177 (2020).

43-2923.

A 15-year-old child's custody preference and the reasoning behind such preference is entitled to consideration but is not controlling in the determination of custody. Leners v. Leners, 302 Neb. 904, 925 N.W.2d 704 (2019).

Even though the district court did not conduct an in camera interview of the child, it did have in evidence the child's handwritten note with "testimony" written at the top of the first page. In the letter, the child stated what custody and parenting time arrangement she hoped for and explained her reasoning. Under the circumstances, that was sufficient to assess the child's "desires and wishes" for purposes of subdivision (6)(b) of this section. Toro v. Toro, 30 Neb. App. 158, 966 N.W.2d 519 (2021).

Limiting the father to supervised parenting time was supported by evidence of his verbal threats and physically abusive behaviors toward the mother, an altercation with his girlfriend and her ex-boyfriend, and the father's allowance of his girlfriend to be around the children, despite court orders prohibiting the girlfriend's presence around the children. Toro v. Toro, 30 Neb. App. 158, 966 N.W.2d 519 (2021).

The best interests considerations for determining custody and the best interests considerations for determining removal become intertwined when a change in custody necessarily includes the relocation of the child's primary residence to another state. Burton v. Schlegel, 29 Neb. App. 393, 954 N.W.2d 645 (2021).

Based on subdivision (6) of this section, when determining the best interests of the child in deciding custody, a court must consider, at a minimum, (1) the relationship of the minor child to each parent prior to the commencement of the action; (2) the desires and wishes of a sufficiently mature child, if based on sound reasoning; (3) the general health, welfare, and social behavior of the child; (4) credible evidence of abuse inflicted on any family or household member; and (5) credible evidence of child abuse or neglect or domestic intimate partner abuse. Chmelka v. Chmelka, 29 Neb. App. 265, 953 N.W.2d 288 (2020).

The best interests of a child require a parenting plan that provides for a child's safety, emotional growth, health, stability, physical care, and regular school attendance and which promotes a child's continued contact with his or her families and parents who have shown the ability to act in the child's best interests. Chmelka v. Chmelka, 29 Neb. App. 265, 953 N.W.2d 288 (2020).

The trial court was required to make written findings in a marital dissolution proceeding as to why the parties' stipulated parenting plan was not in the children's best interests, and beyond the court's statement that it did not approve of the parties' sharing joint decisionmaking authority over their children, the dissolution decree provided no written findings explaining why it rejected and modified the stipulated parenting plan. Cook v. Cook, 26 Neb. App. 137, 918 N.W.2d 1 (2018).

The best interests of a child require that the child's family remain appropriately active and involved in parenting with safe, appropriate, and continuing quality contact between the child and the child's family when they have shown the ability to act in the best interests of the child and have shared in the responsibilities of raising the child. Thompson v. Thompson, 24 Neb. App. 349, 887 N.W.2d 52 (2016).

This section of the Nebraska Parenting Act sets forth a nonexhaustive list of factors to be considered in determining the best interests of a child in regard to custody. Such factors include the relationship of the minor child with each parent, the desires of the minor child, the general health and well-being of the minor child, and credible evidence of abuse inflicted on the child by any family or household member. Floerchinger v. Floerchinger, 24 Neb. App. 120, 883 N.W.2d 419 (2016).

While the wishes of a child are not controlling in the determination of custody, if a child is of sufficient age and has expressed an intelligent preference, the child's preference is entitled to consideration. Floerchinger v. Floerchinger, 24 Neb. App. 120, 883 N.W.2d 419 (2016).

The trial court did not err in considering an 8 1/2-year-old child's wishes regarding custody, where there was no evidence that the court regarded the child's wishes as determinative of its decision and the child was of an age of comprehension and displayed sound reasoning. Kenner v. Battershaw, 24 Neb. App. 58, 879 N.W.2d 409 (2016).

Although there was no evidence that the mother was currently engaged in abusive behaviors or an abusive relationship, the trial court acted within its discretion in finding that the father's custody was in the best interests of the child based on the mother's history of domestic violence, previous removal of a child, and the mother's questionable rehabilitation. State on behalf of Keegan M. v. Joshua M., 20 Neb. App. 411, 824 N.W.2d 383 (2012).

43-2924.

The Parenting Act applied because the action was filed after January 1, 2008, and because parenting functions for a child were at issue. Citta v. Facka, 19 Neb. App. 736, 812 N.W.2d 917 (2012).

43-2929.

A determination of legal custody is a mandatory and indispensable part of a parenting plan. Vyhlidal v. Vyhlidal, 311 Neb. 495, 973 N.W.2d 171 (2022).

Pursuant to subdivision (1)(b)(ix) of this section, the district court did not abuse its discretion in ordering the mother to attend an anger management course and counseling to address her coparenting issues. Schriner v. Schriner, 25 Neb. App. 165, 903 N.W.2d 691 (2017).

Although the trial court's order did not attach a parenting plan and did not address several determinations under subdivision (1)(b) of this section, such error did not deprive the appellate court of jurisdiction where the order addressed custody, telephone visitation, and alternating weekend and holiday visitation. Citta v. Facka, 19 Neb. App. 736, 812 N.W.2d 917 (2012).

43-2930.

Pursuant to subdivision (2)(e) of this section, the district court did not abuse its discretion in ordering the mother to attend an anger management course and counseling to address her coparenting issues. Schriner v. Schriner, 25 Neb. App. 165, 903 N.W.2d 691 (2017).

43-2932.

To meet the requirement for "special written findings" under subsection (3) of this section, the court must, at a minimum, specifically state that it finds that the children and the other parent may be adequately protected from harm by the limits the court has actually imposed in the parenting plan. The court's findings should also indicate that the court recognized that the burden on this issue was on the parent found to have committed the abuse. The court should further identify what limits it imposed in the parenting plan that it finds will provide the necessary protection. Franklin M. v. Lauren C., 310 Neb. 927, 969 N.W.2d 882 (2022).

In awarding custody of a child, special written findings that a child and other parent can be adequately protected from harm are required if a parent is found to have engaged in "domestic intimate partner abuse," which means attempting to cause or intentionally and knowingly causing bodily injury with or without a dangerous instrument to a family or household member and a pattern or history of abuse. Blank v. Blank, 303 Neb. 602, 930 N.W.2d 523 (2019).

Regardless of when the parent was convicted of third degree domestic assault, where the district court was presented with evidence of that conviction during modification proceedings, it was required to comply with this section in making a custody determination. Flores v. Flores-Guerrero, 290 Neb. 248, 859 N.W.2d 578 (2015).

Threatening to cause or actually causing bodily injury to a spouse or former spouse qualifies as domestic intimate partner abuse. Flores v. Flores-Guerrero, 290 Neb. 248, 859 N.W.2d 578 (2015).

Where a preponderance, or the greater weight, of the evidence demonstrates that a parent has committed one of the listed actions, the obligations of this section are mandatory. Flores v. Flores-Guerrero, 290 Neb. 248, 859 N.W.2d 578 (2015).

The district court did not abuse its discretion by ordering therapeutic and supervised parenting time for the father. The ability to transition to unsupervised parenting time was in the father's control. He simply needed to demonstrate that he would no longer engage in manipulative or alienating behavior which adversely impacted the children's relationship with their mother. Wright v. Wright, 29 Neb. App. 787, 961 N.W.2d 834 (2021).

When a parent has committed domestic intimate partner abuse, subsection (3) of this section requires the district court to make special written findings that the child and other parent can be adequately protected from harm before ordering legal or physical custody to be given to that parent. Fales v. Fales, 25 Neb. App. 868, 914 N.W.2d 478 (2018).

The requirement to make special written findings that the child and the "other parent" can be adequately protected from harm if child custody is awarded to the parent with a record of domestic abuse applies to instances where domestic abuse occurred between the parents of the child or children at issue, where it is necessary to ensure that there is no future domestic abuse to the "other parent." This section does not apply to a case in which one parent's conviction for domestic abuse was the result of an incident with a prior or estranged domestic intimate partner, who is not a party in the current action. State on behalf of Dawn M. v. Jerrod M., 22 Neb. App. 835, 861 N.W.2d 755 (2015).

43-2933.

To overcome the "bursting bubble" presumption set forth in subdivision (1)(c) of this section, a custodial parent must produce evidence that, even with a sex offender's access, the child or children are not at significant risk. If the evidence is produced, the presumption disappears and the trial court must weigh the evidence presented free from any legal presumptions. Hopkins v. Hopkins, 294 Neb. 417, 883 N.W.2d 363 (2016).

Pursuant to subsection (2) of this section, no person shall be granted custody, parenting time, visitation, or other access with a child if the person has been convicted under section 28-319 (first degree sexual assault) and the child was conceived as a result of that violation. In re Interest of Danajah G. et al., 23 Neb. App. 244, 870 N.W.2d 432 (2015).

Subsection (2) of this section applies to cases under the Nebraska Juvenile Code when parenting functions are at issue under chapter 42 of the Nebraska Revised Statutes. In re Interest of Danajah G. et al., 23 Neb. App. 244, 870 N.W.2d 432 (2015).

Subsection (2) of this section does not provide for any exception to or discretion in its mandatory language. In re Interest of Danajah G. et al., 23 Neb. App. 244, 870 N.W.2d 432 (2015).

Subsection (2) of this section falls under the Parenting Act, section 43-2920 et seq., and not under the Nebraska Juvenile Code, section 43-245 et seq. In re Interest of Danajah G. et al., 23 Neb. App. 244, 870 N.W.2d 432 (2015).

A person seeking a change in custody based upon "material" changes in circumstances cannot piggyback such alleged material changes on the statutorily deemed change in circumstances provided by this section. Hopkins v. Hopkins, 23 Neb. App. 174, 869 N.W.2d 390 (2015).

If an attempt to change custody is not successful pursuant to this section, then as to any other grounds for modification alleged, the party seeking the modification in custody bears the burden of showing a material change of circumstances affecting the best interests of the child. Hopkins v. Hopkins, 23 Neb. App. 174, 869 N.W.2d 390 (2015).

43-4505.

Immigration relief services, under subdivision (3)(h) of this section, is an exception where the Department of Health and Human Services may offer immigration assistance to unlawful aliens until they are 21 years old. E.M. v. Nebraska Dept. of Health & Human Servs., 306 Neb. 1, 944 N.W.2d 252 (2020).

44-359.

When a party brings an action to foreclose a construction lien and a surety bond is subsequently obtained to substitute as collateral, the action is not one brought upon the surety bond. Echo Group v. Tradesmen Internat., 312 Neb. 729, 980 N.W.2d 869 (2022).

Where a court's determination respecting insurance coverage was reversed on appeal, a lower-than-requested attorney fee award was vacated and the cause remanded accordingly where the record supported an inference that the amount was tied to the result of the suit and not a calculation of the fees' value. North Star Mut. Ins. Co. v. Miller, 311 Neb. 941, 977 N.W.2d 195 (2022).

44-3,128.01.

Attorney fees are not within the field specified by this section, because the statutory language is silent as to attorney fees and there is no indication that the Legislature intended to restrict or preclude the common fund doctrine. Hauptman, O'Brien v. Auto-Owners Ins. Co., 310 Neb. 147, 964 N.W.2d 264 (2021).

This section does not preempt the common fund doctrine. Hauptman, O'Brien v. Auto-Owners Ins. Co., 29 Neb. App. 662, 958 N.W.2d 428 (2021).

This section meets the standard of legislative reasonableness and is therefore constitutional and enforceable. Hauptman, O'Brien v. Auto-Owners Ins. Co., 29 Neb. App. 662, 958 N.W.2d 428 (2021).

44-501.02.

It is not the type of action, but, rather, the nature of the claim being asserted, that triggers application of the valued policy statute; the statute is implicated whenever a suit between the insurer and the insured seeks to determine the amount owed by the insurer for a total loss to real property insured against loss by fire, tornado, windstorm, lightning, or explosion. Callahan v. Brant, 314 Neb. 219, 990 N.W.2d 1 (2023).

The conclusive determination of true value required by this valued policy statute applies to both insurers and insureds. Callahan v. Brant, 314 Neb. 219, 990 N.W.2d 1 (2023).

The preloss duties related to this valued policy statute apply to both insurers and insureds. Callahan v. Brant, 314 Neb. 219, 990 N.W.2d 1 (2023).

44-2810.

"Similar community" is determined considering characteristics relevant to the level of medical care that is to be expected, such as available facilities, personnel, equipment, and practices. Carson v. Steinke, 314 Neb. 140, 989 N.W.2d 401 (2023).

44-2828.

The continuous treatment doctrine for limitations in a malpractice action applies only for incorrect treatment based on misdiagnosis or other continuing course of negligent treatment. Bogue v. Gillis, 311 Neb. 445, 973 N.W.2d 338 (2022).

45-103.

Where offsetting claims and counterclaims were tried separately, postjudgment interest did not begin to accrue until all claims were tried and reduced to a single judgment. VKGS v. Planet Bingo, 309 Neb. 950, 962 N.W.2d 909 (2021).

45-103.02.

Prejudgment interest is authorized when there is not a dispute as to the amount due on a claim or to the plaintiff's right to recover. Echo Group v. Tradesmen Internat., 312 Neb. 729, 980 N.W.2d 869 (2022).

Recovery of prejudgment interest under this section is limited to claims that are liquidated. Mogensen Bros. Land & Cattle Co. v. Mogensen, 29 Neb. App. 56, 952 N.W.2d 688 (2020).

45-103.04.

This section does not limit a court's equitable powers to order a party to pay interest. Becher v. Becher, 311 Neb. 1, 970 N.W.2d 472 (2022).

45-104.

A written construction contract entailing the parties' rights and obligations, including an obligation to make payment, is an instrument in writing on which money is due. BCL Properties v. Boyle, 314 Neb. 607, 992 N.W.2d 440 (2023).

An award of prejudgment interest is authorized in an action to foreclose a construction lien. Echo Group v. Tradesmen Internat., 312 Neb. 729, 980 N.W.2d 869 (2022).

Compliance with Neb. Ct. R. Pldg. § 6-1108(a) is not determinative where entitlement to interest is based on statute and the adverse party had notice and an opportunity to be heard prior to judgment. McGill Restoration v. Lion Place Condo. Assn., 309 Neb. 202, 959 N.W.2d 251 (2021).

Section 45-103.02(1) and (2) and this section provide alternate and independent means of recovering prejudgment interest, each with different criteria for the recovery of prejudgment interest, and none makes the recovery of prejudgment interest contingent on proof of another. McGill Restoration v. Lion Place Condo. Assn., 309 Neb. 202, 959 N.W.2d 251 (2021).

Compliance with Neb. Ct. R. Pldg. § 6-1108(a) is not determinative where entitlement to interest is based on statute and the adverse party had notice and an opportunity to be heard prior to judgment. AVG Partners I v. Genesis Health Clubs, 307 Neb. 47, 948 N.W.2d 212 (2020).

Prejudgment interest can be recovered on a lease, although the statute's provisions may be superseded by terms set forth in the lease. AVG Partners I v. Genesis Health Clubs, 307 Neb. 47, 948 N.W.2d 212 (2020).

Whether a claim is liquidated or unliquidated is immaterial with respect to a litigant's ability to recover

prejudgment interest under this section. AVG Partners I v. Genesis Health Clubs, 307 Neb. 47, 948 N.W.2d 212 (2020).

46-1639.

The phrase "control and regulation" as used in this section means general authority over a dam. Angel v. Nebraska Dept. of Nat. Resources, 314 Neb. 1, 988 N.W.2d 507 (2023).

The Safety of Dams and Reservoirs Act does not exclude from immunity any negligent conduct concerning control and regulation of a dam occurring prior to the effective date of the act. Angel v. Nebraska Dept. of Nat. Resources, 314 Neb. 1, 988 N.W.2d 507 (2023).

47-502.

Where an offender is originally sentenced to post-release supervision and is later resentenced to confinement in a county jail following the revocation of post-release supervision, the offender is entitled to good time reduction of his or her county jail sentence. State v. Knight, 311 Neb. 485, 973 N.W.2d 356 (2022).

47-503.

Because jail credit is an absolute and objective number that is established by the record and no statute mandates who is responsible for making that record, the party advocating for a specific jail credit calculation has the burden to provide the sentencing court with a record that establishes such calculation. State v. Castillo-Rodriguez, 313 Neb. 763, 986 N.W.2d 78 (2023).

The legal impact of a writ of habeas corpus ad prosequendum on the jail credit calculation cannot be addressed unless the record establishes compliance with the writ, not just issuance of the writ. State v. Castillo-Rodriguez, 313 Neb. 763, 986 N.W.2d 78 (2023).

Spending time in a treatment facility and spending time in jail are not the same, and this section specifically refers to credit for time spent in jail. State v. McCain, 29 Neb. App. 981, 961 N.W.2d 576 (2021).

48-120.

An employer may contest any future workers' compensation claims for medical treatment on the basis that such treatment is unrelated to the original work-related injury or occupational disease, or that the treatment is unnecessary or inapplicable, only after a Form 50 physician has been appointed and prescribed treatment. Rogers v. Jack's Supper Club, 308 Neb. 107, 953 N.W.2d 9 (2021).

48-121.

Although subsection (3) of this section does not refer to the body parts listed in its first paragraph as "members," for decades, this court has referred to those listed body parts as "members" or, more specifically, "scheduled members." Espinoza v. Job Source USA, 313 Neb. 559, 984 N.W.2d 918 (2023).

To recover an award based on loss of earning capacity under subsection (3) of this section, an employee must prove a loss or loss of use of more than one member or parts of more than one member set forth in this subdivision. An employee with multiple injuries along the same extremity may suffer a loss or loss of use of more than one member or parts of more than one member set forth in this subdivision. Espinoza v. Job Source USA, 313 Neb. 559, 984 N.W.2d 918 (2023).

An employee suffering a below-the-knee amputation was not entitled to consecutive amounts of disability benefits for the loss of his five toes, his foot, and his leg, because subdivision (3) of this section explicitly states that a below-the-knee amputation is the equivalent of a loss of a foot and because, as a general rule, a party may not have double recovery for a single injury. Melton v. City of Holdrege, 309 Neb. 385, 960 N.W.2d 298 (2021).

48-125.

A reasonable controversy existed due to an unanswered question of law regarding the timing of permanent disability payments in a case involving an amputation. Melton v. City of Holdrege, 309 Neb. 385, 960 N.W.2d 298 (2021).

48-148.

When an employee is compensated for the inability to work due to a physical injury that arose out of and in the course of employment, the Nebraska Workers' Compensation Act is the exclusive remedy for refusing to return the injured employee to suitable work and the employee cannot seek additional remedies under the Nebraska Fair Employment Practice Act for terminating his or her employment on the basis of the disability caused by the same workplace injury. Dutcher v. Nebraska Dept. of Corr. Servs., 312 Neb. 405, 979 N.W.2d 245 (2022).

48-162.01.

Where a prior award by the compensation court provided medical or physical rehabilitation services, the compensation court may modify the award of such services to the extent that the compensation court finds such modification necessary in order to accomplish the goal of restoring the injured employee to gainful and suitable employment or is otherwise required in the interest of justice. Spratt v. Crete Carrier Corp., 311 Neb. 262, 971 N.W.2d 335 (2022).

The workers' compensation court did not clearly err in denying vocational rehabilitation benefits to an employee who had secured substantial gainful employment but who desired an award of vocational rehabilitation in case he became unable to continue his present employment. Melton v. City of Holdrege, 309 Neb. 385, 960 N.W.2d 298 (2021).

48-180.

This section does not limit the reasons for which a compensation court may modify its findings, order, award, or judgment. Parks v. Hy-Vee, 307 Neb. 927, 951 N.W.2d 504 (2020).

48-185.

Based on this section, a judgment, order, or award of the compensation court may be modified, reversed, or set aside only upon the grounds that (1) the compensation court acted without or in excess of its powers; (2) the judgment, order, or award was procured by fraud; (3) there is not sufficient competent evidence in the record to warrant the making of the judgment, order, or award; or (4) the findings of fact by the compensation court do not support the order or award. Arroyo v. Caring for People Servs., 29 Neb. App. 93, 952 N.W.2d 11 (2020).

48-628.10.

An employee's actions do not rise to the level of misconduct if the individual is merely unable to perform the duties of the job, but must involve at least culpable negligence, which, on a sliding scale, is much closer to an intentional disregard of the employer's interests than it is to mere negligence. Pinnacle Bancorp v. Moritz, 313 Neb. 906, 987 N.W.2d 277 (2023).

An employer's rule of conduct must clearly apply to off-duty conduct before its violation constitutes misconduct of such a degree to render the employee ineligible to partake in the beneficent purposes of the Employment Security Law. Pinnacle Bancorp v. Moritz, 313 Neb. 906, 987 N.W.2d 277 (2023).

In cases exploring whether an employer policy or order governing off-duty conduct is reasonable, a court weighs the likely effect on an employer's interests against the imposition upon the employee's private life. Pinnacle Bancorp v. Moritz, 313 Neb. 906, 987 N.W.2d 277 (2023).

Misconduct connected with work is a breach of a duty owed to the employer, not to society in general. Pinnacle Bancorp v. Moritz, 313 Neb. 906, 987 N.W.2d 277 (2023).

An employee who is discharged for refusing an employer's order to complete a task is discharged for misconduct only if the order refused was reasonable under the circumstances. Badawi v. Albin, 311 Neb. 603, 973 N.W.2d 714 (2022).

In a disputed claim for unemployment benefits, the employer bears the burden of proving an individual is disqualified from receiving benefits because he or she was discharged for misconduct. Badawi v. Albin, 311 Neb. 603, 973 N.W.2d 714 (2022).

Misconduct includes behavior which evidences (1) wanton and willful disregard of the employer's interests, (2) deliberate violation of rules, (3) disregard of standards of behavior which the employer can rightfully expect from the employee, or (4) negligence which manifests culpability, wrongful intent, evil design, or intentional and substantial disregard of the employer's interests or of the employee's duties and obligations. Badawi v. Albin, 311 Neb. 603, 973 N.W.2d 714 (2022).

48-824.

In determining whether a topic is covered by an agreement, an appellate court considers whether the topic is within the compass of the terms of the agreement or it is instead wholly absent or contained in so broad and vague a reservation as to negate the requirement of bargaining in good faith regarding subjects of mandatory bargaining. Fraternal Order of Police v. City of York, 309 Neb. 359, 960 N.W.2d 315 (2021).

48-1114.

Employees who complained about coworkers' alleged unlawful practices failed to establish a prima facie case of retaliation because subdivision (1)(c) of this section refers to an unlawful practice of the employer and does not protect an employee's opposition to the unlawful activities of fellow employees. Baker-Heser v. State, 309 Neb. 979, 963 N.W.2d 59 (2021).

48-1230.

Under the Nebraska Wage Payment and Collection Act, the right to payment of wages arises from the contract between the parties; the act does not create an individual statutory right to receive wages. Hoagbin v. School Dist. No. 28-0017, 313 Neb. 397, 984 N.W.2d 305 (2023).

49-14,103.01.

An "interest in any contract" includes receipt of a direct pecuniary fee or payment of money in exchange for performing extra work and the contract may be implied. Moore v. Nebraska Acct. & Disclosure Comm., 310 Neb. 302, 965 N.W.2d 564 (2021).

52-142.

The function of the surety bond under this section is to release the property from the lien and to transfer the claimant's rights from the property to the surety bond. Echo Group v. Tradesmen Internat., 312 Neb. 729, 980 N.W.2d 869 (2022).

When a person releases real estate from a construction lien by depositing a surety bond, the Nebraska Construction Lien Act does not limit a party's recovery in an action to foreclose the lien to the amount of the surety bond. Echo Group v. Tradesmen Internat., 312 Neb. 729, 980 N.W.2d 869 (2022).

52-157.

A person is not wrongfully deprived of benefits to which he or she is entitled under the Construction Lien Act for merely having to foreclose on a construction lien; wrongful deprivation requires something more than merely foreclosing a construction lien. BCL Properties v. Boyle, 314 Neb. 607, 992 N.W.2d 440 (2023).

This section authorizes attorney fees in circumstances involving the wrongful deprivation of benefits or bad faith, but it does not authorize such fees in every action involving foreclosure of a construction lien. Echo Group v. Tradesmen Internat., 312 Neb. 729, 980 N.W.2d 869 (2022).

54-1,122.

Under this section, cattle that move from their point of origin to backgrounding lots and then later to registered feedlots do not avoid brand inspection. Adams Land & Cattle v. Widdowson, 314 Neb. 358, 990 N.W.2d 542 (2023).

Under this section, if cattle move into registered feedlots from their points of origin with no other movement in between and are accompanied by paperwork that proves they have been so moved, they avoid brand inspection. Adams Land & Cattle v. Widdowson, 314 Neb. 358, 990 N.W.2d 542 (2023).

60-6,108.

Subsection (3) of this section explicitly preempts local laws to the extent those laws are directly contrary to the Rules of Road, unless expressly authorized by the Legislature. State v. Albarenga, 313 Neb. 72, 892 N.W.2d 799 (2022).

60-6,123.

This section plainly provides that the "steady red indication," a subset of "traffic control signals exhibiting different colored light or colored lighted arrows," encompasses "colored lighted arrows," and shall apply to drivers of vehicles in this state, so as to indicate at the intersection of two one-way streets that the driver may cautiously enter the intersection to make a left turn after stopping. State v. Albarenga, 313 Neb. 72, 892 N.W.2d 799 (2022).

A city ordinance prohibiting a left turn on a steady red arrow indication does not conflict with this section. State v. Albarenga, 30 Neb. App. 711, 972 N.W.2d 85 (2022).

A steady red arrow indication constitutes a traffic control device prohibiting a turn under subdivision (3)(c) of this section. State v. Albarenga, 30 Neb. App. 711, 972 N.W.2d 85 (2022).

To the extent this section conflicts with the Manual on Uniform Traffic Control Devices, 411 Neb. Admin. Code, ch.1, section 001 (2019), as it relates to red arrow indications, the manual is the controlling law. State v. Albarenga, 30 Neb. App. 711, 972 N.W.2d 85 (2022).

60-6,196.

The Department of Health and Human Services is not authorized by section 60-6,201 to define the phrase "any drug" as it appears in this section or in municipal ordinances authorized by section 60-6,197.07. State v. Taylor, 310 Neb. 376, 966 N.W.2d 510 (2021).

The phrase "any drug" in a municipal ordinance mirroring this section refers to all drugs, of whatever kind, including the appellant's prescription medications. State v. Taylor, 310 Neb. 376, 966 N.W.2d 510 (2021).

60-6,201.

A defendant's chemical breath test was properly conducted under methods stated by the Department of Health and Human Services where an officer used a department-approved method of infrared absorption analysis to test the defendant's breath alcohol content. State v. Alkazahy, 314 Neb. 406, 990 N.W.2d 740 (2023).

This section does not authorize the Department of Health and Human Services to define the phrase "any drug" as it appears in section 60-6,196(1)(a) or in municipal ordinances authorized by section 60-6,197.07. State v. Taylor, 310 Neb. 376, 966 N.W.2d 510 (2021).

60-6,213.

Evidence of sustained inattention, resulting in a failure to heed numerous warning signs, was sufficient for a rational jury to conclude the defendant was engaged in reckless driving. State v. Knight, 31 Neb. App. 176, 978 N.W.2d 188 (2022).

Reckless driving lies somewhere between careless driving and willful reckless driving. State v. Knight, 31 Neb. App. 176, 978 N.W.2d 188 (2022).

60-6,269.

This section does not create civil liability based on a driver's failure to secure a child. Christensen v. Broken Bow Public Schools, 312 Neb. 814, 981 N.W.2d 234 (2022).

60-6,273.

Under this section, all evidence of nonuse of a seatbelt is inadmissible regarding liability or proximate cause. Christensen v. Broken Bow Public Schools, 312 Neb. 814, 981 N.W.2d 234 (2022).

64-201.

A notary public or other authorized officer should use a traditional jurat (long or short) to certify the administration of an oath or affirmation and employ an acknowledgment for documents requiring that type of proof. AVG Partners I v. Genesis Health Clubs, 307 Neb. 47, 948 N.W.2d 212 (2020).

66-1863.

The determination of the public interest with regard to a specific application to the Public Service Commission

pursuant to this section is based on the conditions presented by the application and relates directly to the time and conditions presented, and it does not amount to an adjudication for the future. Therefore, the conclusive presumption under subsection (3) of this section is conclusive as to the determination of the public interest based on the time and conditions presented by the specific application, and it does not constitute a permanent determination or a conclusive presumption as to an application that may be presented to the Public Service Commission under different conditions in the future. In re App. No. P-12.32 of Black Hills Neb. Gas, 311 Neb. 813, 976 N.W.2d 152 (2022).

67-404.

Under subsection (1) of this section, relations among the partners and between the partners and the partnership are also governed by the partnership agreement. Fredericks Peebles v. Assam, 300 Neb. 670, 915 N.W.2d 770 (2018).

67-445.

Based on this section, partners are entitled to an accounting upon the winding up of the business of a partnership. Mogensen Bros. Land & Cattle Co. v. Mogensen, 29 Neb. App. 56, 952 N.W.2d 688 (2020).

68-145.

When a county which furnished general assistance to an indigent individual complies with the general assistance statutes in seeking reimbursement from the indigent individual's county of legal settlement, compliance with section 23-135 is not mandatory. County of Lancaster v. County of Custer, 313 Neb. 622, 985 N.W.2d 612 (2023).

68-919.

The Department of Health and Human Services may recover from a Medicaid recipient's estate sums paid on the recipient's behalf for room and board and other "nonmedical" expenses at nursing facilities. In re Estate of Vollmann, 296 Neb. 659, 896 N.W.2d 576 (2017).

Under the Medical Assistance Act, where a Medicaid recipient is not survived by a spouse or by a child who is either under the age of 21 or blind or totally and permanently disabled and where no undue hardship as provided in the Department of Health and Human Services' rules and regulations would result, the beneficiaries of a recipient's estate are not entitled to an inheritance at the public's expense. In re Estate of Vollmann, 296 Neb. 659, 896 N.W.2d 576 (2017).

69-2301.

The scope of the Disposition of Personal Property Landlord and Tenant Act is not so narrowly confined as to exclude commercial leases; as such, the act applies in commercial lease cases. Pan v. IOC Realty Specialist, 301 Neb. 256, 918 N.W.2d 273 (2018).

69-2302.

"Landlord," as defined under this section as the "owner, lessor, or sublessor of furnished or unfurnished premises, including self-service storage units or facilities," does not limit the application of the Disposition of Personal Property Landlord and Tenant Act to self-service storage units or facilities, but, rather, relates to the inclusion of those two types of facilities indicating a nonexclusive list of example applications. Pan v. IOC Realty Specialist, 301 Neb. 256, 918 N.W.2d 273 (2018).

"Tenant," as defined under this section as a person entitled under a rental agreement to occupy any premises for rent or storage uses to the exclusion of others "whether such premises are used as a dwelling unit or self-service storage unit or facility or not," does not limit the application of the Disposition of Personal Property Landlord and Tenant Act to leases in nature of dwelling unit or self-service storage unit. Rather, the language "whether or not" indicates that it is not important which of the possibilities were true. Pan v. IOC Realty Specialist, 301 Neb. 256, 918 N.W.2d 273 (2018).

The definition of landlord under this section clearly includes agents under its scope. Pan v. IOC Realty Specialist, 301 Neb. 256, 918 N.W.2d 273 (2018).

69-2307.

Giving the word "former" its plain and ordinary meaning, "former tenant" under this section includes any past

tenant to whom the property may have belonged. Pan v. IOC Realty Specialist, 301 Neb. 256, 918 N.W.2d 273 (2018).

Reading this section in conjunction with section 69-2312, a landlord would not be required to relinquish property to any party that is either (1) not a former tenant or (2) not a person who is reasonably believed by the landlord to be the owner of the personal property at issue. Pan v. IOC Realty Specialist, 301 Neb. 256, 918 N.W.2d 273 (2018).

The purpose of this section is to protect landlords from liability to the owners of personal property when the landlord erroneously surrenders property to a party other than the true owner but who the landlord reasonably believed was the owner. Conversely, if the requesting party is not a former tenant or a person that the landlord reasonably believes owns the personal property, the landlord would not be protected from liability under this section. Pan v. IOC Realty Specialist, 301 Neb. 256, 918 N.W.2d 273 (2018).

69-2312.

Under this section, the phrase "value of the personal property" in its relation to "[a]ctual damages" is the fair market value of the property at the time the tenant's property is improperly detained by the landlord. Pan v. IOC Realty Specialist, 301 Neb. 256, 918 N.W.2d 273 (2018).

69-2404.

The applicant was prohibited from purchasing or possessing a handgun where his conviction for third degree assault met the criteria for domestic violence under federal law due to the circumstances of the offense. Scalise v. Davis, 312 Neb. 518, 980 N.W.2d 27 (2022).

69-2408.

The false information on an application form, which can subject an applicant to this section, is not limited to the required information under section 69-2404 of the applicant's full name, address, date of birth, and country of citizenship and, if the applicant is not a U.S. citizen, as to the applicant's place of birth and his or her alien or admission number. State v. Hofmann, 310 Neb. 609, 967 N.W.2d 435 (2021).

69-2433.

A conviction for violating an Oklahoma statute prohibiting the transportation of a loaded pistol, rifle, or shotgun in a landborne motor vehicle over a public highway was sufficiently similar to section 37-522 to justify the denial of a concealed handgun permit application under subsection (8) of this section. Shurigar v. Nebraska State Patrol, 293 Neb. 606, 879 N.W.2d 25 (2016).

70-655.

A discount provided only to wholesale customers who renewed their contractual relationship with Nebraska Public Power District was not discriminatory under the circumstances. In re Application of Northeast Neb. Pub. Power Dist., 300 Neb. 237, 912 N.W.2d 884 (2018).

70-1008.

"Reintegration" for the purposes of section 70-1010 means "to restore to unity after disintegration" and is distinct from any accompanying loss of revenue that might be associated with a loss of load following a transfer of electrical services under this section and section 70-1010. In re Application of City of Neligh, 299 Neb. 517, 909 N.W.2d 73 (2018).

70-1010.

"Reintegration" for the purposes of this section means "to restore to unity after disintegration" and is distinct from any accompanying loss of revenue that might be associated with a loss of load following a transfer of electrical services under section 70-1008 and this section. In re Application of City of Neligh, 299 Neb. 517, 909 N.W.2d 73 (2018).

70-1301.

The Nebraska Power Review Board's jurisdiction to resolve wholesale electric rate disputes extends to contractual issues intertwined with such disputes. City of Sidney v. Municipal Energy Agency of Neb., 301 Neb. 147, 917

N.W.2d 826 (2018).

70-1306.

This section makes the Commercial Arbitration Rules of the American Arbitration Association, as amended and in effect March 1, 1977, the default procedural rules governing arbitration. City of Sidney v. Municipal Energy Agency of Neb., 301 Neb. 147, 917 N.W.2d 826 (2018).

This section provides an arbitration board with the authority to allow a party to amend its notice, substantive or not, at any time in the arbitrative proceedings. City of Sidney v. Municipal Energy Agency of Neb., 301 Neb. 147, 917 N.W.2d 826 (2018).

70-1327.

Despite de novo review, when credible evidence is in conflict on material issues of fact, the appellate court will consider and may give weight to the fact that the arbitration board under section 70-1301 et seq. observed the witnesses and accepted one version of the facts over another. In re Application of Northeast Neb. Pub. Power Dist., 300 Neb. 237, 912 N.W.2d 884 (2018).

On an appeal from the decision of an arbitration board convened under section 70-1301 et seq., trial in the appellate court is de novo on the record. In re Application of Northeast Neb. Pub. Power Dist., 300 Neb. 237, 912 N.W.2d 884 (2018).

71-445.

The State has not waived its sovereign immunity for claims arising under the Health Care Facility Licensure Act. Baker-Heser v. State, 309 Neb. 979, 963 N.W.2d 59 (2021).

71-930.

Because this section does not provide a direct right of appeal from an order issued in connection with section 71-935, a subject's right to appeal is grounded in sections 25-1901 to 25-1908. In re Interest of R.T., 30 Neb. App. 405, 969 N.W.2d 911 (2021).

71-947.

An attorney validly appointed by a court to assist an indigent subject in a habeas corpus proceeding challenging the subject's custody or treatment under the Sex Offender Commitment Act is entitled to attorney fees. D.I. v. Gibson, 295 Neb. 903, 890 N.W.2d 506 (2017).

71-1103.

The Legislature enacted the Developmental Disabilities Court-Ordered Custody Act to protect society when criminal proceedings are not possible. For example, if an individual is charged with a felony, but found incompetent to stand trial due to a developmental disability, this act applies. In re Interest of K.C., 313 Neb. 385, 984 N.W.2d 277 (2023).

71-1118.

An order of disposition under the Developmental Disabilities Court-Ordered Custody Act that deprives a subject of his or her liberty for an indeterminate period of time affects a substantial right and is made during a special proceeding. In re Interest of T.W., 314 Neb. 475, 991 N.W.2d 280 (2023).

In an appeal under the Developmental Disabilities Court-Ordered Custody Act, an appellate court reviews a district court's judgment or final order for errors appearing on the record. In re Interest of T.W., 314 Neb. 475, 991 N.W.2d 280 (2023).

The mere determination that an individual was a person in need of court-ordered custody and treatment, without further action, did not affect a substantial right. In other words, an order that merely authorized development of a plan for custody and treatment and scheduled a hearing to determine what custody and treatment should be ordered upon disposition, without imposing any custody or treatment, did not have a substantial effect on a substantial right and thus was not a final, appealable order under section 25-1902. In re Interest of K.C., 313 Neb. 385, 984 N.W.2d 277 (2023).

This section, which provides that the subject of a petition has the right to appeal a final decision of the court, incorporates the rules of appealability in civil matters, including section 25-1902. In re Interest of K.C., 313 Neb. 385, 984 N.W.2d 277 (2023).

71-1124.

The mere determination that an individual was a person in need of court-ordered custody and treatment, without further action, did not affect a substantial right. In other words, an order that merely authorized development of a plan for custody and treatment and scheduled a hearing to determine what custody and treatment should be ordered upon disposition, without imposing any custody or treatment, did not have a substantial effect on a substantial right and thus was not a final, appealable order under section 25-1902. In re Interest of K.C., 313 Neb. 385, 984 N.W.2d 277 (2023).

71-1126.

No error appeared on the record regarding the district court's imposition of additional conditions in its order of disposition; based on the evidence and inferences, the court could reasonably conclude that the greater weight of the evidence showed additional restrictions were necessary to achieve the least restrictive alternative. In re Interest of T.W., 314 Neb. 475, 991 N.W.2d 280 (2023).

The district court was empowered to accept or reject competing expert testimony regarding which placement constituted the least restrictive alternative. In re Interest of T.W., 314 Neb. 475, 991 N.W.2d 280 (2023).

71-1214.

The proper procedure to be followed when taking an appeal from a final order of the district court under this section is the general appeal procedure set forth in section 25-1912. In re Interest of L.T., 295 Neb. 105, 886 N.W.2d 525 (2016).

75-109.01.

Under subsection (2) of this section, the Public Service Commission's authority to regulate public grain warehouses is purely statutory, in contrast to its plenary authority to regulate common carriers under the state Constitution. Amend v. Nebraska Pub. Serv. Comm., 298 Neb. 617, 905 N.W.2d 551 (2018).

75-110.

The Public Service Commission has authority to take actions affecting parties subject to its jurisdiction if such action is taken pursuant to a statute. In re Application No. OP-0003, 303 Neb. 872, 932 N.W.2d 653 (2019).

75-134.02.

The words "file" and "filing" in this section mean that a motion for reconsideration must be in the possession of the Public Service Commission within 10 days after the effective date of the order in order to suspend the time for filing a notice of intention to appeal. In re App. No. C-4973 of Skrdlant, 305 Neb. 635, 942 N.W.2d 196 (2020).

75-136.

An appellate court reviews an order of the Nebraska Public Service Commission de novo on the record. In re Application No. OP-0003, 303 Neb. 872, 932 N.W.2d 653 (2019).

75-362.

Pursuant to subdivision (31) of this section, when distinguishing between a motor carrier and a broker, the determinative question is whether the disputed party accepted legal responsibility to transport the shipment. Sparks v. M&D Trucking, 301 Neb. 977, 921 N.W.2d 110 (2018).

Even if the regulatory scheme governing intrastate motor carriers was applicable to common-law concepts of respondeat superior liability in a tort action, a general contractor that was a registered motor carrier, and that hired another registered motor carrier to transport construction debris, was not the statutory employer of the hired carrier or its truckdriver and, thus, could not be held vicariously liable to automobile passenger who was injured in a collision with the hired carrier's truck while the driver was under the influence of drugs; regulatory scheme

contemplated a relationship between a registered motor carrier and a private truck owner or driver that was not a registered motor carrier, and did not impose an agency relationship when the independent contractor was also a registered motor carrier. Cruz v. Lopez, 301 Neb. 531, 919 N.W.2d 479 (2018).

Under the plain language of "employee" and "employer," as used in the statutes governing intrastate motor carriers and adopting certain federal motor carrier safety regulations, a registered motor carrier that is also an employer of the drivers of its commercial motor vehicles cannot at the same time be the statutory employee of another motor carrier acting as a general contractor for a particular job. Cruz v. Lopez, 301 Neb. 531, 919 N.W.2d 479 (2018).

75-363.

A motor carrier may combine more than one policy, and use more than one method, to meet the minimum financial responsibility requirements. Shelter Ins. Co. v. Gomez, 306 Neb. 607, 947 N.W.2d 92 (2020).

Compliance with the minimum financial responsibility requirements in this section is the responsibility of the motor carrier, not the insurer. Shelter Ins. Co. v. Gomez, 306 Neb. 607, 947 N.W.2d 92 (2020).

This section does not regulate the terms and conditions of insurance policies. Shelter Ins. Co. v. Gomez, 306 Neb. 607, 947 N.W.2d 92 (2020).

76-106.

This section eliminates common-law technicalities and exactions regarding the language used to make a reservation in a deed; whether a provision is a reservation does not depend upon the use of a particular word but upon the character and effect of the provision itself. Walters v. Sporer, 298 Neb. 536, 905 N.W.2d 70 (2017).

76-251.

Where there is evidence the parties intended the special warranty deed as security for a loan and the finder of fact determined such was true, the deed could be construed as a mortgage, and the purported forgiveness of the loan could be seen to operate as a relinquishment of the ownership interest in the home. The question then of whether the loan was forgiven is a material issue of fact as it affects the determination of title and outcome of the partition claim and, thus, summary judgment on partition is inappropriate. Humphrey v. Smith, 311 Neb. 632, 974 N.W.2d 293 (2022).

76-2,120.

If a conveyance of real property is not made in compliance with this section, the purchaser shall have a cause of action against the seller and may recover the actual damages, court costs, and reasonable attorney fees. Hutchison v. Kula, 27 Neb. App. 96, 927 N.W.2d 373 (2019).

Sellers must complete the disclosure statement to the best of their belief and knowledge as of the date it was completed and signed, and as they are otherwise required by law to update before closing on the property. Hutchison v. Kula, 27 Neb. App. 96, 927 N.W.2d 373 (2019).

To state a cause of action under this section, the buyer must plead and prove either that the seller failed to provide a disclosure statement or that the statement contained knowingly false disclosures by the seller. Hutchison v. Kula, 27 Neb. App. 96, 927 N.W.2d 373 (2019).

76-705.

This section includes compensation for property that is damaged, in addition to property that is taken. Russell v. Franklin County, 27 Neb. App. 684, 934 N.W.2d 517 (2019).

A job is not the type of property for which inverse condemnation claims can be brought. Craw v. City of Lincoln, 24 Neb. App. 788, 899 N.W.2d 915 (2017).

76-717.

This section provides that only when a district court orders an appealing party to file a petition on appeal does it become necessary for the court to impose such sanctions as are reasonable. Pinnacle Enters. v. City of Papillion, 302 Neb. 297, 923 N.W.2d 372 (2019).

76-726.

An affidavit is admissible to introduce evidence relating to an award of attorney fees under this section. TransCanada Keystone Pipeline v. Nicholas Family, 299 Neb. 276, 908 N.W.2d 60 (2018).

"Incurred" under the plain language of this section means that landowners be indebted to counsel for services rendered and that the fees charged be reasonable. TransCanada Keystone Pipeline v. Nicholas Family, 299 Neb. 276, 908 N.W.2d 60 (2018).

Landowners seeking the reimbursement of fees owed under this section need not show that the fees sought were actually paid, but only that they were actually incurred. TransCanada Keystone Pipeline v. Nicholas Family, 299 Neb. 276, 908 N.W.2d 60 (2018).

76-875.

A judgment against a condominium association results in a lien against each of the units. But a party who obtains a judgment for money against a condominium association may not levy execution against a unit owned by someone other than the condominium association. McGill Restoration v. Lion Place Condo. Assn., 313 Neb. 658, 986 N.W.2d 32 (2023).

76-876.

The Nebraska Nonprofit Corporation Act applies broadly to all nonprofit corporations, whereas the Nebraska Condominium Act applies only to condominium regimes and condominium owners. To the extent that there is conflict between two statutes on the same subject, the specific statute controls over the general statute. Dunbar v. Twin Towers Condo. Assn., 26 Neb. App. 354, 920 N.W.2d 1 (2018).

This section does not confer on condominium owners the right to make copies of all records; rather, it gives them the right to examine all of them. Dunbar v. Twin Towers Condo. Assn., 26 Neb. App. 354, 920 N.W.2d 1 (2018).

This section, rather than the Nebraska Nonprofit Corporation Act, controls a condominium owner's right to examine all financial and other records of its association. Dunbar v. Twin Towers Condo. Assn., 26 Neb. App. 354, 920 N.W.2d 1 (2018).

76-1006.

Section 76-1012 provides a trustor the ability to cure a default on an obligation secured by a trust deed prior to a trustee's sale and have the trust deed reinstated. While section 76-1012 contemplates and references the filing of a notice of default, it does not itself require the notice of default or specify the necessary contents of a notice of default, which requirements are set forth in this section. Section 76-1012 adds no additional requirements for notices of default to those in this section. First Nat. Bank North Platte v. Cardenas, 299 Neb. 497, 909 N.W.2d 79 (2018).

This section imposes the requirement for notices of default, while section 76-1012 provides the means by which a trustor may cure the default of an obligation secured by a trust deed. First Nat. Bank North Platte v. Cardenas, 299 Neb. 497, 909 N.W.2d 79 (2018).

This section includes detailed requirements that a trustee must satisfy prior to exercising the power of sale in a trust deed. A trustee must file with the county register of deeds a notice of default identifying the trust deed, stating that a breach of the obligation secured by the trust deed has occurred, setting forth the nature of the breach, and stating its election to sell the property to satisfy the obligation. First Nat. Bank North Platte v. Cardenas, 299 Neb. 497, 909 N.W.2d 79 (2018).

76-1008.

A proper reading of this section provides that unless the person or institution is a party to the trust deed at issue, that person or institution is not entitled to notice unless it is requested under subsection (1) of this section. First Neb. Ed. Credit Union v. U.S. Bancorp, 293 Neb. 308, 877 N.W.2d 578 (2016).

76-1012.

Section 76-1006 imposes the requirement for notices of default, while this section provides the means by which a trustor may cure the default of an obligation secured by a trust deed. First Nat. Bank North Platte v. Cardenas, 299 Neb. 497, 909 N.W.2d 79 (2018).

This section provides a trustor the ability to cure a default on an obligation secured by a trust deed prior to a trustee's sale and have the trust deed reinstated. While this section contemplates and references the filing of a notice of default, it does not itself require the notice of default or specify the necessary contents of a notice of default, which requirements are set forth in section 76-1006. This section adds no additional requirements for notices of default to those in section 76-1006. First Nat. Bank North Platte v. Cardenas, 299 Neb. 497, 909 N.W.2d 79 (2018).

This section provides that in order to cure a default, the trustor must pay to the beneficiary the entire amount then due. Thus, a default must be cured by tendering payment. A tender of payment is more than being willing and able to pay. It is an offer to perform, coupled with the present ability of immediate performance, which, were it not for the refusal of cooperation by the party to whom tender is made, would immediately satisfy the condition or obligation for which the tender is made. First Nat. Bank North Platte v. Cardenas, 299 Neb. 497, 909 N.W.2d 79 (2018).

76-1013.

This section provides a mechanism for creditors to recover a deficiency judgment for amounts still due and owing after a trustee's sale. First Nat. Bank North Platte v. Cardenas, 299 Neb. 497, 909 N.W.2d 79 (2018).

Under this section, a below fair market value sale would reduce the amount the creditor could recover in a deficiency action. But, depending upon the mathematics of the transaction, a below market sale would not necessarily be a total bar to a recovery of a deficiency. First Nat. Bank North Platte v. Cardenas, 299 Neb. 497, 909 N.W.2d 79 (2018).

76-1410.

The appellant was not a tenant as defined by this section of the Uniform Residential Landlord and Tenant Act, because the lease agreement was between the management agent and the appellant's wife, but not the appellant himself, and no lease agreement existed between the management agent and the appellant; furthermore, the appellant was not otherwise listed as an occupant on the lease. Where a forcible entry and detainer action is not brought under the Uniform Residential Landlord and Tenant Act, the action is controlled by sections 25-21,219 to 25-21,235. Lund Co. v. Clark, 30 Neb. App. 351, 967 N.W.2d 759 (2021).

76-1418.

A tenant who accepts possession and lives on the property for several months thereafter does not have a claim under this section, because the duties described in this section pertain to the "commencement" of the lease term. Vasquez v. CHI Properties, 302 Neb. 742, 925 N.W.2d 304 (2019).

76-1419.

The duties set forth in this section to comply with minimum housing codes materially affecting health and safety and to "put and keep" the premises in a fit and habitable condition are not limited under the plain language to conditions arising after commencement of the lease term. Vasquez v. CHI Properties, 302 Neb. 742, 925 N.W.2d 304 (2019).

76-1425.

So long as a tenant has given notice when required by section 76-1419, a tenant can seek damages or injunctive relief under subsection (2) of this section without sending notice under subsection (1) of this section specifying that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice of the breach, if not remedied within 14 days. Vasquez v. CHI Properties, 302 Neb. 742, 925 N.W.2d 304 (2019).

The conjunction "and" in subsection (2) of this section "serves to vest a tenant with two distinct options for relief" and does not require that both be pursued in order to pursue either. Vasquez v. CHI Properties, 302 Neb. 742, 925 N.W.2d 304 (2019).

76-1439.

A separate action for termination of a rental agreement is not a prerequisite to termination under this section. Vasquez v. CHI Properties, 302 Neb. 742, 925 N.W.2d 304 (2019).

76-2005.

A right of first refusal is a nonvested property interest. Walters v. Sporer, 298 Neb. 536, 905 N.W.2d 70 (2017).

76-2403.

This section and section 76-2417(3)(a) do not limit a seller's agent's duty to disclose facts only when he or she has actual knowledge of the existence of a material defect or only when he or she has knowledge that a home needs extensive repair. Rather, these sections contemplate whether seller's agent knew of any facts which significantly affected the desirability or value of the property and which were not reasonably ascertainable or known by the buyers, pertaining to the physical condition of the property or any material defects in the property. Hinson v. Forehead, 30 Neb. App. 55, 965 N.W.2d 793 (2021).

76-2417.

Section 76-2403 and subdivision (3)(a) of this section do not limit a seller's agent's duty to disclose facts only when he or she has actual knowledge of the existence of a material defect or only when he or she has knowledge that a home needs extensive repair. Rather, the statutes contemplate whether the seller's agent knew of any facts which significantly affected the desirability or value of the property and which were not reasonably ascertainable or known by the buyers, pertaining to the physical condition of the property or any material defects in the property. Hinson v. Forehead, 30 Neb. App. 55, 965 N.W.2d 793 (2021).

77-101.

This section did not require the definition of "[d]epreciable tangible personal property" in section 77-119 to be used to define "depreciable repairs or parts" in section 77-2708.01, because the term "repairs" in section 77-2708.01 made the phrases contextually different. Farmers Co-op v. State, 296 Neb. 347, 893 N.W.2d 728 (2017).

77-119.

Section 77-101 did not require the definition of "[d]epreciable tangible personal property" in this section to be used to define "depreciable repairs or parts" in section 77-2708.01, because the term "repairs" in section 77-2708.01 made the phrases contextually different. Farmers Co-op v. State, 296 Neb. 347, 893 N.W.2d 728 (2017).

77-202.

A conservation group qualified as a "charitable organization" for purposes of subdivision (1)(d) of this section. Platte River Crane Trust v. Hall Cty. Bd. of Equal., 298 Neb. 970, 906 N.W.2d 646 (2018).

A tax exemption for charitable use is allowed because those exemptions benefit the public generally and the organization performs services which the state is relieved pro tanto from performing. Platte River Crane Trust v. Hall Cty. Bd. of Equal., 298 Neb. 970, 906 N.W.2d 646 (2018).

77-1327.

Section 77-5027(3) does not require the Property Tax Administrator to set out every property sale that the Department of Revenue's assessment division has included in its statistical analyses under subsection (3) of this section. County of Webster v. Nebraska Tax Equal. & Rev. Comm., 296 Neb. 751, 896 N.W.2d 887 (2017).

The Property Tax Administrator's required reports under subsection (3) of this section are competent evidence to support an equalization order under section 77-5026 without including the sales file information for each real property transaction. Accordingly, in a show cause hearing under section 77-5026, a county has the burden to demonstrate that the Tax Equalization and Review Commission should not rely on the reports. County of Webster v. Nebraska Tax Equal. & Rev. Comm., 296 Neb. 751, 896 N.W.2d 887 (2017).

77-1333.

In calculating the actual value of rent-restricted housing projects for each assessment year using the income approach, this section requires a county assessor to use income and expense data from the prior year only, which is timely filed as described in subsection (5), and to use no income or expense data from other years. Lincoln Cty. Bd. of Equal. v. Western Tabor Ranch Apts., 314 Neb. 582, 991 N.W.2d 889 (2023).

Subsections (9) through (11) of this section contemplate scenarios where the capitalization rate should be adjusted or where, because of unique circumstances, the income-approach methodology will not result in the most accurate

determination of actual value of the rent-restricted project. Lincoln Cty. Bd. of Equal. v. Western Tabor Ranch Apts., 314 Neb. 582, 991 N.W.2d 889 (2023).

The Tax Equalization and Review Commission has the power and duty to determine on appeal whether the income approach would result in actual value and to substitute whatever method it deems suitable to determine actual value. Lincoln Cty. Bd. of Equal. v. Western Tabor Ranch Apts., 314 Neb. 582, 991 N.W.2d 889 (2023).

77-1343.

The county assessor's valuation of homesite acres was not arbitrary, capricious, or unreasonable, where the valuation was based on the sale of similarly sized parcels within the same market and where sufficient differences justified the $14,000 difference in valuation from another nearby property. Burdess v. Washington Cty. Bd. of Equal., 298 Neb. 166, 903 N.W.2d 35 (2017).

The county assessor's valuation of wasteland was not arbitrary, capricious, or unreasonable, where the valuation was based on a market analysis of arm's-length sales of property sold, subject to certain probable and legal agricultural purposes and uses. Burdess v. Washington Cty. Bd. of Equal., 298 Neb. 166, 903 N.W.2d 35 (2017).

The special valuation statutes were enacted because of the economic impact that urban development and other nonagricultural development have on neighboring agricultural and horticultural land. Special valuation protects persons engaged in agricultural endeavors from excessive tax burdens that might force them to discontinue those endeavors. Burdess v. Washington Cty. Bd. of Equal., 298 Neb. 166, 903 N.W.2d 35 (2017).

77-1344.

The greenbelt tax status of agricultural land does not qualify as particular evidence of rural character. County of Sarpy v. City of Gretna, 309 Neb. 320, 960 N.W.2d 272 (2021).

77-1501.

County boards of equalization can exercise only such powers as are expressly granted to them by statute, and statutes conferring power and authority upon a county board of equalization are strictly construed. Hilt v. Douglas Cty. Bd. of Equal., 30 Neb. App. 425, 970 N.W.2d 113 (2021).

77-1502.

When a protest of property valuation is not timely filed on or before June 30 as required under subsection (1) of this section, the county board of equalization lacks statutory authority to review and decide the merits of the protest, and it does not have statutory authority to do anything other than dismiss the protest. Mid America Agri Prods. v. Perkins Cty. Bd. Of Equal., 312 Neb. 341, 979 N.W.2d 95 (2022).

77-1507.01.

A presumption exists that a county board of equalization has faithfully performed its official duties in making a property tax assessment and has acted upon sufficient competent evidence to justify its action. The presumption disappears when competent evidence to the contrary is presented. Once the presumption is rebutted, whether the valuation assessed is reasonable becomes a question of fact based on all of the evidence. Cain v. Custer Cty. Bd. of Equal., 298 Neb. 834, 906 N.W.2d 285 (2018).

When the Tax Equalization and Review Commission hears a property tax protest and performs the factfinding functions that a county board of equalization would have if the county had timely provided notice to the taxpayer, the taxpayer's burden of persuasion is by a preponderance of the evidence. Cain v. Custer Cty. Bd. of Equal., 298 Neb. 834, 906 N.W.2d 285 (2018).

77-1801.

Efforts to collect taxes, either through the sale of a lien on the property or sale of the property itself, cannot be categorized as a taking under U.S. Const. amend. V or Neb. Const. art. I, sec. 21. Continental Resources v. Fair, 311 Neb. 184, 971 N.W.2d 313 (2022).

The issuance of a tax deed to a tax certificate sale purchaser does not impose a "fine" on the former property owner; therefore, the Excessive Fines Clause of U.S. Const. amend. VIII does not apply. Continental Resources v. Fair, 311 Neb. 184, 971 N.W.2d 313 (2022).

Under this section, properties with delinquent real estate taxes on or before the first Monday of March may be sold at a tax sale. HBI, L.L.C. v. Barnette, 305 Neb. 457, 941 N.W.2d 158 (2020).

Actions challenging title obtained via a tax deed are governed by statute. Adair Holdings v. Johnson, 304 Neb. 720, 936 N.W.2d 517 (2020).

77-1807.

The successful bidder under the bid-down procedure acquires only an interest in the undivided percentage of the real estate. Adair Asset Mgmt. v. Terry's Legacy, 293 Neb. 32, 875 N.W.2d 421 (2016).

77-1824.

A property owner may redeem a property sold at a tax sale with payment of the amount noted on the tax certificate, other taxes subsequently paid, and interest. HBI, L.L.C. v. Barnette, 305 Neb. 457, 941 N.W.2d 158 (2020).

If a property sold at a tax sale has not been redeemed after 3 years, there are two methods by which the holder of a tax certificate may acquire a deed to the property: the tax deed method and judicial foreclosure. HBI, L.L.C. v. Barnette, 305 Neb. 457, 941 N.W.2d 158 (2020).

A tax deed holder's misstatement of the time available for the redemption provided in a notice rendered the tax deed invalid, regardless of whether the record owner relied on the misstatement. Adair Holdings v. Johnson, 304 Neb. 720, 936 N.W.2d 517 (2020).

77-1827.

The district court did not err when it concluded that the plaintiff—who alleged she was entitled to the extended redemption under this section on the basis that her depression and anxiety qualified as a mental disorder—was not entitled to the extended redemption period, because the plaintiff had acknowledged she knew she had to pay her bills and there were consequences if she did not; the plaintiff had admitted that sometimes she failed to pay her bills because she lacked the money; the plaintiff had previously taken prompt action to respond to a notice from the city that required her to address certain conditions of her house; and an expert witness stated in his affidavit that, based on his review of the plaintiff's medical records, he saw no evidence that the plaintiff was unable to protect her rights. Nieveen v. TAX 106, 311 Neb. 574, 974 N.W.2d 15 (2022).

A person with a "mental disorder" under this section is one who suffers from a condition of mental derangement which actually prevents the sufferer from understanding his or her legal rights or from instituting legal action, and a mental disorder within the meaning of this section is an incapacity which disqualifies one from acting for the protection of one's rights. Wisner v. Vandelay Investments, 300 Neb. 825, 916 N.W.2d 698 (2018).

This section extends the redemption period for a mental disorder only if the owner had a mental disorder at the time of the property's sale. Wisner v. Vandelay Investments, 300 Neb. 825, 916 N.W.2d 698 (2018).

77-1831.

The notice period of 3 months before a tax certificate purchaser could apply for a tax deed was adequate and did not violate the property owner's procedural due process rights under U.S. Const. amend. XIV or Neb. Const. art. I, sec. 3. Continental Resources v. Fair, 311 Neb. 184, 971 N.W.2d 313 (2022).

This section does not contain language requiring the party applying for the tax deed to be included in the notice. HBI, L.L.C. v. Barnette, 305 Neb. 457, 941 N.W.2d 158 (2020).

A misstatement in the statutory notice of the expiration of the time of redemption renders the tax deed invalid. Adair Holdings v. Johnson, 304 Neb. 720, 936 N.W.2d 517 (2020).

A tax deed holder's misstatement of the time available for the redemption provided in a notice rendered the tax deed invalid, regardless of whether the record owner relied on the misstatement. Adair Holdings v. Johnson, 304 Neb. 720, 936 N.W.2d 517 (2020).

77-1832.

Under this section, notice may be sent by certified mail, return receipt requested, to the address where the property tax statement is mailed. HBI, L.L.C. v. Barnette, 305 Neb. 457, 941 N.W.2d 158 (2020).

Under this section, service need only be provided to the owner of record at the address where the property tax statement was mailed and may only be done by certified mail, return receipt requested. Wisner v. Vandelay Investments, 300 Neb. 825, 916 N.W.2d 698 (2018).

77-1834.

In contrast to section 25-520.01, this section does not require that the published notice be mailed to all parties having a direct legal interest in the action when the party's name and address are known. HBI, L.L.C. v. Barnette, 305 Neb. 457, 941 N.W.2d 158 (2020).

Notice by publication is permitted under this section upon proof of compliance with section 77-1832 if the record owner lives at the address where the property tax statement was mailed. HBI, L.L.C. v. Barnette, 305 Neb. 457, 941 N.W.2d 158 (2020).

This section only authorizes service by publication in the county where the property at issue is located. HBI, L.L.C. v. Barnette, 305 Neb. 457, 941 N.W.2d 158 (2020).

77-1837.

Under this section, a tax deed acts to convey property to the purchaser of a tax sale certificate or his or her assignee and may be issued by the county treasurer after proper notice is provided. HBI, L.L.C. v. Barnette, 305 Neb. 457, 941 N.W.2d 158 (2020).

77-1843.

A misstatement in the statutory notice of the expiration of the time of redemption renders the tax deed invalid. Adair Holdings v. Johnson, 304 Neb. 720, 936 N.W.2d 517 (2020).

A record owner's attempt to tender payment to the county treasurer for all taxes due upon the property complied with this section's requiring that all such taxes be "paid" by a person seeking to challenge a tax deed and gave the record owner standing to assert a claim seeking to set aside the tax deed, though the record owner's attempted tender took place outside of the statutory redemption period; the record owner attempted tender within the redemption period set forth in a public notice by the holder of the tax deed, and the treasurer refused to accept the tender because the tax deed had already issued. Adair Holdings v. Johnson, 304 Neb. 720, 936 N.W.2d 517 (2020).

This section has a jurisdictional component that renders a tax deed void when the tax deed holder failed to comply with the statutory notice requirements prior to acquiring the deed. Adair Holdings v. Johnson, 304 Neb. 720, 936 N.W.2d 517 (2020).

77-1844.

The plaintiff did more than question the title when the plaintiff's counterclaim and third-party complaint sought both damages and an order directing the defendant or the county to pay the plaintiff the value of the equity the plaintiff had in the property, less the tax debt. Continental Resources v. Fair, 311 Neb. 184, 971 N.W.2d 313 (2022).

The plaintiff had standing to challenge the tax deed statute on certain state and federal constitutional grounds, despite not paying nor tendering payment of the taxes, because the plaintiff's requests for relief extended beyond merely questioning the title. Continental Resources v. Fair, 311 Neb. 184, 971 N.W.2d 313 (2022).

A record owner's attempt to tender payment to the county treasurer for all taxes due upon the property complied with this section's requiring that all such taxes be "paid" by a person seeking to challenge a tax deed and gave the record owner standing to assert a claim seeking to set aside the tax deed, though the record owner's attempted tender took place outside of the statutory redemption period; the record owner attempted tender within the redemption period set forth in a public notice by the holder of the tax deed, and the treasurer refused to accept the tender because the tax deed had already issued. Adair Holdings v. Johnson, 304 Neb. 720, 936 N.W.2d 517 (2020).

The standing requirement that the taxes are "paid" under this section includes tendering payment. Adair Holdings v. Johnson, 304 Neb. 720, 936 N.W.2d 517 (2020).

This section sets forth the conditions precedent to questioning title conveyed under a tax deed; to obtain standing to redeem property after the issuance of a tax deed, even if title under a tax deed is void or voidable, a party must satisfy these conditions precedent. Wisner v. Vandelay Investments, 300 Neb. 825, 916 N.W.2d 698 (2018).

To comply with this section, a party only needs to show that it has tendered the tax payment to the treasurer, not

that the taxes have actually been paid. Wisner v. Vandelay Investments, 300 Neb. 825, 916 N.W.2d 698 (2018).

To satisfy the tax payment requirement in this section, a party must show the tender or payment of taxes due to the county treasurer. Wisner v. Vandelay Investments, 300 Neb. 825, 916 N.W.2d 698 (2018).

77-1902.

Judicial foreclosure requires the holder of a tax certificate to foreclose on the lien for taxes in the district court of the county where the property is located. HBI, L.L.C. v. Barnette, 305 Neb. 457, 941 N.W.2d 158 (2020).

Where the successful bidder purchased a tax sale certificate by bidding down to a 1-percent undivided interest of property, its lien to be judicially foreclosed was limited to 1 percent of the property. Adair Asset Mgmt. v. Terry's Legacy, 293 Neb. 32, 875 N.W.2d 421 (2016).

77-2002.

In determining whether to impose inheritance tax under subdivision (1)(b) of this section on a transferred interest in property, a court must consider all the surrounding circumstances of the transfer rather than simply the form of the transferring legal documents, in order to determine if a decedent intended, as a matter of fact rather than a technical vesting of title or estates, to retain a substantial economic benefit or actual use of the property until death. In re Estate of Lofgreen, 312 Neb. 937, 981 N.W.2d 585 (2022).

77-2004.

Factual findings necessary in determining whether the requisite acknowledged parent-child relationship of this section exists should be reviewed for sufficient evidence and should not be disturbed on appeal unless clearly wrong. In re Estate of Chambers, 27 Neb. App. 398, 932 N.W.2d 343 (2019).

The following factors serve as appropriate guideposts to the trial court in making a determination of an acknowledged relationship of a parent under this section: (1) reception of the child into the home and treatment of the child as a member of the family, (2) assumption of the responsibility for support beyond occasional gifts and financial aid, (3) exercise of parental authority and discipline, (4) relationship by blood or marriage, (5) advice and guidance to the child, (6) sharing of time and affection, and (7) existence of written documentation evincing the decedent's intent to act as parent. In re Estate of Chambers, 27 Neb. App. 398, 932 N.W.2d 343 (2019).

Factual findings necessary in determining whether the requisite acknowledged parent-child relationship of this section exists should be reviewed for sufficient evidence and should not be disturbed on appeal unless clearly wrong. In re Estate of Sedlacek, 27 Neb. App. 390, 932 N.W.2d 91 (2019).

The Nebraska Supreme Court has identified the following factors as appropriate guideposts to the trial court in making a determination of an acknowledged relationship of a parent under this section: (1) reception of the child into the home and treatment of the child as a member of the family, (2) assumption of the responsibility for support beyond occasional gifts and financial aid, (3) exercise of parental authority and discipline, (4) relationship by blood or marriage, (5) advice and guidance to the child, (6) sharing of time and affection, and (7) existence of written documentation evincing the decedent's intent to act as a parent. In re Estate of Sedlacek, 27 Neb. App. 390, 932 N.W.2d 91 (2019).

77-2011.

Where a will directs that inheritance taxes be paid out of the residuary estate, but there is no residuary estate or the residuary estate is insufficient to pay the inheritance taxes, the direction in the will fails, and the default statutory rule placing the burden of inheritance taxes on the individual beneficiaries receiving the property applies. In re Estate of Larson, 311 Neb. 352, 972 N.W.2d 891 (2022).

77-2018.02.

Published notice is not a prerequisite of a county court's subject matter jurisdiction of an independent proceeding for the sole purpose of determining Nebraska inheritance tax; rather, such jurisdiction is invoked by the filing of a petition to initiate the proceeding. In re Estate of Marsh, 307 Neb. 893, 951 N.W.2d 486 (2020).

The county court has subject matter jurisdiction of an independent proceeding brought for the sole purpose of determining Nebraska inheritance tax. In re Estate of Marsh, 307 Neb. 893, 951 N.W.2d 486 (2020).

Although subsection (5) of this section states that the court may dispense with the notice required under

subsections (2) and (3), the court is ultimately responsible for determining the inheritance tax. In re Estate of Chambers, 27 Neb. App. 398, 932 N.W.2d 343 (2019).

77-2018.03.

This section, while authorizing the county attorney to stipulate to facts regarding the determination of inheritance tax which could be presented by evidence to the county court, does not require the court to accept the stipulated facts. In re Estate of Chambers, 27 Neb. App. 398, 932 N.W.2d 343 (2019).

77-2701.10.

Where the statutes allow contractors a choice as to how they are taxed and where certain exceptions are provided, there is no conflict between subdivision (2) of this section, which allows a contractor to pay sales tax as a consumer, and subdivision (2)(e) of section 77-2701.16, which requires the payment of tax on the "furnishing, installing, or connecting" of mobile telecommunications services. Diversified Telecom Servs. v. State, 306 Neb. 834, 947 N.W.2d 550 (2020).

77-2701.16.

Where the statutes allow contractors a choice as to how they are taxed and where certain exceptions are provided, there is no conflict between subdivision (2) of section 77-2701.10, which allows a contractor to pay sales tax as a consumer, and subdivision (2)(e) of this section, which requires the payment of tax on the "furnishing, installing, or connecting" of mobile telecommunications services. Diversified Telecom Servs. v. State, 306 Neb. 834, 947 N.W.2d 550 (2020).

77-2701.34.

When determining whether property is being leased in the normal course of a taxpayer's business, a court may consider factors including, but not limited to, whether the leases are entered into with consumers who are related to or associated with the taxpayer, whether the terms of the leases and the parties' subsequent conduct reflect an arm's-length business transaction, whether the leases produced reasonable revenue for the taxpayer's business in relation to operating expenses, and whether the taxpayer held itself out to the public as being in the business of leasing the property. Big Blue Express v. Nebraska Dept. of Rev., 309 Neb. 838, 962 N.W.2d 528 (2021).

77-2701.35.

The credit a motor vehicle lessor received from a dealer for a used vehicle was not a "trade-in credit," because the dealer resold the used vehicle before it sold the new vehicle to the lessor; thus, the dealer did not take the used vehicle as all or part of the consideration for the purchase of a new vehicle. Gelco Fleet Trust v. Nebraska Dept. of Rev., 312 Neb. 49, 978 N.W.2d 12 (2022).

77-2701.46.

For purposes of the statutory definition of "manufacturing," "reduce" means "to diminish in size, amount, extent, or number," and "transform" means "to change the outward former appearance" or "to change in character or condition." Ash Grove Cement Co. v. Nebraska Dept. of Rev., 306 Neb. 947, 947 N.W.2d 731 (2020).

77-2703.

A motor vehicle lessor's transactions with a dealer were two independent transactions that did not meet statutory criteria for a trade-in credit on sales tax for the purchase of a new vehicle. Gelco Fleet Trust v. Nebraska Dept. of Rev., 312 Neb. 49, 978 N.W.2d 12 (2022).

This section places the legal incidence of admissions taxes on the consumer, not the retailer. Therefore, the consumer, and not the retailer, has standing to claim a refund of admissions taxes under section 77-2708. Aline Bae Tanning v. Nebraska Dept. of Rev., 293 Neb. 623, 880 N.W.2d 61 (2016).

77-2708.

Section 77-2703 places the legal incidence of admissions taxes on the consumer, not the retailer. Therefore, the consumer, and not the retailer, has standing to claim a refund of admissions taxes under this section. Aline Bae Tanning v. Nebraska Dept. of Rev., 293 Neb. 623, 880 N.W.2d 61 (2016).

77-2708.01.

"[D]epreciable repairs or parts" means repairs or parts that appreciably prolong the life of the property, arrest its deterioration, or increase its value or usefulness, and are ordinarily capital expenditures for which a deduction is allowed only through the depreciation recovery allowance. Farmers Co-op v. State, 296 Neb. 347, 893 N.W.2d 728 (2017).

Section 77-101 did not require the definition of "[d]epreciable tangible personal property" in section 77-119 to be used to define "depreciable repairs or parts" in this section, because the term "repairs" in this section made the phrases contextually different. Farmers Co-op v. State, 296 Neb. 347, 893 N.W.2d 728 (2017).

The legislative intent of creating the refund for "depreciable repairs or parts" in this section was to prevent double taxation but also to ensure that all depreciable repairs and parts were subject to personal property tax. Farmers Co-op v. State, 296 Neb. 347, 893 N.W.2d 728 (2017).

The party claiming a tax refund must establish its entitlement to the refund. Farmers Co-op v. State, 296 Neb. 347, 893 N.W.2d 728 (2017).

77-2714.01.

Where facts are conflicting or where there is any reasonable doubt, the presumption is in favor of an original, or former, domicile, as against an acquired one. Acklie v. Nebraska Dept. of Rev., 313 Neb. 28, 982 N.W.2d 228 (2022).

An individual's subjective intent is not dispositive of domicile if a limited visa of a foreign country is intended to restrict intent, for an intent inconsistent with law is unrealistic and insufficient to establish a domicile. Houghton v. Nebraska Dept. of Rev., 308 Neb. 188, 953 N.W.2d 237 (2021).

To acquire a domicile by choice, there must be both (1) residence through bodily presence in the new locality and (2) an intention to remain there; to change domicile, there must be an intention to abandon the old domicile. Houghton v. Nebraska Dept. of Rev., 308 Neb. 188, 953 N.W.2d 237 (2021).

77-2715.08.

This section does not include any "economic activity" or "business purpose" requirements for creating a qualified corporation and merely sets forth certain requirements for the shareholders at one specific point in time for the special capital gains election. Stewart v. Nebraska Dept. of Rev., 294 Neb. 1010, 885 N.W.2d 723 (2016).

77-2715.09.

Taxpayers' election to receive special capital gains/extraordinary dividend treatment available only to someone domiciled in Nebraska militated against a finding that taxpayers possessed intent to abandon their Nebraska domicile. Houghton v. Nebraska Dept. of Rev., 308 Neb. 188, 953 N.W.2d 237 (2021).

This section does not contain language discussing underlying sales and transactions or requiring a purpose for taking actions to comply with the section other than qualifying for the special capital gains election. Courts and executive agencies lack the authority to add such language where a statute is clear and not ambiguous. Stewart v. Nebraska Dept. of Rev., 294 Neb. 1010, 885 N.W.2d 723 (2016).

77-2781.

Taxpayers had the burden of proof to show they possessed the intent to abandon their Nebraska domicile and remain indefinitely in a foreign country. Houghton v. Nebraska Dept. of Rev., 308 Neb. 188, 953 N.W.2d 237 (2021).

77-5016.

Where the only issue raised on appeal to the Nebraska Tax Equalization and Review Commission was whether a natural resources district's parcels were being used for a public purpose as required for property tax exemption, the commission lacked jurisdiction to consider questions beyond whether the parcels were being used for a public purpose, including whether the parcels were leased at fair market value and whether assessment of taxes to surface lessees would violate due process. Upper Republican NRD v. Dundy Cty. Bd. of Equal., 300 Neb. 256, 912 N.W.2d 796 (2018).

The procedures for a hearing to show cause why an adjustment should not be made to a county's valuation of a class or subclass of real property are not governed by subdivision (4) of this section. Instead, the show cause hearing is part of equalization procedures under sections 77-5022, 77-5023, and 77-5026. County of Webster v. Nebraska Tax Equal. & Rev. Comm., 296 Neb. 751, 896 N.W.2d 887 (2017).

77-5019.

Questions of law arising during appellate review of Tax Equalization and Review Commission decisions are reviewed de novo. Cain v. Custer Cty. Bd. of Equal., 298 Neb. 834, 906 N.W.2d 285 (2018).

On appeal, an order that subsection (5) of this section defines as a "final decision" is reviewed for error on the record. When reviewing a judgment for errors appearing on the record, an appellate court's inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. County of Webster v. Nebraska Tax Equal. & Rev. Comm., 296 Neb. 751, 896 N.W.2d 887 (2017).

When reviewing a judgment 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. An agency decision is supported by competent evidence, sufficient evidence, or substantial evidence if the agency could reasonably have found the facts as it did on the basis of the testimony and exhibits contained in the record before it. Agency action is arbitrary, capricious, and unreasonable if it is taken in disregard of the facts or circumstances of the case, without some basis which would lead a reasonable and honest person to the same conclusion. Agency action taken in disregard of the agency's own substantive rules is also arbitrary and capricious. County of Douglas v. Nebraska Tax Equal. & Rev. Comm., 296 Neb. 501, 894 N.W.2d 308 (2017).

A service of summons within 30 days of the filing of the petition for review of the Tax Equalization and Review Commission's decision is necessary to confer subject matter jurisdiction upon the Nebraska Court of Appeals. Hilt v. Douglas Cty. Bd. of Equal., 30 Neb. App. 425, 970 N.W.2d 113 (2021).

77-5022.

The procedures for a hearing to show cause why an adjustment should not be made to a county's valuation of a class or subclass of real property are not governed by section 77-5016(4). Instead, the show cause hearing is part of equalization procedures under this section and sections 77-5023 and 77-5026. County of Webster v. Nebraska Tax Equal. & Rev. Comm., 296 Neb. 751, 896 N.W.2d 887 (2017).

77-5023.

The procedures for a hearing to show cause why an adjustment should not be made to a county's valuation of a class or subclass of real property are not governed by section 77-5016(4). Instead, the show cause hearing is part of equalization procedures under this section and sections 77-5022 and 77-5026. County of Webster v. Nebraska Tax Equal. & Rev. Comm., 296 Neb. 751, 896 N.W.2d 887 (2017).

77-5026.

The procedures for a hearing to show cause why an adjustment should not be made to a county's valuation of a class or subclass of real property are not governed by section 77-5016(4). Instead, the show cause hearing is part of equalization procedures under this section and sections 77-5022 and 77-5023. County of Webster v. Nebraska Tax Equal. & Rev. Comm., 296 Neb. 751, 896 N.W.2d 887 (2017).

The Property Tax Administrator's required reports under section 77-1327(3) are competent evidence to support an equalization order under this section without including the sales file information for each real property transaction. Accordingly, in a show cause hearing under this section, a county has the burden to demonstrate that the Tax Equalization and Review Commission should not rely on the reports. County of Webster v. Nebraska Tax Equal. & Rev. Comm., 296 Neb. 751, 896 N.W.2d 887 (2017).

77-5027.

Subsection (3) of this section does not require the Property Tax Administrator to set out every property sale that the Department of Revenue's assessment division has included in its statistical analyses under section 77-1327(3). County of Webster v. Nebraska Tax Equal. & Rev. Comm., 296 Neb. 751, 896 N.W.2d 887 (2017).

77-5704.

Any term used in the Nebraska Advantage Act shall have the same meaning as used in chapter 77, article 27, of

Nebraska's statutes. Ash Grove Cement Co. v. Nebraska Dept. of Rev., 306 Neb. 947, 947 N.W.2d 731 (2020).

77-5715.

In the context of the Nebraska Advantage Act, "manufacturing" and "processing" have distinct meanings. In the absence of a statute or regulation indicating the contrary, the term "processing" means to subject to a particular method, system, or technique of preparation, handling or other treatment designed to prepare tangible personal property for market, manufacture, or other commercial use which does not result in the transformation of property into a substantially different character. Ash Grove Cement Co. v. Nebraska Dept. of Rev., 306 Neb. 947, 947 N.W.2d 731 (2020).

NEBRASKA UNIFORM COMMERCIAL CODE

UCC 9-406.

"Assignment" and its derivatives includes both outright transfers of ownership and presently exercisable security interests. First State Bank Neb. v. MP Nexlevel, 307 Neb. 198, 948 N.W.2d 708 (2020).

UCC 9-607.

Article 9 leaves to the agreement of the parties the circumstances giving rise to a default; default is whatever the security agreement says it is. First State Bank Neb. v. MP Nexlevel, 307 Neb. 198, 948 N.W.2d 708 (2020).

"Default" is not contingent on an adjudication or agreement and occurs, instead, when determined by the terms of the security agreement. First State Bank Neb. v. MP Nexlevel, 307 Neb. 198, 948 N.W.2d 708 (2020).

CONSTITUTION OF THE STATE OF NEBRASKA OF 1875, AND SUBSEQUENT AMENDMENTS

CONSTITUTION OF THE STATE OF NEBRASKA

ARTICLE I

BILL OF RIGHTS

Section
2. Slavery prohibited.
22. Elections to be free; identification required.

Sec. 2 Slavery prohibited.

There shall be neither slavery nor involuntary servitude in this state.

Source: Neb. Const. art. I, sec. 2 (1875); Amended 2020, Laws 2019, LR1CA, sec. 1.

Sec. 22 Elections to be free; identification required.

(1) All elections shall be free; and there shall be no hindrance or impediment to the right of a qualified voter to exercise the elective franchise.

(2) Before casting a ballot in any election, a qualified voter shall present valid photographic identification in a manner specified by the Legislature to ensure the preservation of an individual's rights under this Constitution and the Constitution of the United States.

Source: Neb. Const. art. I, sec. 22 (1875); Amended 2022, Initiative Measure No. 432.

ARTICLE III

LEGISLATIVE POWER

Section
24. Games of chance, lotteries, and gift enterprises; restrictions; use of state lottery proceeds; parimutuel wagering on horseraces; bingo games; laws relating to games of chance, applicability.

Sec. 24 Games of chance, lotteries, and gift enterprises; restrictions; use of state lottery proceeds; parimutuel wagering on horseraces; bingo games; laws relating to games of chance, applicability.

(1) Except as provided in this section, the Legislature shall not authorize any game of chance or any lottery or gift enterprise when the consideration for a chance to participate involves the payment of money for the purchase of property, services, or a chance or admission ticket or requires an expenditure of substantial effort or time.

(2) The Legislature may authorize and regulate a state lottery pursuant to subsection (3) of this section and other lotteries, raffles, and gift enterprises which are intended solely as business promotions or the proceeds of which are to be used solely for charitable or community betterment purposes without profit to the promoter of such lotteries, raffles, or gift enterprises.

(3)(a) The Legislature may establish a lottery to be operated and regulated by the State of Nebraska. The proceeds of the lottery shall be appropriated by the Legislature for the costs of establishing and maintaining the lottery and for the following purposes, as directed by the Legislature:

(i) The first five hundred thousand dollars after the payment of prizes and operating expenses shall be transferred to the Compulsive Gamblers Assistance Fund;

(ii) Forty-four and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Environmental Trust Fund to be used as provided in the Nebraska Environmental Trust Act;

(iii) Forty-four and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be used for education as the Legislature may direct;

(iv) Ten percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska State Fair Board if the most populous city within the county in which the fair is located provides matching funds equivalent to ten percent of the funds available for transfer. Such matching funds may be obtained from the city and any other private or public entity, except that no portion of such matching funds shall be provided by the state. If the Nebraska State Fair ceases operations, ten percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the General Fund; and

(v) One percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Compulsive Gamblers Assistance Fund.

(b) No lottery game shall be conducted as part of the lottery unless the type of game has been approved by a majority of the members of the Legislature.

(4) Nothing in this section shall be construed to prohibit (a) the enactment of laws providing for the licensing and regulation of wagering on the results of horseraces, wherever run, either within or outside of the state, by the parimutuel method, when such wagering is conducted by licensees within a licensed racetrack enclosure or (b) the enactment of laws providing for the licensing and regulation of bingo games conducted by nonprofit associations which have been in existence for a period of five years immediately preceding the application for license, except that bingo games cannot be conducted by agents or lessees of such associations on a percentage basis.

(5) This section shall not apply to any law which is enacted contemporaneously with the adoption of this subsection or at any time thereafter and which provides for the licensing, authorization, regulation, or taxation of all forms of games of chance when such games of chance are conducted by authorized gaming operators within a licensed racetrack enclosure.

Source: Neb. Const. art. III, sec. 21 (1875); Amended 1934, Initiative Measure No. 332; Amended 1958, Initiative Measure No. 302; Amended 1962, Laws 1961, c. 248, sec. 1, p. 735; Amended 1968, Laws 1967, c. 307, sec. 1, p. 832; Amended 1988, Laws 1988, LR

15, sec. 1; Amended 1992, Laws 1991, LR 24CA, sec. 1; Amended 2004, Laws 2004, LR 209CA, sec. 1; Amended 2020, Initiative Measure No. 429.

Cross References

Nebraska Environmental Trust Act, see section 81-15,167.

ARTICLE VIII
REVENUE

Section
12. Cities or villages; redevelopment project; substandard and blighted property; incur indebtedness; taxes; how treated.

Sec. 12 Cities or villages; redevelopment project; substandard and blighted property; incur indebtedness; taxes; how treated.

For the purpose of rehabilitating, acquiring, or redeveloping substandard and blighted property in a redevelopment project as determined by law, any city or village of the state may, notwithstanding any other provision in the Constitution, and without regard to charter limitations and restrictions, incur indebtedness, whether by bond, loans, notes, advance of money, or otherwise. Notwithstanding any other provision in the Constitution or a local charter, such cities or villages may also pledge for and apply to the payment of the principal, interest, and any premium on such indebtedness all taxes levied by all taxing bodies on the assessed valuation of the property in the project area portion of a designated blighted and substandard area that is in excess of the assessed valuation of such property for the year prior to such rehabilitation, acquisition, or redevelopment. Cities and villages may pledge such taxes for a period not to exceed fifteen years, except that the Legislature may allow cities and villages to pledge such taxes for a period not to exceed twenty years if, due to a high rate of unemployment combined with a high poverty rate as determined by law, more than one-half of the property in the project area is designated as extremely blighted.

When such indebtedness and the interest thereon have been paid in full, such property thereafter shall be taxed as is other property in the respective taxing jurisdictions and such taxes applied as all other taxes of the respective taxing bodies.

Source: Neb. Const. art. VIII, sec. 12 (1978); Adopted 1978, Laws 1978, LB 469, sec. 1; Amended 1984, Laws 1984, LR 227, sec. 1; Amended 1988, Laws 1987, LR 11, sec. 1; Amended 2020, Laws 2019, LR14CA, sec. 1.

ARTICLE XV
MISCELLANEOUS PROVISIONS

Section
26. Political subdivision; revenues; commercial passenger air service.

Sec. 26 Political subdivision; revenues; commercial passenger air service.

Notwithstanding restrictions imposed by any other provision in the Constitution, any city, county, or other political subdivision owning or operating an airport may expend or otherwise employ its revenues, from whatever source, for the public purpose of developing, or encouraging the development of, new or expanded regularly scheduled commercial passenger air service at such airport.

Source: Neb. Const. art. XV, sec. 26 (2022); Adopted 2022, Laws 2022, LR283CA, sec. 1.

CHAPTER 1
ACCOUNTANTS

Section
1-116. Certified public accountant; examination; eligibility.
1-124. Certified public accountant; reciprocal certificate; waiver of examination; fee.
1-136. Public accountant; permits; issuance; fees; failure to renew; effect; inactive list.
1-136.02. Permit; when issued.

1-116 Certified public accountant; examination; eligibility.

(1)(a) Prior to January 1, 2025, any person making initial application to take the examination described in section 1-114 is eligible to take the examination if he or she has completed at least one hundred fifty semester hours or two hundred twenty-five quarter hours of postsecondary academic credit and has earned a baccalaureate or higher degree from a college or university accredited by an accrediting agency recognized by the United States Department of Education or a similar agency as determined to be acceptable by the board. The person shall demonstrate that accounting, auditing, business, and other subjects at the appropriate academic level as required by the board are included within the required hours of postsecondary academic credit.

(b) Prior to January 1, 2025, a person who expects to complete the postsecondary academic credit and earn the degree as required by this subsection may take test sections of the examination within one hundred twenty days prior to completing the postsecondary academic credit and earning the degree, but such person shall not receive any credit for such test sections unless evidence satisfactory to the board showing that such person has completed the postsecondary academic credit and earned the degree as required by this subsection is received by the board within one hundred fifty days following when the first test section of the examination is taken.

(2)(a) On or after January 1, 2025, any person making initial application to take the examination described in section 1-114 is eligible to take the examination if he or she has completed at least one hundred twenty semester hours or one hundred eighty quarter hours of postsecondary academic credit and has earned a baccalaureate or higher degree from a college or university accredited by an accrediting agency recognized by the United States Department of Education or a similar agency as determined to be acceptable by the board. The person shall demonstrate that accounting, auditing, business, and other subjects at the appropriate academic level as required by the board are included within the required hours of postsecondary academic credit.

(b) On or after January 1, 2025, no person is allowed to take any portion of the examination prior to completing the academic credit and earning the degree required by this subsection.

(3) The board shall not prescribe the specific curricula of colleges or universities.

(4) If the applicant is an individual, the application shall include the applicant's social security number.

Source: Laws 1957, c. 1, § 11, p. 59; Laws 1976, LB 619, § 2; Laws 1984, LB 473, § 6; Laws 1991, LB 75, § 5; Laws 1997, LB 114, § 13; Laws 1997, LB 752, § 49; Laws 1999, LB 346, § 1; Laws 2009, LB31, § 7; Laws 2014, LB967, § 1; Laws 2020, LB808, § 1; Laws 2021, LB528, § 1; Laws 2024, LB854, § 1.
Effective date July 19, 2024.

1-124 Certified public accountant; reciprocal certificate; waiver of examination; fee.

(1)(a) The board may, in its discretion, waive the examination described in section 1-114 and may issue a reciprocal certificate as a certified public accountant to any person who possesses the qualifications specified in subdivision (2)(a) of section 1-114 and section 1-116 and who is the holder of a certificate as a certified public accountant, then in full force and effect, issued under the laws of any state or is the holder of a certificate, license, or degree in a foreign country constituting a recognized qualification for the practice of public accountancy in such country, comparable to that of a certified public accountant of this state, which is then in full force and effect.

(b) The board shall waive the examination described in section 1-114 and the educational requirements specified in section 1-116 and shall issue a reciprocal certificate as a certified public accountant to any person who possesses the qualifications specified in subdivision (2)(a) of section 1-114, who is the holder of a certificate as a certified public accountant, then in full force and effect, issued under the laws of any state, who meets all other current requirements of the board for issuance of a certificate as a certified public accountant, and who, at the time of the application for a reciprocal certificate as a certified public accountant, has had, within the ten years immediately preceding application, at least four years of experience in the practice of public accountancy specified in subdivision (1)(b) of section 1-136.02.

(2) The board shall charge each person obtaining a reciprocal certificate issued under this section a fee as established by the board not to exceed four hundred dollars.

Source: Laws 1957, c. 1, § 19, p. 60; Laws 1976, LB 619, § 7; Laws 1976, LB 961, § 2; Laws 1977, LB 290, § 2; Laws 1979, LB 278, § 3; Laws 1984, LB 473, § 12; Laws 1991, LB 75, § 11; Laws 1997, LB 114, § 21; Laws 2003, LB 214, § 5; Laws 2007, LB24, § 1; Laws 2024, LB854, § 2.
Effective date July 19, 2024.

1-136 Public accountant; permits; issuance; fees; failure to renew; effect; inactive list.

(1) Permits to engage in the practice of public accountancy in this state shall be issued by the board to (a) persons who are holders of the certificate of certified public accountant issued under sections 1-114 to 1-124 and who have met the education and experience requirements of section 1-136.02, (b) partnerships and limited liability companies of certified public accountants registered under section 1-126, and (c) corporations registered under section 1-134 as long as all offices of such certificate holders or registrants in this state for the

practice of public accountancy are maintained and registered as required under section 1-135.

(2)(a) Except as provided in the case of permits subject to subdivision (2)(b) of this section, the board shall charge an annual permit fee as established by the board not to exceed one hundred fifty dollars. All permits subject to this subdivision shall expire on June 30 of each year and may be renewed annually for a period of one year by certificate holders and registrants in good standing upon payment of an annual renewal fee as established by the board not to exceed one hundred fifty dollars. The board may prorate the fee for any permit subject to this subdivision issued for less than one year.

(b) The board shall charge a biennial permit fee as established by the board not to exceed three hundred dollars for permits issued under subdivision (1)(a) of this section. All permits subject to this subdivision shall expire on June 30 of the first calendar year after the calendar year of issuance in which the age of the certificate holder or the registrant becomes divisible by two, and may be renewed biennially for a period of two years by certificate holders and registrants in good standing upon payment of a biennial renewal fee as established by the board not to exceed three hundred dollars. The board may prorate the fee for any permit subject to this subdivision issued for less than two years.

(3) Failure of a certificate holder or registrant to apply for a permit within (a) three years from the expiration date of the permit last obtained or renewed or (b) three years from the date upon which the certificate holder or registrant was issued a certificate or registration if no permit was ever issued to such person shall deprive him or her of the right to issuance or renewal of a permit unless the board, in its discretion, determines such failure to have been excusable. In such case the renewal fee or the fee for the issuance of the original permit, as the case may be, shall be such amount as established by the board not to exceed three hundred dollars.

(4) Any certificate holder or registrant who has not lost his or her right to issuance or renewal of a permit and who is not actively engaged in the practice of public accountancy in this state may file a written application with the board to be classified as inactive. A person so classified shall not be issued a permit or be deemed the holder of a permit but shall be carried upon an inactive roll to be maintained by the board upon the payment of an inactive fee as established by the board not to exceed fifty percent of the fee charged persons actively engaged in the practice of public accountancy as provided in this section. A person so classified shall not be deprived of the right to the issuance or renewal of a permit and may, upon application to the board and upon payment of the current permit fee, be issued a current permit.

Source: Laws 1957, c. 1, § 31, p. 65; Laws 1959, c. 1, § 1, p. 57; Laws 1976, LB 961, § 4; Laws 1977, LB 290, § 4; Laws 1979, LB 278, § 5; Laws 1981, LB 92, § 4; Laws 1984, LB 473, § 17; Laws 1986, LB 869, § 1; Laws 1993, LB 121, § 49; Laws 1997, LB 114, § 27; Laws 2003, LB 214, § 7; Laws 2009, LB31, § 17; Laws 2024, LB854, § 3.
Effective date July 19, 2024.

1-136.02 Permit; when issued.

(1) The board shall issue a permit under subdivision (1)(a) of section 1-136 to a holder of a certificate as a certified public accountant when such holder has completed:

(a) At least one hundred fifty semester hours or two hundred twenty-five quarter hours of postsecondary academic credit and has earned a baccalaureate or higher degree from a college or university accredited by a regional accrediting agency as recognized by the United States Department of Education or a similar agency as determined to be acceptable by the board. The person shall demonstrate that accounting, auditing, business, and other subjects at the appropriate academic level as required by the board are included within the required hours of postsecondary academic credit; and

(b)(i) Two years of accounting experience satisfactory to the board, in any state or foreign country, in employment as an accountant in a firm, proprietorship, partnership, corporation, limited liability company, or other business entity authorized in any state to engage in the practice of public accountancy under the supervision of an active certified public accountant who is the holder of a permit issued under subdivision (1)(a) of section 1-136 or the equivalent issued by another state;

(ii) Except as provided in subdivision (b)(iii) of this subsection, three years of accounting experience satisfactory to the board, in any state or foreign country, in employment as (A) an accountant in government or business under the supervision of an active certified public accountant who is the holder of a permit issued under subdivision (1)(a) of section 1-136 or the equivalent issued by another state or (B) faculty at a college or university of recognized standing under the supervision of an active certified public accountant who is the holder of a permit issued under subdivision (1)(a) of section 1-136 or the equivalent issued by another state; or

(iii) Two years of accounting experience satisfactory to the board in employment as an accountant in the office of the Auditor of Public Accounts or the Department of Revenue under the supervision of an active certified public accountant who is the holder of a permit issued under subdivision (1)(a) of section 1-136 or the equivalent issued by another state.

(2) The board shall issue a permit under subdivision (1)(a) of section 1-136 to a holder of a reciprocal certificate issued under section 1-124 upon a showing that:

(a) He or she meets all current requirements in this state for issuance of a permit at the time the application is made; and

(b) At the time of the application for a permit the applicant, within the ten years immediately preceding application, meets an experience requirement in subdivision (1)(b) of this section.

Source: Laws 1977, LB 290, § 3; Laws 1993, LB 41, § 2; Laws 1997, LB 114, § 29; Laws 2007, LB24, § 2; Laws 2009, LB31, § 19; Laws 2013, LB27, § 1; Laws 2016, LB853, § 5; Laws 2017, LB56, § 1; Laws 2024, LB854, § 4.
Effective date July 19, 2024.

CHAPTER 2
AGRICULTURE

ARTICLE 4
HEALTHY SOIL MANAGEMENT AND WATER QUALITY PRACTICES

(c) NITROGEN REDUCTION INCENTIVE ACT

(c) NITROGEN REDUCTION INCENTIVE ACT

2-411 Nitrogen Reduction Incentive Act, how cited.

Sections 2-411 to 2-417 shall be known and may be cited as the Nitrogen Reduction Incentive Act.

Source: Laws 2024, LB1368, § 1.
Effective date July 19, 2024.
Termination date December 31, 2029.

2-412 Legislative findings.

The Legislature finds and declares that:

(1) Agriculture is Nebraska's number one industry;

(2) Water is Nebraska's most precious natural resource;

(3) Nebraska farmers are leading the charge on sustainable agriculture initiatives that will make Nebraska a world-renowned leader and ensure protection of the land and water of Nebraska for generations to come; and

(4) The Nitrogen Reduction Incentive Act encourages farmers to adopt efficient and sustainable practices to help Nebraska protect these natural resources and positions Nebraska farmers to compete.

Source: Laws 2024, LB1368, § 2.
Effective date July 19, 2024.
Termination date December 31, 2029.

2-413 Commercial fertilizer, defined.

For purposes of the Nitrogen Reduction Incentive Act, commercial fertilizer has the same meaning as in section 81-2,162.02.

Source: Laws 2024, LB1368, § 3.
Effective date July 19, 2024.
Termination date December 31, 2029.

2-414 Nitrogen reduction incentive program; created; incentive payments; authorized.

(1) The nitrogen reduction incentive program is created and shall be administered by the Department of Natural Resources. The department may collaborate with natural resources districts to administer the program.

(2) The purposes of the program are to:

(a) Provide incentive payments to farmers; and

(b) Encourage farmers to (i) reduce the use of commercial fertilizer and (ii) incorporate innovative technology into farming practices, including the proper use of biological nitrogen products.

(3) The program shall provide an annual per-acre incentive for any farmer who verifies through documentation that commercial fertilizer rates were reduced by the lesser of forty pounds per acre for nitrogen or fifteen percent by incorporating a qualifying product in the farmer's nutrient plans.

(4) A commercial fertilizer rate reduction from historic baseline use shall be completed to qualify for the program.

(5) The department shall review the required commercial fertilizer rate of reduction for the program on a biennial basis to determine if higher reduction targets are necessary.

(6) The department shall:

(a) Collaborate with natural resources districts to add any new technology to the program as it becomes available. Such technology shall replace nitrogen fertilizer use and maintain farm productivity;

(b) Identify geographically beneficial target areas while keeping the program open to all farmers in the state;

(c) Consult with farmers and commercial entities in the agriculture industry to determine a per-acre payment rate tied to the commercial fertilizer rate reduction but not less than ten dollars per acre; and

(d) Review the per-acre payment rate based on inflation or emerging technology in subsequent years.

(7)(a) The department shall not award an amount of incentive payments in total per year under the nitrogen reduction incentive program that is greater than the lesser of:

(i) Five million dollars; or

(ii) The amount appropriated for such purpose by the Legislature.

(b) It is the intent of the Legislature that any appropriation from the General Fund to carry out the Nitrogen Reduction Incentive Act be used only for operating expenses.

Source: Laws 2024, LB1368, § 4.
Effective date July 19, 2024.
Termination date December 31, 2029.

2-415 Rules and regulations.

The Department of Natural Resources may adopt and promulgate rules and regulations that adopt a standard for labeled commercial fertilizer products to qualify for the nitrogen reduction incentive program and may adopt and promulgate rules and regulations to carry out the Nitrogen Reduction Incentive Act.

Source: Laws 2024, LB1368, § 5.
Effective date July 19, 2024.
Termination date December 31, 2029.

2-416 Nitrogen Reduction Incentive Cash Fund; created; use; investment.

(1) The Nitrogen Reduction Incentive Cash Fund is created and shall be administered by the Department of Natural Resources for purposes of the Nitrogen Reduction Incentive Act. The Nitrogen Reduction Incentive Cash Fund may consist of transfers as directed by the Legislature and gifts, grants, bequests, and money from any public or private source.

(2) The Department of Natural Resources may apply for all grants from state, federal, and private sources that are applicable to the purposes of the Nitrogen Reduction Incentive Act.

(3) Any such grant applied for by the Department of Natural Resources that is awarded to the Department of Natural Resources or the State of Nebraska shall be credited to the Nitrogen Reduction Incentive Cash Fund.

(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 2024, LB1368, § 6.
Effective date July 19, 2024.
Termination date December 31, 2029.

Cross References

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

2-417 Act, termination.

The Nitrogen Reduction Incentive Act terminates on December 31, 2029.

Source: Laws 2024, LB1368, § 7.
Effective date July 19, 2024.
Termination date December 31, 2029.

ARTICLE 5
NEBRASKA HEMP FARMING ACT

Section

2-501 Act, how cited.

Sections 2-501 to 2-518 shall be known and may be cited as the Nebraska Hemp Farming Act.

Source: Laws 2019, LB657, § 1; Laws 2024, LB262, § 1.
Operative date January 1, 2025.

2-502 Repealed. Laws 2024, LB262, § 52.

Operative date January 1, 2025.

2-503 Terms, defined.

For purposes of the Nebraska Hemp Farming Act:

(1) Agriculture Improvement Act of 2018 means section 10113 of the federal Agriculture Improvement Act of 2018, Public Law 115-334, and any regulations adopted and promulgated under such section, as such section, act, and regulations existed on January 1, 2024;

(2) Cultivate or cultivating means planting, watering, growing, and harvesting a hemp plant or crop. The presence of plants of the plant Cannabis sativa L. growing as uncultivated, naturalized plants in the environment is not cultivating hemp for purposes of the Nebraska Hemp Farming Act;

(3) Hemp means the plant Cannabis sativa L. and any part of such plant, including the viable seeds of such plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis. Hemp shall be considered an agricultural commodity. Notwithstanding any other provision of law, hemp shall not be considered a controlled substance under the Uniform Controlled Substances Act;

(4) Person means an individual, partnership, corporation, limited liability company, association, postsecondary institution, or other legal entity;

(5) State-program-licensed hemp producer means a person licensed under a USDA-approved state or tribal program as authorized under the Agriculture Improvement Act of 2018 and includes the authorized employees or agents of such person;

(6) USDA means the United States Department of Agriculture; and

(7) USDA-licensed hemp producer means a person licensed by the USDA to produce hemp as provided in 7 C.F.R. part 990, subpart C, as such regulations existed on January 1, 2024, and includes the authorized employees or agents of such person.

Source: Laws 2019, LB657, § 3; Laws 2020, LB1152, § 1; Laws 2024, LB262, § 2.
Operative date January 1, 2025.

Cross References

Uniform Controlled Substances Act, see section 28-401.01.

2-504 Repealed. Laws 2024, LB262, § 52.
Operative date January 1, 2025.

2-505 Cultivation and transportation of hemp; authorized.

(1) Hemp may be cultivated in this state by a USDA-licensed hemp producer, in accordance with such producer's USDA-issued license, or by a state-program-licensed hemp producer, in accordance with such producer's license under a USDA-approved tribal program.

(2) Hemp may only be transported pursuant to section 2-515.

Source: Laws 2019, LB657, § 5; Laws 2020, LB1152, § 3; Laws 2024, LB262, § 3.
Operative date January 1, 2025.

2-506 Repealed. Laws 2024, LB262, § 52.
Operative date January 1, 2025.

2-507 Repealed. Laws 2024, LB262, § 52.
Operative date January 1, 2025.

2-508 Repealed. Laws 2024, LB262, § 52.
Operative date January 1, 2025.

2-509 Nebraska Hemp Program Fund; established; termination.

The Nebraska Hemp Program Fund is established. The fund terminates on January 1, 2025, and the State Treasurer shall transfer any money in the fund on such date or as soon thereafter as administratively possible to the Noxious Weed Cash Fund.

Source: Laws 2019, LB657, § 9; Laws 2024, LB262, § 4.
Operative date January 1, 2025.

2-510 Repealed. Laws 2024, LB262, § 52.
Operative date January 1, 2025.

2-511 Repealed. Laws 2024, LB262, § 52.
Operative date January 1, 2025.

2-512 Repealed. Laws 2024, LB262, § 52.
Operative date January 1, 2025.

2-513 Repealed. Laws 2024, LB262, § 52.
Operative date January 1, 2025.

2-514 Repealed. Laws 2024, LB262, § 52.
Operative date January 1, 2025.

2-515 Transportation of hemp; requirements; restrictions.

(1) Except as provided in subsection (3) of this section, any USDA-licensed hemp producer or state-program-licensed hemp producer transporting hemp shall carry with the hemp being transported a copy of the USDA license or state program license under which it was cultivated and a copy of the test results pertaining to each lot of hemp being transported.

(2) A USDA-licensed hemp producer or state-program-licensed hemp producer under a USDA-approved tribal program cultivating hemp in this state shall maintain a record of shipments of hemp shipped from or received by such producer. Such record shall, for each shipment of hemp, indicate the date of shipment, identify the point of origin and destination, identify the name of the person sending and receiving the shipment, and include the vehicle identification number of the vehicle transporting the hemp.

(3) Any USDA-licensed hemp producer or state-program-licensed hemp producer transporting hemp cultivated under such producer's USDA license or state program license shall not be required to carry a copy of the test results relating to such hemp as provided in subsection (1) of this section if such producer carries with the hemp being transported a copy of the applicable USDA license or state program license and is transporting:

(a) Hemp between two registered sites listed on the producer's USDA or state program license application;

(b) Samples of hemp for testing to determine the tetrahydrocannabinol level; or

(c) Live hemp plants to a registered site listed on the producer's USDA or state program license application prior to cultivating such hemp plants.

(4) Any person who is carrying or transporting hemp who is not a USDA-licensed hemp producer or state-program-licensed hemp producer shall only carry or transport hemp if such hemp meets the following requirements:

(a) The hemp is carried or transported with a bill of lading stating the owner of the hemp, the point of origin of the hemp, and the destination of the hemp;

(b) The hemp is carried or transported with a copy of the valid USDA or state program license under which the hemp was cultivated;

(c) The hemp is carried or transported with a copy of the test results pertaining to each lot of hemp being transported; and

(d) The hemp is not unloaded or in any way removed from the vehicle transporting such hemp unless authorized by state or federal law enforcement.

(5) No person shall transport or carry hemp in this state concurrently with any other plant material that is not hemp.

Source: Laws 2019, LB657, § 15; Laws 2020, LB1152, § 10; Laws 2024, LB262, § 5.
Operative date January 1, 2025.

2-516 Repealed. Laws 2024, LB262, § 52.
Operative date January 1, 2025.

2-517 Repealed. Laws 2024, LB262, § 52.
Operative date January 1, 2025.

2-518 Hemp Promotion Fund; established; termination.

The Hemp Promotion Fund is established. The fund terminates on January 1, 2025, and the State Treasurer shall transfer any money in the fund on such date or as soon thereafter as administratively possible to the Noxious Weed Cash Fund.

Source: Laws 2019, LB657, § 18; Laws 2024, LB262, § 6.
Operative date January 1, 2025.

2-519 Repealed. Laws 2024, LB262, § 52.
Operative date January 1, 2025.

ARTICLE 9
NOXIOUS WEED CONTROL

Section
2-958. Noxious weed control fund; authorized; Noxious Weed Cash Fund; created; use; investment.

2-958 Noxious weed control fund; authorized; Noxious Weed Cash Fund; created; use; investment.

(1) A noxious weed control fund may be established for each control authority, which fund shall be available for expenses authorized to be paid from such fund, including necessary expenses of the control authority in carrying out its duties and responsibilities under the Noxious Weed Control Act. The weed control superintendent within the county shall (a) ascertain and tabulate each year the approximate amount of land infested with noxious weeds and its location in the county, (b) ascertain and prepare all information required by the county board in the preparation of the county budget, including actual and expected revenue from all sources, cash balances, expenditures, amounts proposed to be expended during the year, and working capital, and (c) transmit such information tabulated by the control authority to the county board not later than June 1 of each year.

(2) The Noxious Weed Cash Fund is created. The fund shall consist of proceeds raised from fees imposed for the registration of pesticides and earmarked for the fund pursuant to section 2-2634, funds credited or transferred pursuant to sections 2-509, 2-518, 81-201, and 81-201.05, any gifts, grants, or donations from any source, and any reimbursement funds for control work done pursuant to subdivision (1)(b)(vi) of section 2-954. An amount from the General Fund may be appropriated annually for the Noxious Weed Control Act. The fund shall be administered and used by the director to maintain the noxious weed control program and for expenses directly related to the program. Until January 1, 2025, the fund may also be used to defray all reasonable and necessary costs related to the administration of the Nebraska Hemp Farming 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.

Source: Laws 1965, c. 7, § 7, p. 84; Laws 1969, c. 13, § 5, p. 159; Laws 1969, c. 145, § 11, p. 675; Laws 1987, LB 1, § 4; Laws 1987, LB 138, § 8; Laws 1989, LB 49, § 10; Laws 1993, LB 588, § 35; Laws 1994, LB 1066, § 2; Laws 1996, LB 1114, § 11; Laws 1997, LB 269, § 1; Laws 2001, LB 541, § 1; Laws 2004, LB 869, § 6; Laws 2019, LB657, § 20; Laws 2024, LB262, § 7.
Operative date January 1, 2025.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska Hemp Farming Act, see section 2-501.
Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 12
HORSERACING

Section
2-1201. State Racing and Gaming Commission; creation; members; appointment; removal, grounds; terms; qualifications; compensation; expenses; bond or insurance; personal financial interest prohibited.
2-1202. Commission; chairperson; executive director; compensation; duties; bond; personnel; duties; bonded or insured; vested with authority and power of law enforcement officer.
2-1205. License; terms and conditions; revocation; relocation of racetrack; conditions.
2-1207. Horseracing; parimutuel wagering; how conducted; certificate, contents; deductions; licensee; duties; person under twenty-one years of age prohibited; penalty.

2-1201 State Racing and Gaming Commission; creation; members; appointment; removal, grounds; terms; qualifications; compensation; expenses; bond or insurance; personal financial interest prohibited.

(1) There hereby is created a State Racing and Gaming Commission. For purposes of sections 2-1201 to 2-1229, commission means the State Racing and Gaming Commission.

(2) The commission shall consist of seven members who shall be appointed by the Governor and subject to confirmation by a majority of the members elected to the Legislature and may, after an opportunity to be heard, be removed for cause by the Governor. A violation by a member of the commission of section 2-1219 or any malfeasance, misfeasance, or neglect in office shall be considered cause for removal. No person shall be appointed to the commission, or continue to hold that office after appointment, while holding any other office or position under the laws of this state, any other state, or the United States. One member of the commission shall be appointed from each congressional district, as such districts existed on January 1, 2010, and four members of the commission shall be appointed at large for terms as follows:

(a) The member representing the second congressional district who is appointed on or after April 1, 2010, shall serve until March 31, 2014, and until his or her successor is appointed and qualified. Thereafter the term of the member representing such district shall be four years and until his or her successor is appointed and qualified;

(b) The member representing the third congressional district who is appointed on or after April 1, 2011, shall serve until March 31, 2015, and until his or her successor is appointed and qualified. Thereafter the term of the member representing such district shall be four years and until his or her successor is appointed and qualified;

(c) The member representing the first congressional district who is appointed on or after April 1, 2012, shall serve until March 31, 2016, and until his or her successor is appointed and qualified. Thereafter the term of the member representing such district shall be four years and until his or her successor is appointed and qualified;

(d) Not later than sixty days after July 15, 2010, the Governor shall appoint one at-large member who shall serve until March 31, 2013, and until his or her successor is appointed and qualified. Thereafter the term of such member shall be four years and until his or her successor is appointed and qualified;

(e) Not later than sixty days after July 15, 2010, the Governor shall appoint one at-large member who shall serve until March 31, 2014, and until his or her successor is appointed and qualified. Thereafter the term of such member shall be four years and until his or her successor is appointed and qualified; and

(f) Not later than sixty days after May 26, 2021, the Governor shall appoint two additional at-large members who shall serve until March 31, 2025, and until their successors are appointed and qualified. One of such members shall have experience in the Nebraska gaming industry, and one shall have experience in the Nebraska horseracing industry. Thereafter the terms of such at-large members shall be four years and until their successors are appointed and qualified.

(3) Not more than four members of the commission shall belong to the same political party. No more than three of the members shall reside, when appointed, in the same congressional district. No more than two of the members shall reside in any one county. Any vacancy shall be filled by appointment by the Governor for the unexpired term. The compensation of the members of the commission shall be one thousand dollars per month, which may be adjusted every two years in an amount not to exceed the change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the period between June 30 of the first year to June 30 of the year of adjustment. The members shall be reimbursed for expenses incurred in the performance of their duties as provided in sections 81-1174 to 81-1177. The members of the commission shall be bonded or insured as required by section 11-201.

(4) No member shall have any personal financial interest in any licensed racetrack enclosure or authorized gaming operator as defined in the Nebraska Racetrack Gaming Act for the duration of the member's term.

Source: Laws 1935, c. 173, § 1, p. 629; C.S.Supp.,1941, § 2-1501; R.S. 1943, § 2-1201; Laws 1978, LB 653, § 1; Laws 1981, LB 204, § 4; Laws 2004, LB 884, § 1; Laws 2006, LB 1111, § 1; Laws 2010, LB861, § 1; Laws 2020, LB381, § 2; Laws 2021, LB561, § 1; Laws 2022, LB876, § 1; Laws 2024, LB839, § 1.
Effective date April 3, 2024.

Cross References

Nebraska Racetrack Gaming Act, see section 9-1101.

2-1202 Commission; chairperson; executive director; compensation; duties; bond; personnel; duties; bonded or insured; vested with authority and power of law enforcement officer.

(1) The commission shall elect one of its members to be chairperson thereof, and it shall be authorized to employ such other assistants and employees as may be necessary to carry out the purposes of sections 2-1201 to 2-1218, the Nebraska Racetrack Gaming Act, and sections 9-1201 to 9-1209. The commission shall employ an executive director who shall be selected by the commission subject to the approval of the Governor. The executive director shall devote full time to the duties of the office and shall not engage in any other business or profession or hold any other state public office. The executive director shall keep a record of the proceedings of the commission, preserve the books, records, and documents entrusted to the executive director, and perform such other duties as the commission shall prescribe; and the commission shall require the executive director to give bond in such sum as it may fix, conditioned for the faithful performance of the duties of the executive director. The commission shall be authorized to fix the compensation of the executive director, and also the compensation of its other employees, subject to the approval of the Governor. The commission shall have an office at such place within the state as it may determine and shall meet at least eight times per year.

(2) The commission shall appoint or employ deputies, investigators, inspectors, agents, security personnel, and other persons as deemed necessary to administer and effectively enforce the regulation of horseracing, the Nebraska Racetrack Gaming Act, and sections 9-1201 to 9-1209. Any appointed or employed personnel shall perform the duties assigned by the commission.

(3) All personnel appointed or employed by the commission shall be bonded or insured as required by section 11-201. As specified by the commission, certain personnel shall be vested with the authority and power of a law enforcement officer to carry out the laws of this state administered by the commission.

Source: Laws 1935, c. 173, § 2, p. 630; C.S.Supp.,1941, § 2-1502; R.S. 1943, § 2-1202; Laws 1967, c. 4, § 1, p. 72; Laws 2021, LB561, § 3; Laws 2022, LB876, § 2; Laws 2024, LB839, § 2.
Effective date April 3, 2024.

Cross References

Nebraska Racetrack Gaming Act, see section 9-1101.

2-1205 License; terms and conditions; revocation; relocation of racetrack; conditions.

(1) If the commission is satisfied that its rules and regulations and all provisions of sections 2-1201 to 2-1218 have been and will be complied with, it may issue a license for a period of not more than five years. The license shall set forth the name of the licensee, the place where the races or race meetings are to be held, and the time and number of days during which racing may be conducted by such licensee. Any such license issued shall not be transferable or assignable. The commission shall have the power to revoke any license issued at any time for good cause upon reasonable notice and hearing. No license shall be granted to any corporation or association except upon the express condition that it shall not, by any lease, contract, understanding, or arrangement of whatever kind or nature, grant, assign, or turn over to any person, corporation,

or association the operation or management of any racing or race meeting licensed under such sections or of the parimutuel system of wagering described in section 2-1207 or in any manner permit any person, corporation, or association other than the licensee to have any share, percentage, or proportion of the money received for admissions to the racing or race meeting or from the operation of the parimutuel system; and any violation of such conditions shall authorize and require the commission immediately to revoke such license. No licensee shall be considered in violation of this section with respect to an agreement with an authorized gaming operator regarding employees and the acceptance of any parimutuel wager or sports wager pursuant to section 9-1110.

(2)(a) Any racetrack for which a licensee is issued a license to conduct a race or race meeting under sections 2-1201 to 2-1218 which is in existence and operational as of April 20, 2022, shall:

(i) Hold a minimum of five live racing meet days and fifty live horseraces annually beginning January 1, 2026, through December 31, 2030; and

(ii) Beginning January 1, 2031, hold a minimum of fifteen live racing meet days and one hundred twenty live horseraces annually.

(b) Any racetrack for which a licensee is issued a license to conduct a race or race meeting under sections 2-1201 to 2-1218 which is not in existence and operational until after April 20, 2022, shall:

(i) Hold a minimum of one live racing meet day annually for the first three years of operation;

(ii) Hold a minimum of five live racing meet days and fifty live horseraces annually for the fourth year of operation through the seventh year of operation; and

(iii) Beginning with the eighth year of operation, hold a minimum of fifteen live racing meet days and one hundred twenty live horseraces annually.

(c) A racetrack that fails to meet the minimum requirements under this subsection is subject to discipline by the commission, including revocation of the license issued under sections 2-1201 to 2-1218.

(3) A racetrack for which a licensee is issued a license to conduct a race or race meeting under sections 2-1201 to 2-1218 in existence on November 1, 2020, which is located in the counties of Adams, Dakota, Douglas, Hall, Lancaster, and Platte, may move such racetrack location to another county in Nebraska that does not have a racetrack one time only, subject to approval by the commission as provided in subdivision (27) of section 9-1106, subsequent to the initial issuance of the market analysis and socioeconomic-impact studies conducted pursuant to section 9-1106.

Source: Laws 1935, c. 173, § 5, p. 631; C.S.Supp.,1941, § 2-1505; R.S. 1943, § 2-1205; Laws 1975, LB 599, § 1; Laws 1986, LB 1041, § 3; Laws 2022, LB876, § 5; Laws 2023, LB775, § 1.

2-1207 Horseracing; parimutuel wagering; how conducted; certificate, contents; deductions; licensee; duties; person under twenty-one years of age prohibited; penalty.

(1) Within the enclosure of any racetrack where a race or race meeting licensed and conducted under sections 2-1201 to 2-1218 is held or at a racetrack licensed to simulcast races or conduct interstate simulcasting, the

parimutuel method or system of wagering on the results of the respective races may be used and conducted by the licensee. Under such system, the licensee may receive wagers of money from any person present at such race or racetrack receiving the simulcast race or conducting interstate simulcasting on any horse in a race selected by such person to run first in such race, and the person so wagering shall acquire an interest in the total money so wagered on all horses in such race as first winners in proportion to the amount of money wagered by him or her. Such licensee shall issue to each person so wagering a certificate on which shall be shown the number of the race, the amount wagered, and the number or name of the horse selected by such person as first winner. As each race is run, at the option of the licensee, the licensee may deduct from the total sum wagered on all horses as first winners not less than fifteen percent or more than eighteen percent from such total sum, plus the odd cents of the redistribution over the next lower multiple of ten. At the option of the licensee, the licensee may deduct up to and including twenty-five percent from the total sum wagered by exotic wagers as defined in section 2-1208.03. The commission may authorize other levels of deduction on wagers conducted by means of interstate simulcasting. The licensee shall notify the commission in writing of the percentages the licensee intends to deduct during the live race meet conducted by the licensee and shall notify the commission at least one week in advance of any changes to such percentages the licensee intends to make. The licensee shall also deduct from the total sum wagered by exotic wagers, if any, the tax plus the odd cents of the redistribution over the next multiple of ten as provided in subsection (1) of section 2-1208.04. The balance remaining on hand shall be paid out to the holders of certificates on the winning horse in the proportion that the amount wagered by each certificate holder bears to the total amount wagered on all horses in such race to run first. The licensee may likewise receive such wagers on horses selected to run second, third, or both, or in such combinations as the commission may authorize, the method, procedure, and authority and right of the licensee, as well as the deduction allowed to the licensee, to be as specified with respect to wagers upon horses selected to run first.

(2) At all race meets held pursuant to this section, the licensee shall deduct from the total sum wagered one-third of the amount over fifteen percent deducted pursuant to subsection (1) of this section on wagers on horses selected to run first, second, or third and one percent of all exotic wagers to be used to promote agriculture and horse breeding in Nebraska and for the support and preservation of horseracing pursuant to section 2-1207.01.

(3) No person under twenty-one years of age shall be permitted to make any parimutuel wager, and there shall be no wagering on horseracing except under the parimutuel method outlined in this section. Any person, association, or corporation who knowingly aids or abets a person under twenty-one years of age in making a parimutuel wager shall be guilty of a Class I misdemeanor.

(4) Beginning on the implementation date designated by the Tax Commissioner pursuant to subsection (1) of section 9-1312, prior to the winnings payment of any parimutuel winnings as defined in section 9-1303, an authorized gaming operator or licensee licensed to conduct parimutuel wagering shall check the collection system to determine if the winner has a debt or an outstanding state tax liability as required by the Gambling Winnings Setoff for Outstanding Debt Act. If such authorized gaming operator or licensee determines that the winner is subject to the collection system, the operator shall deduct the amount of debt

and outstanding state tax liability identified in the collection system from the winnings payment and shall remit the net winnings payment of parimutuel winnings, if any, to the winner and the amount deducted to the Department of Revenue to be credited against such debt or outstanding state tax liability as provided in section 9-1306.

Source: Laws 1935, c. 173, § 7, p. 631; C.S.Supp.,1941, § 2-1507; R.S. 1943, § 2-1207; Laws 1959, c. 5, § 1, p. 71; Laws 1963, c. 6, § 1, p. 66; Laws 1965, c. 9, § 1, p. 123; Laws 1973, LB 76, § 1; Laws 1976, LB 519, § 5; Laws 1977, LB 40, § 12; Laws 1982, LB 631, § 1; Laws 1983, LB 365, § 1; Laws 1986, LB 1041, § 4; Laws 1987, LB 708, § 5; Laws 1989, LB 591, § 2; Laws 1990, LB 1055, § 1; Laws 1992, LB 718, § 3; Laws 1993, LB 471, § 1; Laws 1994, LB 1153, § 3; Laws 2005, LB 573, § 2; Laws 2014, LB656, § 3; Laws 2021, LB561, § 8; Laws 2024, LB1317, § 46.
Operative date July 19, 2024.

Cross References

Gambling Winnings Setoff for Outstanding Debt Act, see section 9-1301.

ARTICLE 15
NEBRASKA NATURAL RESOURCES COMMISSION

(a) GENERAL PROVISIONS

Section
2-1507. Water Sustainability Fund; distribution; allocation; natural resources district; eligibility; report.

(a) GENERAL PROVISIONS

2-1507 Water Sustainability Fund; distribution; allocation; natural resources district; eligibility; report.

(1) It is the intent of the Legislature that the Water Sustainability Fund be equitably distributed statewide to the greatest extent possible for the long term and give priority funding status to projects which are the result of federal mandates.

(2) Distributions to assist municipalities with the cost of constructing, upgrading, developing, and replacing sewer infrastructure facilities as part of a combined sewer overflow project shall be based on a demonstration of need and shall equal ten percent of the total annual appropriation to the Water Sustainability Fund if (a) applicants have applied for such funding as required under section 2-1509 and (b) any such application has been recommended for further consideration by the director and is subsequently approved for allocation by the commission pursuant to subsection (1) of section 2-1511. If more than one municipality demonstrates a need for funds pursuant to this subsection, funds shall be distributed proportionally based on population.

(3) Any money in the Water Sustainability Fund may be allocated by the commission to applicants in accordance with sections 2-1506 to 2-1513. Such money may be allocated in the form of grants or loans for water sustainability programs, projects, or activities undertaken within the state. The allocation of funds to a program, project, or activity in one form shall not of itself preclude additional allocations in the same or any other form to the same program,

project, or activity. The commission shall, when ranking and scoring applications for funding, prioritize projects for drinking water improvements for any federally recognized Indian tribe whose drinking water is under a no-drink order from the United States Environmental Protection Agency.

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

(5) A natural resources district is eligible for funding from the Water Sustainability Fund only if the district has adopted or is currently participating in the development of an integrated management plan pursuant to subdivision (1)(a) or (b) of section 46-715.

(6) The commission shall utilize the resources and expertise of and collaborate with the Department of Natural Resources, the University of Nebraska, the Department of Environment and Energy, the Nebraska Environmental Trust Board, and the Game and Parks Commission on funding and planning for water programs, projects, or activities.

(7) A biennial report shall be made to the Clerk of the Legislature describing the work accomplished by the use of funds towards the goals of the Water Sustainability Fund beginning on December 31, 2015. The report submitted to the Clerk of the Legislature shall be submitted electronically.

Source: Laws 2014, LB1098, § 4; Laws 2015, LB661, § 21; Laws 2016, LB957, § 1; Laws 2019, LB302, § 9; Laws 2024, LB1413, § 33. Effective date April 2, 2024.

ARTICLE 32

NATURAL RESOURCES

Section
2-3213. Board of directors; membership; number of directors; executive committee; terms.
2-3214. Board of directors; nomination; election; subdistricts; oath.

2-3213 Board of directors; membership; number of directors; executive committee; terms.

(1) Except as provided in subsections (2), (3), and (4) of this section, each district shall be governed by a board of directors of five, seven, nine, eleven, thirteen, fifteen, seventeen, nineteen, or twenty-one members. The board of directors shall determine the number of directors and in making such determination shall consider the complexity of the foreseeable programs and the population and land area of the district. Districts shall be political subdivisions of the state, shall have perpetual succession, and may sue and be sued in the name of the district.

(2) At least six months prior to the primary election, the board of directors of any natural resources district may change the number of directors for the district and may change subdistrict boundaries to accommodate the increase or decrease in the number of directors.

(3) The board of directors shall utilize the criteria found in subsection (1) of this section and in subsection (2) of section 2-3214 when changing the number of directors. Except as provided in subsection (6) of this section, no director's term of office shall be shortened as a result of any change in the number of directors. Any reduction in the number of directors shall be made as directors take office during the two succeeding elections or more quickly if the reduction can be made by not filling vacancies on the board and if desired by the board. If necessary to preserve staggered terms for directors when the reduction in number is made in whole or in part through unfilled vacancies, the board may provide for a one-time election of one or more directors for a two-year term. The board of directors shall inform the Secretary of State whenever any such one-time elections have been approved. Notwithstanding subsection (1) of this section, the district may be governed by an even number of directors during the two-year transition to a board of reduced number.

(4) Whenever any change of boundaries, division, or merger results in a natural resources district director residing in a district other than the one to which such director was elected to serve, such director shall automatically become a director of the board of the district in which he or she then resides. Except as provided in subsection (6) of this section, all such directors shall continue to serve in office until the expiration of the term of office for which they were elected. Directors or supervisors of other special-purpose districts merged into a natural resources district shall not become members of the natural resources district board but may be appointed as advisors in accordance with section 2-3228. No later than six months after any change, division, or merger, each affected board, in accordance with the procedures and criteria found in this section and section 2-3214, shall determine the number of directors for the district as it then exists, the option chosen for nomination and election of directors, and, if appropriate, new subdistrict boundaries.

(5) To facilitate the task of administration of any board increased in size by a change of boundaries or merger, such board may appoint an executive committee to conduct the business of the board in the interim until board size reductions can be made in accordance with this section. An executive committee shall be empowered to act for the full board in all matters within its purview unless specifically limited by the board in the establishment and appointment of the executive committee.

(6) Notwithstanding the provisions of section 2-3214 and subsections (4) and (5) of this section, the board of directors of any natural resources district established by merging two or more districts in their entirety may provide that all directors be nominated and elected at the first primary and general elections following the year in which such merger becomes effective. In districts which have one director elected from each subdistrict, each director elected from an even-numbered subdistrict shall be elected for a two-year term and each director from an odd-numbered district and any member to be elected at large shall be elected for a four-year term. In districts which have two directors elected from each subdistrict, the four candidates receiving the highest number of votes at the primary election shall be carried over to the general election, and at such general election the candidate receiving the highest number of

votes shall be elected for a four-year term and the candidate receiving the second highest number of votes shall be elected for a two-year term. Thereafter each director shall be elected for a four-year term.

Source: Laws 1969, c. 9, § 13, p. 108; Laws 1971, LB 544, § 4; Laws 1972, LB 543, § 6; Laws 1973, LB 335, § 3; Laws 1978, LB 411, § 2; Laws 1981, LB 81, § 1; Laws 1986, LB 302, § 1; Laws 1986, LB 124, § 1; Laws 1987, LB 148, § 2; Laws 1988, LB 1045, § 10; Laws 1994, LB 76, § 458; Laws 1994, LB 480, § 4; Laws 2021, LB285, § 1; Laws 2024, LB287, § 1.
Operative date July 19, 2024.

2-3214 Board of directors; nomination; election; subdistricts; oath.

(1) District directors shall be elected as provided in section 32-513. Elections shall be conducted as provided in the Election Act. Registered voters residing within the district shall be eligible for nomination as candidates for any at-large position or, in those districts that have established subdistricts, as candidates from the subdistrict within which they reside.

(2) The board of directors may choose to: (a) Nominate candidates from subdistricts and from the district at large who shall be elected by the registered voters of the entire district; (b) nominate and elect each candidate from the district at large; or (c) nominate and elect candidates from subdistricts of substantially equal population except that any at-large candidate would be nominated and elected by the registered voters of the entire district. Unless the board of directors determines that the nomination and election of all directors will be at large, the board shall strive to divide the district into subdistricts of substantially equal population, except that no subdistrict shall have a population greater than three times the population of any other subdistrict within the district. Such subdistricts shall be consecutively numbered and shall be established with due regard to all factors including, but not limited to, the location of works of improvement and the distribution of population and taxable values within the district. The boundaries and numbering of such subdistricts shall be designated at least six months prior to the primary election. Unless the district has been divided into subdistricts with substantially equal population, all directors shall be elected by the registered voters of the entire district and all registered voters shall vote on the candidates representing each subdistrict and any at-large candidates. If a district has been divided into subdistricts with substantially equal population, the board of directors may determine that directors shall be elected only by the registered voters of the subdistrict except that an at-large director may be elected by registered voters of the entire district.

(3) Except in districts which have chosen to have a single director serve from each subdistrict, the number of subdistricts for a district shall equal a number which is one less than a majority of directors for the district. In districts which have chosen to have a single director serve from each subdistrict, the number of subdistricts shall equal a number which is equal to the total number of directors of the district or which is one less than the total number of directors for the district if there is an at-large candidate. If the number of directors to be elected exceeds the number of subdistricts or if the term of the at-large director expires in districts which have chosen to have a single director serve from each subdistrict, candidates may file as a candidate from the district at large.

Registered voters may each cast a number of votes not larger than the total number of directors to be elected.

(4) Elected directors shall take their oath of office in the same manner provided for county officials.

(5) At least six months prior to the primary election, the board of directors may choose to have a single director serve from each subdistrict.

(6) The board of directors shall certify to the Secretary of State and the election commissioners or county clerks the number of directors to be elected at each election and the length of their terms as provided in section 32-404.

Source: Laws 1969, c. 9, § 14, p. 110; Laws 1972, LB 543, § 7; Laws 1974, LB 641, § 1; Laws 1986, LB 302, § 2; Laws 1987, LB 148, § 3; Laws 1994, LB 76, § 459; Laws 1994, LB 480, § 5; Laws 2021, LB285, § 2; Laws 2024, LB287, § 2.
Operative date July 19, 2024.

Cross References

Election Act, see section 32-101.

ARTICLE 36
CORN DEVELOPMENT

Section
2-3611. Board; members.
2-3615. Board; membership districts.
2-3616. Repealed. Laws 2024, LB262, § 51.
2-3619. Board; compensation; expenses.
2-3620. Board; removal of member; grounds.
2-3622. Board; duties and responsibilities.
2-3623. Sale of corn; fee; when paid.
2-3627. Repealed. Laws 2024, LB262, § 51.
2-3628. Repealed. Laws 2024, LB262, § 51.
2-3629. Fee; when assessed.
2-3631. First purchaser deduct fee; maintain records; public information; quarterly statement.
2-3632. Board; annual report; contents; public information.
2-3634. Board; cooperate with University of Nebraska and other organizations.
2-3635. Violations; penalty.

2-3611 Board; members.

(1) The board shall be composed of nine members who (a) are citizens of Nebraska, (b) are at least twenty-one years of age, (c) have been actually engaged in growing corn in this state for a period of at least five years, and (d) derive a substantial portion of their income from growing corn.

(2) There shall be eight district members appointed by the Governor as follows: One member from each membership district described in section 2-3615.

(3) There shall be one at-large member appointed by the eight district members.

(4) The Director of Agriculture, the vice chancellor of the University of Nebraska Institute of Agriculture and Natural Resources, and the president of the Nebraska Corn Growers Association shall be ex officio members of the board but shall have no vote in board matters.

Source: Laws 1978, LB 639, § 11; Laws 2024, LB262, § 8.
Operative date July 19, 2024.

2-3615 Board; membership districts.

(1) The membership districts are as follows:

(a) District 1. The counties of Butler, Saunders, Douglas, Sarpy, Seward, Lancaster, Cass, Otoe, Saline, Jefferson, Gage, Johnson, Nemaha, Pawnee, and Richardson;

(b) District 2. The counties of Adams, Clay, Fillmore, Franklin, Webster, Nuckolls, and Thayer;

(c) District 3. The counties of Merrick, Polk, Hamilton, and York;

(d) District 4. The counties of Knox, Cedar, Dixon, Dakota, Pierce, Wayne, Thurston, Madison, Stanton, Cuming, Burt, Colfax, Dodge, and Washington;

(e) District 5. The counties of Sherman, Howard, Dawson, Buffalo, and Hall;

(f) District 6. The counties of Hayes, Frontier, Gosper, Phelps, Kearney, Hitchcock, Red Willow, Furnas, and Harlan;

(g) District 7. The counties of Boyd, Holt, Antelope, Garfield, Wheeler, Boone, Platte, Valley, Greeley, and Nance; and

(h) District 8. The counties of Sioux, Dawes, Box Butte, Sheridan, Scotts Bluff, Banner, Kimball, Morrill, Cheyenne, Garden, Deuel, Cherry, Keya Paha, Brown, Rock, Grant, Hooker, Thomas, Blaine, Loup, Arthur, McPherson, Logan, Custer, Keith, Lincoln, Perkins, Chase, and Dundy.

(2) The board may provide recommendations to the Agriculture Committee of the Legislature for potential changes to the list of counties that make up each membership district.

Source: Laws 1978, LB 639, § 15; Laws 2024, LB262, § 9.
Operative date July 19, 2024.

2-3616 Repealed. Laws 2024, LB262, § 51.
Operative date July 19, 2024.

2-3619 Board; compensation; expenses.

The voting members of the board, while engaged in the performance of their official duties, shall receive compensation at the rate of fifty dollars per day while so serving, including travel time. In addition, members of the board shall receive reimbursement for expenses on the same basis and subject to the same conditions as provided in sections 81-1174 to 81-1177.

Source: Laws 1978, LB 639, § 19; Laws 1981, LB 204, § 11; Laws 2020, LB381, § 6; Laws 2024, LB262, § 10.
Operative date July 19, 2024.

2-3620 Board; removal of member; grounds.

A member of the board shall be removable by the Governor for cause. The member shall first be given a copy of written charges against such member and also an opportunity to be heard publicly. In addition to all other causes, a member ceasing to (1) be a resident of the state, (2) live in the district from which such member was appointed, or (3) be actually engaged in growing corn in the state shall be deemed sufficient cause for removal from office.

Source: Laws 1978, LB 639, § 20; Laws 2024, LB262, § 11.
Operative date July 19, 2024.

2-3622 Board; duties and responsibilities.

The duties and responsibilities of the board shall be prescribed in the authority for the corn program and to the extent applicable shall include the following:

(1) To develop and direct any corn development, utilization, and marketing program. Such program may include a program to make grants and enter into contracts for research, accumulation of data, and construction of ethanol production facilities;

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

(3) To adopt and promulgate such rules and regulations as are necessary to enforce the Nebraska Corn Resources Act in accordance with the Administrative Procedure Act;

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

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

(6) To establish a means whereby any grower of corn has the opportunity at least annually to offer such grower's ideas and suggestions relative to board policy for the upcoming year;

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

(8) To bond the treasurer and such other persons necessary to insure adequate protection of funds;

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

(10) To prohibit any funds collected by the board from being expended directly or indirectly to promote or oppose any candidate for public office or to influence state legislation. The board shall not expend more than ten percent of its annual budget to influence federal legislation; and

(11) To make refunds for overpayment of fees according to rules and regulations adopted and promulgated by the board.

Source: Laws 1978, LB 639, § 22; Laws 1983, LB 505, § 5; Laws 1985, LB 60, § 2; Laws 1986, LB 1230, § 18; Laws 2024, LB262, § 12. Operative date July 19, 2024.

Cross References

Administrative Procedure Act, see section 84-920.

2-3623 Sale of corn; fee; when paid.

(1) The following corn fee is levied upon all corn sold through commercial channels in Nebraska or delivered in Nebraska:

(a) Until and on September 30, 2024, one-half cent per bushel; and

(b) Beginning October 1, 2024, one cent per bushel.

(2) The fee shall be paid by the grower at the time of sale or delivery and shall be collected by the first purchaser. Under the Nebraska Corn Resources Act, no corn shall be subject to the fee more than once.

Source: Laws 1978, LB 639, § 23; Laws 1983, LB 505, § 6; Laws 1987, LB 610, § 2; Laws 1996, LB 1336, § 5; Laws 2012, LB1057, § 2; Laws 2024, LB262, § 13.
Operative date July 19, 2024.

2-3627 Repealed. Laws 2024, LB262, § 51.
Operative date July 19, 2024.

2-3628 Repealed. Laws 2024, LB262, § 51.
Operative date July 19, 2024.

2-3629 Fee; when assessed.

The fee provided for by section 2-3623 shall be deducted as provided in the Nebraska Corn Resources Act whether such corn is stored in this state or any other state.

Source: Laws 1978, LB 639, § 29; Laws 2024, LB262, § 14.
Operative date July 19, 2024.

2-3631 First purchaser deduct fee; maintain records; public information; quarterly statement.

(1)(a) The first purchaser, at the time of settlement, shall deduct the corn fee and shall maintain the necessary record of the fee for each purchase of corn on the grain settlement form or check stub showing payment to the grower for each purchase. Such records maintained by the first purchaser shall provide the following information:

(i) Name and address of the grower and seller;

(ii) The date of the purchase;

(iii) The number of bushels of corn sold; and

(iv) The amount of fees collected on each purchase.

(b) Such records shall be open for inspection during the normal business hours observed by the first purchaser.

(2) The first purchaser shall render and have on file with the board by the last day of each January, April, July, and October, on forms prescribed by the board, a statement of the number of bushels of corn purchased in Nebraska. At the time the statement is filed, the first purchaser shall pay and remit to the board the fee as provided for in section 2-3623.

Source: Laws 1978, LB 639, § 31; Laws 2024, LB262, § 15.
Operative date July 19, 2024.

2-3632 Board; annual report; contents; public information.

(1) The board shall prepare and make available an annual report on or before January 1 of each year, which report shall set forth in detail the income received from the corn assessment for the previous year and shall include:

(a) The expenditure of all funds by the board during the previous year for the administration of the Nebraska Corn Resources Act;

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

(c) A description of all such contracts;

(d) A detailed explanation of all programs relating to the discovery, promotion, and development of markets and industries for the utilization of corn, the direct expense associated with each program, and copies of such programs if in writing; and

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

(2) Such report and a copy of all contracts requiring expenditure of funds by the board shall be available to the public in an electronic form upon request.

Source: Laws 1978, LB 639, § 32; Laws 2012, LB1057, § 3; Laws 2024, LB262, § 16.
Operative date July 19, 2024.

2-3634 Board; cooperate with University of Nebraska and other organizations.

The board shall not be authorized to set up research or development units or agencies of its own, but shall limit its activity to cooperation and contracts with the University of Nebraska Institute of Agriculture and Natural Resources and other proper local, state, or national organizations, public or private, in carrying out the Nebraska Corn Resources Act.

Source: Laws 1978, LB 639, § 34; Laws 2024, LB262, § 17.
Operative date July 19, 2024.

2-3635 Violations; penalty.

Any person violating the Nebraska Corn Resources Act shall be guilty of a Class III misdemeanor.

Source: Laws 1978, LB 639, § 35; Laws 2024, LB262, § 18.
Operative date July 19, 2024.

ARTICLE 38

MARKETING, DEVELOPMENT, AND PROMOTION OF AGRICULTURAL PRODUCTS

(a) NEBRASKA AGRICULTURAL PRODUCTS MARKETING ACT

Section
2-3804. Agricultural product or commodity, defined.

(a) NEBRASKA AGRICULTURAL PRODUCTS MARKETING ACT

2-3804 Agricultural product or commodity, defined.

Agricultural product or commodity shall include all products resulting from the conduct of farming or ranching activities, dairying, beekeeping, aquaculture, insect production, poultry or egg production, or comparable activities, and any byproducts resulting from such activities.

Source: Laws 1979, LB 538, § 4; Laws 1987, LB 561, § 3; Laws 2024, LB262, § 19.
Operative date July 19, 2024.

ARTICLE 39
MILK

(d) NEBRASKA MILK ACT

Section
2-3966. Terms, defined.

(d) NEBRASKA MILK ACT

2-3966 Terms, defined.

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

(1) 3-A Sanitary Standards has the same meaning as in the Grade A Pasteurized Milk Ordinance;

(2) Acceptable milk means milk that qualifies under sections 2-3979 to 2-3982 as to sight and odor and that is classified acceptable for somatic cells, bacterial content, drug residues, and sediment content;

(3) Components of milk means whey, whey and milk protein concentrate, whey cream, cream, butter, skim milk, condensed milk, ultra-filtered milk, milk powder, dairy blends that are at least fifty-one percent dairy components, and any similar milk byproduct;

(4) C-I-P or cleaned-in-place means the procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation;

(5) Dairy products means products allowed to be made from milk for manufacturing purposes and not required to be of Grade A quality;

(6) Department means the Department of Agriculture;

(7) Director means the Director of Agriculture or his or her duly authorized agent or designee;

(8) Field representative means an individual qualified and trained in the sanitary methods of production and handling of milk as set forth in the Nebraska Milk Act and who is generally employed by a processing or manufacturing milk plant or cooperative for the purpose of quality control work;

(9) First purchaser means a person who purchases raw milk directly from the farm for processing or for resale to a processor, who purchases milk products or components of milk for processing or resale to a processor, or who utilizes milk from the first purchaser's own farm for the manufacturing of milk products or dairy products;

(10) Grade A Pasteurized Milk Ordinance means the documents delineated in subsection (3) of section 2-3965;

(11) Milk for manufacturing purposes means milk produced for processing and manufacturing into products not required by law to be of Grade A quality;

(12) Milk distributor means a person who distributes milk, fluid milk, milk products, or dairy products whether or not the milk is shipped within or into the state. The term does not include (a) a milk plant, a bulk milk hauler/sampler, or a milk producer, as such terms are defined in the Grade A Pasteurized Milk Ordinance, (b) a food establishment as defined in the Nebraska Pure Food Act, or (c) a private home not included in the definition of a food establishment in section 81-2,245.01;

(13) Probational milk means milk classified undergrade for somatic cells, bacterial content, or sediment content that may be accepted by plants for specific time periods; and

(14) Reject milk means milk that does not qualify under sections 2-3979 to 2-3982.

Source: Laws 1969, c. 5, § 3, p. 69; R.S.1943, (1976), § 81-263.89; Laws 1980, LB 632, § 14; Laws 1981, LB 333, § 1; Laws 1986, LB 900, § 12; Laws 1988, LB 871, § 19; Laws 1990, LB 856, § 6; Laws 1993, LB 121, § 77; Laws 1993, LB 268, § 1; Laws 2001, LB 198, § 7; R.S.Supp.,2006, § 2-3914; Laws 2007, LB111, § 2; Laws 2013, LB67, § 2; Laws 2019, LB333, § 2; Laws 2024, LB262, § 20.
Operative date July 19, 2024.

Cross References

Nebraska Pure Food Act, see section 81-2,239.

ARTICLE 57
INDUSTRIAL HEMP

Section
2-5701. Repealed. Laws 2024, LB262, § 52.

2-5701 Repealed. Laws 2024, LB262, § 52.
Operative date January 1, 2025.

CHAPTER 3
AERONAUTICS

ARTICLE 1
GENERAL PROVISIONS

3-107 Division; general supervision; Highway Cash Fund; use for administration of the division; projects; state funds; expenditure; recovery.

(1) The division shall have general supervision over aeronautics within this state. It is empowered and directed to encourage, foster, and assist in the development of aeronautics in this state and encourage the establishment of airports and other air navigation facilities.

(2) The Department of Transportation may budget for and pay any of the costs related to the administration of the division, including, but not limited to, employee salaries and benefits, out of the Highway Cash Fund, as the Director-State Engineer determines, in his or her sole discretion, to be in the best interest of transportation in Nebraska. Such costs do not include costs related to the construction, reconstruction, repair, operation, or maintenance of airport infrastructure, including runways, concrete surfacing, hangars or capital improvements, buildings, and structures.

(3) No state funds for the acquisition, engineering, construction, improvement, or maintenance of airports shall be expended upon any project or for any work upon any such project which is not done under the supervision of the division. When any airport which has received state grant funds pursuant to the State Aeronautics Act ceases to be an airport or a privately owned public use airport, the division shall, consistent with all other provisions of state and federal law, seek to recover so much of the state funds provided to the airport as it may and shall deposit any such funds so recovered into the Aeronautics Cash Fund.

Source: Laws 1945, c. 5, § 6(1), p. 83; Laws 1995, LB 609, § 3; Laws 2017, LB339, § 7; Laws 2023, LB138, § 1.

CHAPTER 4
ALIENS

Section
4-107. Nonresident alien; property by succession or testamentary disposition; taking of property in this state; conditions; escheat; disposition of escheated property.
4-108. Public benefits; state agency or political subdivision; verification of lawful presence; employee; participation in retirement system; restriction.
4-111. Public benefits; verification of lawful presence; attestation required; professional or commercial license; requirements.
4-112. Public benefits; applicant; eligibility; verification; presumption.

4-107 Nonresident alien; property by succession or testamentary disposition; taking of property in this state; conditions; escheat; disposition of escheated property.

(1) The right of a nonresident alien to take either real or personal property or the proceeds thereof in this state by succession or testamentary disposition, upon the same terms and conditions as inhabitants and citizens of the United States, is dependent in each case upon:

(a) The existence of a reciprocal right upon the part of citizens of the United States to take real and personal property and the proceeds thereof upon the same terms and conditions as inhabitants and citizens of the country of which such nonresident alien is an inhabitant;

(b) The rights of citizens of the United States to receive by payment to them within the United States or its territories money originating from the estates of persons dying within such foreign country;

(c) Proof that such nonresident alien heirs, distributees, devisees, or legatees may receive the benefit, use, or control of property or proceeds from estates of persons dying in this state without confiscation in whole or in part, by the governments of such foreign countries; and

(d) Compliance of the nonresident alien with the Foreign-owned Real Estate National Security Act, except that if the nonresident alien does not comply with the Foreign-owned Real Estate National Security Act, the act shall control the transfer and disposition of any of the property that is agricultural land.

(2) The burden is upon such nonresident alien to establish the fact of existence of the reciprocal rights set forth in subsection (1) of this section.

(3) If such reciprocal rights are not found to exist, the property shall be delivered to the State Treasurer to be held for a period of five years from date of death during which time such nonresident alien may show that he or she has become eligible to receive such property. If at the end of such period of five years no showing of eligibility is made by such nonresident alien, his or her rights to such property or proceeds shall be barred.

(4) At any time within the one year following the date the rights of such nonresident alien have been barred, any other person other than an ineligible nonresident alien who, in the case of succession or testamentary disposition, would have been entitled to the property or proceeds by virtue of the laws of Nebraska governing intestate descent and distribution had the nonresident alien predeceased the decedent, may petition the district court of Lancaster

County for payment or delivery of such property or proceeds to those entitled thereto.

(5) If no person has petitioned the district court of Lancaster County for payment or delivery of such property or proceeds within six years from the date of death of decedent, such property or proceeds shall be disposed of as escheated property.

(6) All property other than money delivered to the State Treasurer under this section may within one year after delivery be sold by the State Treasurer to the highest bidder at public sale in whatever city in the state in the State Treasurer's judgment would be the most favorable market for the property involved. The State Treasurer may decline the highest bid and reoffer the property for sale if the State Treasurer considers the price bid insufficient. The State Treasurer need not offer any property for sale if, in the State Treasurer's opinion, the probable cost of sale exceeds the value of the property. Any sale held under this section shall be preceded by a single publication of notice of such sale at least three weeks in advance of sale in a newspaper of general circulation in the county where the property is to be sold and the cost of such publication and other expenses of sale paid out of the proceeds of such sale. The purchaser at any sale conducted by the State Treasurer pursuant to this section shall receive title to the property purchased, free from all claims of the owner or prior holder of such property and of all persons claiming through or under such owner or prior holder. The State Treasurer shall execute all documents necessary to complete the transfer of title.

(7) For purposes of this section, nonresident alien has the same meaning as in section 76-3702.

Source: Laws 1963, c. 21, § 1, p. 104; Laws 2024, LB1301, § 1. Operative date January 1, 2025.

Cross References

Foreign-owned Real Estate National Security Act, see section 76-3701.

4-108 Public benefits; state agency or political subdivision; verification of lawful presence; employee; participation in retirement system; restriction.

(1) Notwithstanding any other provisions of law, unless exempted from verification under section 4-110 or pursuant to federal law, no state agency or political subdivision of the State of Nebraska shall provide public benefits to a person not lawfully present in the United States.

(2) Except as provided in section 4-110 or if exempted by federal law, every agency or political subdivision of the State of Nebraska shall verify the lawful presence in the United States of any person who has applied for public benefits administered by an agency or a political subdivision of the State of Nebraska. This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(3) No employee of a state agency or political subdivision of the State of Nebraska shall be authorized to participate in any retirement system, including, but not limited to, the systems provided for in the Class V School Employees Retirement Act, the County Employees Retirement Act, the Judges Retirement Act, the Nebraska State Patrol Retirement Act, the School Employees Retirement Act, and 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 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.

Source: Laws 2009, LB403, § 1; Laws 2011, LB509, § 1; Laws 2024, LB198, § 1.
Effective date March 19, 2024.

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.

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

(1) Verification of lawful presence in the United States pursuant to section 4-108 requires, in addition to any requirements imposed by section 4-108, that the applicant for public benefits attest in a format prescribed by the Department of Administrative Services that such applicant is a United States citizen or is lawfully present in the United States.

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

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

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

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

(d) Any person who has complied with the requirements of this subsection shall have his or her employment authorization document verified through the Systematic Alien Verification for Entitlements Program operated by the United States Department of Homeland Security or an equivalent program designated by the United States Department of Homeland Security.

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

Source: Laws 2009, LB403, § 4; Laws 2016, LB947, § 1; Laws 2020, LB944, § 1; Laws 2024, LB198, § 2.
Effective date March 19, 2024.

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

For any applicant who is not a United States citizen but who has attested that such applicant is lawfully present in the United States as provided in section 4-111, eligibility for public benefits shall be verified through the Systematic Alien Verification for Entitlements Program operated by the United States Department of Homeland Security or an equivalent program designated by the United States Department of Homeland Security. Until such verification of eligibility is made, such attestation may be presumed to be proof of lawful presence for purposes of sections 4-108 to 4-113 unless such verification is required before providing the public benefit under another provision of state or federal law.

Source: Laws 2009, LB403, § 5; Laws 2016, LB947, § 2; Laws 2024, LB198, § 3.
Effective date March 19, 2024.

CHAPTER 8
BANKS AND BANKING

Article.
1. General Provisions. 8-101.03 to 8-1,140.
3. Building and Loan Associations. 8-318, 8-355.
6. Assessments and Fees. 8-602, 8-604.
11. Securities Act of Nebraska. 8-1101 to 8-1120.
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25. Solicitation for Financial Products or Services. 8-2504.
27. Nebraska Money Transmitters Act. 8-2724 to 8-2735.
29. Financial Exploitation of a Vulnerable Adult or Senior Adult.
(a) Financial Institutions. 8-2903.
30. Nebraska Financial Innovation Act. 8-3002 to 8-3030.

ARTICLE 1
GENERAL PROVISIONS

Section
8-101.03. Terms, defined.
8-102. Department; supervision and control of specified financial institutions; declaration of public purpose; director; order, decision, or determination; authority to prescribe conditions.
8-115. Banks; digital asset depositories; charter required.
8-135. Deposits; withdrawal methods authorized; lease of safe deposit box; section; how construed.
8-141. Loans; limits; exceptions.
8-143.01. Extension of credit; limits; credit report; violation; penalty; powers of director.
8-157.01. Establishing financial institution; automatic teller machines; use; availability; user financial institution; switch; use and access; duties.
8-183.04. State or federal savings association; mutual savings association; retention of mutual form authorized.
8-1,140. Federally chartered bank; bank organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception.

8-101.03 Terms, defined.

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

(1) Access device means a code, a transaction card, or any other means of access to a customer's account, or any combination thereof, that may be used by a customer for the purpose of initiating an electronic funds transfer at an automatic teller machine or a point-of-sale terminal;

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

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

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

(5) Bank or banking corporation means any incorporated banking institution which was incorporated under the laws of this state as they existed prior to May 9, 1933, and any corporation duly organized under the laws of this state for the purpose of conducting a bank within this state under the act. Bank means any such banking institution which is, in addition to the exercise of other powers, following the practice of repaying deposits upon check, draft, or order and of making loans. Bank or banking corporation includes a digital asset depository institution as defined in section 8-3003. Notwithstanding the provisions of this subdivision, a digital asset depository institution is subject to the provisions of subdivision (2)(b) of section 8-3005;

(6)(a) Bank subsidiary means a corporation or limited liability company that:

(i) Has a bank as a shareholder, member, or investor; and

(ii) Is organized for purposes of engaging in activities which are part of the business of banking or incidental to such business except for the receipt of deposits.

(b) A bank subsidiary may include a corporation organized under the Nebraska Financial Innovation Act.

(c) A bank subsidiary is not to be considered a branch of its bank shareholder;

(7) Capital or capital stock means capital stock;

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

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

(10) Digital asset depository means a financial institution that securely holds liquid assets when such assets are in the form of controllable electronic records, either as a corporation organized, chartered, and operated pursuant to the Nebraska Financial Innovation Act as a digital asset depository institution, or a financial institution operating a digital asset depository business as a digital asset depository department under a charter granted by the director;

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

(12) Financial institution means a bank, savings bank, building and loan association, savings and loan association, or credit union, whether chartered by the United States, the department, or a foreign state agency; any other similar organization which is covered by federal deposit insurance; a trust company; or a digital asset depository that is not a digital asset depository institution;

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

(14) Foreign state agency means any duly constituted regulatory or supervisory agency which has authority over financial institutions and which is created under the laws of any other state, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the

Virgin Islands or which is operating under the code of law for the District of Columbia;

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

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

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

(18) Order includes orders transmitted by electronic transmission;

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

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

Source: Laws 1963, c. 29, § 1, p. 134; Laws 1965, c. 27, § 1, p. 198; Laws 1967, c. 19, § 1, p. 117; Laws 1975, LB 269, § 1; Laws 1976, LB 561, § 1; Laws 1987, LB 615, § 1; Laws 1988, LB 375, § 1; Laws 1993, LB 81, § 1; Laws 1994, LB 611, § 1; Laws 1995, LB 384, § 1; Laws 1997, LB 137, § 1; Laws 1998, LB 1321, § 1; Laws 2000, LB 932, § 1; Laws 2002, LB 1089, § 1; Laws 2003, LB 131, § 1; Laws 2003, LB 217, § 1; Laws 2015, LB348, § 1; R.S. Supp.,2016, § 8-101; Laws 2017, LB140, § 2; Laws 2021, LB649, § 33; Laws 2022, LB707, § 6; Laws 2023, LB92, § 1.

Cross References

Nebraska Financial Innovation Act, see section 8-3001.

8-102 Department; supervision and control of specified financial institutions; declaration of public purpose; director; order, decision, or determination; authority to prescribe conditions.

(1) The department shall, under the laws of this state specifically made applicable to each, have general supervision and control over banks, trust

companies, credit unions, building and loan associations, savings and loan associations, and digital asset depositories, all of which are hereby declared to be quasi-public in nature and subject to regulation and control by the state.

(2) The director may prescribe conditions on banks, trust companies, credit unions, building and loan associations, savings and loan associations, and digital asset depositories, and their holding companies, if any, as part of any written order, decision, or determination required to be made pursuant to the Credit Union Act, the Nebraska Banking Act, the Nebraska Financial Innovation Act, and Chapter 8, article 3.

Source: Laws 1963, c. 29, § 2, p. 134; Laws 2002, LB 1094, § 1; Laws 2003, LB 131, § 2; Laws 2017, LB140, § 3; Laws 2021, LB649, § 34; Laws 2023, LB92, § 2.

Cross References

Credit Union Act, see section 21-1701.
Nebraska Financial Innovation Act, see section 8-3001.

8-115 Banks; digital asset depositories; charter required.

No corporation shall conduct a bank or digital asset depository in this state without having first obtained a charter in the manner provided in the Nebraska Banking Act or the Nebraska Financial Innovation Act, respectively.

Source: Laws 1909, c. 10, § 11, p. 71; R.S.1913, § 290; Laws 1919, c. 190, tit. V, art. XVI, § 9, p. 689; C.S.1922, § 7990; C.S.1929, § 8-120; Laws 1933, c. 18, § 15, p. 143; C.S.Supp.,1941, § 8-120; R.S. 1943, § 8-117; Laws 1963, c. 29, § 15, p. 140; Laws 1987, LB 2, § 4; Laws 1998, LB 1321, § 4; Laws 2021, LB649, § 36; Laws 2023, LB92, § 3.

Cross References

Nebraska Financial Innovation Act, see section 8-3001.

8-135 Deposits; withdrawal methods authorized; lease of safe deposit box; section; how construed.

(1) All persons, regardless of age, may become depositors in any bank and shall be subject to the same duties and liabilities respecting their deposits. Whenever a deposit is accepted by any bank in the name of any person, regardless of age, the deposit may be withdrawn by the depositor by any of the following methods:

(a) Check or other instrument in writing. The check or other instrument in writing constitutes a receipt or acquittance if the check or other instrument in writing is signed by the depositor and constitutes a valid release and discharge to the bank for all payments so made; or

(b) Electronic means through:

(i) Preauthorized direct withdrawal;

(ii) An automatic teller machine;

(iii) A debit card;

(iv) A transfer by telephone;

(v) A network, including the Internet; or

(vi) Any electronic terminal, computer, magnetic tape, or other electronic means.

(2) All persons, individually or with others and regardless of age, may enter into an agreement with a bank for the lease of a safe deposit box and shall be bound by the terms of the agreement.

(3) This section shall not be construed to affect the rights, liabilities, or responsibilities of participants in an electronic fund transfer under the federal Electronic Fund Transfer Act, 15 U.S.C. 1693 et seq., as such act existed on January 1, 2024, and shall not affect the legal relationships between a minor and any person other than the bank.

Source: Laws 1963, c. 27, § 1, p. 132; Laws 1963, c. 29, § 35, p. 148; Laws 2005, LB 533, § 6; Laws 2013, LB213, § 3; Laws 2016, LB760, § 1; Laws 2017, LB140, § 33; Laws 2018, LB812, § 1; Laws 2019, LB258, § 1; Laws 2020, LB909, § 2; Laws 2021, LB363, § 1; Laws 2022, LB707, § 9; Laws 2023, LB92, § 4; Laws 2024, LB1074, § 37.
Operative date April 18, 2024.

8-141 Loans; limits; exceptions.

(1) No bank shall directly or indirectly loan to any single corporation, limited liability company, firm, or individual, including in such loans all loans made to the several members or shareholders of such corporation, limited liability company, or firm, for the use and benefit of such corporation, limited liability company, firm, or individual, more than twenty-five percent of the paid-up capital, surplus, and capital notes and debentures or fifteen percent of the unimpaired capital and unimpaired surplus of such bank, whichever is greater. Such limitations shall be subject to the following exceptions:

(a) Obligations of any person, partnership, limited liability company, association, or corporation in the form of notes or drafts secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock, when the market value of the livestock securing the obligation is not at any time less than one hundred fifteen percent of the face amount of the notes covered by such documents, shall be subject under this section to a limitation of ten percent of such capital, surplus, and capital notes and debentures or ten percent of such unimpaired capital and unimpaired surplus, whichever is greater, in addition to such twenty-five percent of such capital and surplus or such fifteen percent of such unimpaired capital and unimpaired surplus;

(b) Obligations of any person, partnership, limited liability company, association, or corporation secured by not less than a like amount of bonds or notes of the United States issued since April 24, 1917, or certificates of indebtedness of the United States, treasury bills of the United States, or obligations fully guaranteed both as to principal and interest by the United States shall be subject under this section to a limitation of ten percent of such capital, surplus, and capital notes and debentures or ten percent of such unimpaired capital and unimpaired surplus, whichever is greater, in addition to such twenty-five percent of such capital and surplus or such fifteen percent of such unimpaired capital and unimpaired surplus;

(c) Obligations of any person, partnership, limited liability company, association, or corporation which are secured by negotiable warehouse receipts in an amount not less than one hundred fifteen percent of the face amount of the note or notes secured by such documents shall be subject under this section to a

limitation of ten percent of such capital, surplus, and capital notes and debentures or ten percent of such unimpaired capital and unimpaired surplus, whichever is greater, in addition to such twenty-five percent of such capital and surplus or such fifteen percent of such unimpaired capital and unimpaired surplus; or

(d) Obligations of any person, partnership, limited liability company, association, or corporation which are secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, in an amount at least equal to the face amount of the note or notes secured by such collateral, shall be subject under this section to a limitation of ten percent of such capital, surplus, and capital notes and debentures or ten percent of such unimpaired capital and unimpaired surplus, whichever is greater, in addition to such twenty-five percent of such capital and surplus or such fifteen percent of such unimpaired capital and unimpaired surplus.

(2)(a) For purposes of this section, the discounting of bills of exchange, drawn in good faith against actually existing values, and the discounting of commercial paper actually owned by the persons negotiating the bills of exchange or commercial paper shall not be considered as the lending of money.

(b) Loans or obligations shall not be subject to any limitation under this section, based upon such capital and surplus or such unimpaired capital and unimpaired surplus, to the extent that such capital and surplus or such unimpaired capital and unimpaired surplus are secured or covered by guaranties, or by commitments or agreements to take over or to purchase such capital and surplus or such unimpaired capital and unimpaired surplus, made by any federal reserve bank or by the United States Government or any authorized agency thereof, including any corporation wholly owned directly or indirectly by the United States, or general obligations of any state of the United States or any political subdivision of the state. The phrase general obligation of any state or any political subdivision of the state means an obligation supported by the full faith and credit of an obligor possessing general powers of taxation, including property taxation, but does not include municipal revenue bonds and sanitary and improvement district warrants which are subject to the limitations set forth in this section.

(c) Any bank may subscribe to, invest in, purchase, and own single-family mortgages secured by the Federal Housing Administration or the United States Department of Veterans Affairs and mortgage-backed certificates of the Government National Mortgage Association which are guaranteed as to payment of principal and interest by the Government National Mortgage Association. Such mortgages and certificates shall not be subject under this section to any limitation based upon such capital and surplus or such unimpaired capital and unimpaired surplus.

(d) Obligations representing loans to any national banking association or to any banking institution organized under the laws of any state, when such loans are approved by the director by rule and regulation or otherwise, shall not be subject under this section to any limitation based upon such capital and surplus or such unimpaired capital and unimpaired surplus.

(e) Loans or extensions of credit secured by a segregated deposit account in the lending bank shall not be subject under this section to any limitation based on such capital and surplus or such unimpaired capital and unimpaired surplus. The director may adopt and promulgate rules and regulations govern-

ing the terms and conditions of such security interest and segregated deposit account.

(f) For the purpose of determining lending limits, partnerships shall not be treated as separate entities. Each individual shall be charged with his or her personal debt plus the debt of every partnership in which he or she is a partner, except that for purposes of this section (a) an individual shall only be charged with the debt of any limited partnership in which he or she is a partner to the extent that the terms of the limited partnership agreement provide that such individual is to be held liable for the debts or actions of such limited partnership and (b) no individual shall be charged with the debt of any general partnership in which he or she is a partner beyond the extent to which (i) his or her liability for such partnership debt is limited by the terms of a contract or other written agreement between the bank and such individual and (ii) any personal debt of such individual is incurred for the use and benefit of such general partnership.

(3) A loan made within lending limits at the initial time the loan was made may be renewed, extended, or serviced without regard to changes in the lending limit of a bank following the initial extension of the loan if (a) the renewal, extension, or servicing of the loan does not result in the extension of funds beyond the initial amount of the loan or (b) the accrued interest on the loan is not added to the original amount of the loan in the process of renewal, extension, or servicing.

(4) Any bank may purchase or take an interest in life insurance contracts for any purpose incidental to the business of banking. A bank's purchase of any life insurance contract, as measured by its cash surrender value, from any one life insurance company shall not at any time exceed twenty-five percent of the paid-up capital, surplus, and capital notes and debentures of such bank or fifteen percent of the unimpaired capital and unimpaired surplus of such bank, whichever is greater. A bank's purchase of life insurance contracts, as measured by their cash surrender values, in the aggregate from all life insurance companies shall not at any time exceed thirty-five percent of the paid-up capital, surplus, undivided profits, and capital notes and debentures of such bank. The limitations under this subsection on a bank's purchase of life insurance contracts, in the aggregate from all life insurance companies, shall not apply to any contract purchased prior to April 5, 1994.

(5) On and after January 21, 2013, the director has the authority to determine the manner and extent to which credit exposure resulting from derivative transactions, repurchase agreements, reverse repurchase agreements, securities lending transactions, and securities borrowing transactions shall be taken into account for purposes of determining compliance with this section. In making such determinations, the director may, but is not required to, act by rule and regulation or order.

(6) For purposes of this section:

(a) Derivative transaction means any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets;

(b) Loan includes:

(i) All direct and indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of that person;

(ii) To the extent specified by rule and regulation or order of the director, any liability of a state bank to advance funds to or on behalf of a person pursuant to a contractual commitment; and

(iii) Any credit exposure to a person arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the bank and the person; and

(c) Unimpaired capital and unimpaired surplus means:

(i) For qualifying banks that have elected to use the community bank leverage ratio framework, as set forth under the Capital Adequacy Standards of the appropriate federal banking agency:

(A) The bank's tier 1 capital as reported according to the capital guidelines of the appropriate federal banking agency; and

(B) The bank's allowance for loan and lease losses or allowance for credit losses, as applicable, as reported in the most recent consolidated report of condition filed under 12 U.S.C. 1817(a)(3), as such section existed on January 1, 2024; and

(ii) For all other banks:

(A) The bank's tier 1 and tier 2 capital included in the bank's risk-based capital under the capital guidelines of the appropriate federal banking agency, based on the bank's most recent consolidated report of condition filed under 12 U.S.C. 1817(a)(3), as such section existed on January 1, 2024; and

(B) The balance of the bank's allowance for loan and lease losses not included in the bank's tier 2 capital for purposes of the calculation of risk-based capital by the appropriate federal banking agency, based on the bank's most recent consolidated report of condition filed under 12 U.S.C. 1817(a)(3), as such section existed on January 1, 2024.

(7) Notwithstanding the provisions of section 8-1,140, the director may, by order, deny or limit the inclusion of goodwill in the calculation of a bank's unimpaired capital and unimpaired surplus or in the calculation of a bank's paid-up capital and surplus.

Source: Laws 1909, c. 10, § 33, p. 81; R.S.1913, § 312; Laws 1919, c. 190, tit. V, art. XVI, § 33, p. 698; Laws 1921, c. 313, § 1, p. 1002; C.S.1922, § 8013; Laws 1923, c. 191, § 45, p. 461; C.S.1929, § 8-150; Laws 1933, c. 18, § 33, p. 151; C.S.Supp.,1941, § 8-150; Laws 1943, c. 9, § 1(1), p. 67; R.S.1943, § 8-150; Laws 1959, c. 15, § 14, p. 137; R.R.S.1943, § 8-150; Laws 1963, c. 29, § 41, p. 151; Laws 1965, c. 28, § 3, p. 201; Laws 1969, c. 35, § 1, p. 241; Laws 1972, LB 1151, § 1; Laws 1973, LB 164, § 13; Laws 1986, LB 983, § 2; Laws 1987, LB 753, § 1; Laws 1988, LB 788, § 1; Laws 1990, LB 956, § 2; Laws 1993, LB 81, § 3; Laws 1993, LB 121, § 87; Laws 1994, LB 979, § 2; Laws 1999, LB 396, § 7; Laws 2006, LB 876, § 8; Laws 2012, LB963, § 1; Laws 2017, LB140, § 38; Laws 2020, LB909, § 3; Laws 2021, LB363, § 2;

Laws 2022, LB707, § 10; Laws 2023, LB92, § 5; Laws 2024, LB1074, § 38.
Operative date April 18, 2024.

8-143.01 Extension of credit; limits; credit report; violation; penalty; powers of director.

(1) No bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons in an amount that, when aggregated with the amount of all other extensions of credit by the bank to that person and to all related interests of that person, exceeds the higher of twenty-five thousand dollars or five percent of the bank's unimpaired capital and unimpaired surplus unless (a) the extension of credit has been approved in advance by a majority vote of the entire board of directors of the bank, a record of which shall be made and kept as a part of the records of such bank, and (b) the interested party has abstained from participating directly or indirectly in such vote.

(2) No bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons in an amount that, when aggregated with the amount of all other extensions of credit by the bank to that person and to all related interests of that person, exceeds five hundred thousand dollars except by complying with the requirements of subdivisions (1)(a) and (b) of this section.

(3) No bank shall extend credit to any of its executive officers, and no such executive officer shall borrow from or otherwise become indebted to his or her bank, except in the amounts and for the purposes set forth in subsection (4) of this section.

(4) A bank shall be authorized to extend credit to any of its executive officers:

(a) In any amount to finance the education of such executive officer's children;

(b)(i) In any amount to finance or refinance the purchase, construction, maintenance, or improvement of a residence of such executive officer if the extension of credit is secured by a first lien on the residence and the residence is owned or is expected to be owned after the extension of credit by the executive officer and (ii) in the case of a refinancing, only the amount of the refinancing used to repay the original extension of credit, together with the closing costs of the refinancing, and any additional amount thereof used for any of the purposes enumerated in this subdivision are included within this category of credit;

(c) In any amount if the extension of credit is (i) secured by a perfected security interest in bonds, notes, certificates of indebtedness, or treasury bills of the United States or in other such obligations fully guaranteed as to principal and interest by the United States, (ii) secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States, or (iii) secured by a perfected security interest in a segregated deposit account in the lending bank; or

(d) For any other purpose not specified in subdivisions (a), (b), and (c) of this subsection if the aggregate amount of such other extensions of credit to such executive officer does not exceed, at any one time, the greater of two and one-

half percent of the bank's unimpaired capital and unimpaired surplus or twenty-five thousand dollars, but in no event greater than one hundred thousand dollars or the amount of the bank's lending limit as prescribed in section 8-141, whichever is less.

(5)(a) Except as provided in subdivision (b) of this subsection, the board of directors of a bank may obtain a credit report from a recognized credit agency, on an annual basis, for any or all of its executive officers.

(b) Subdivision (a) of this subsection does not apply to any executive officer if such officer is excluded by a resolution of the board of directors or by the bylaws of the bank from participating in the major policymaking functions of the bank and does not actually participate in the major policymaking functions of the bank.

(6) No bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons in an amount that, when aggregated with the amount of all other extensions of credit by the bank to that person and to all related interests of that person, exceeds the lending limit of the bank as prescribed in section 8-141.

(7)(a) Except as provided in subdivision (b) of this subsection, no bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons unless the extension of credit (i) is made on substantially the same terms, including interest rates and collateral, as, and following credit-underwriting procedures that are not less stringent than, those prevailing at the time for comparable transactions by the bank with other persons that are not covered by this section and who are not employed by the bank and (ii) does not involve more than the normal risk of repayment or present other unfavorable features.

(b) Nothing in subdivision (a) of this subsection shall prohibit any extension of credit made by a bank pursuant to a benefit or compensation program under the provisions of 12 C.F.R. 215.4(a)(2), as such regulation existed on January 1, 2024.

(8) For purposes of this section:

(a) Executive officer means a person who participates or has authority to participate, other than in the capacity of director, in the major policymaking functions of the bank, whether or not the officer has an official title, the title designates such officer as an assistant, or such officer is serving without salary or other compensation. Executive officer includes the chairperson of the board of directors, the president, all vice presidents, the cashier, the corporate secretary, and the treasurer, unless the executive officer is excluded by a resolution of the board of directors or by the bylaws of the bank from participating, other than in the capacity of director, in the major policymaking functions of the bank, and the executive officer does not actually participate in such functions. A manager or assistant manager of a branch of a bank shall not be considered to be an executive officer unless such individual participates or is authorized to participate in the major policymaking functions of the bank; and

(b) Unimpaired capital and unimpaired surplus means the sum of:

(i) The total equity capital of the bank reported on its most recent consolidated report of condition filed under section 8-166;

(ii) Any subordinated notes and debentures approved as an addition to the bank's capital structure by the appropriate federal banking agency; and

(iii) Any valuation reserves created by charges to the bank's income reported on its most recent consolidated report of condition filed under section 8-166.

(9) Any executive officer, director, or principal shareholder of a bank or any other person who intentionally violates this section or who aids, abets, or assists in a violation of this section is guilty of a Class IV felony.

(10) The Director of Banking and Finance may adopt and promulgate rules and regulations to carry out this section, including rules and regulations defining or further defining terms used in this section, consistent with the provisions of 12 U.S.C. 84 and implementing Regulation O as such section and regulation existed on January 1, 2024.

Source: Laws 1994, LB 611, § 2; Laws 1997, LB 137, § 4; Laws 1999, LB 396, § 8; Laws 2001, LB 53, § 1; Laws 2005, LB 533, § 7; Laws 2008, LB851, § 5; Laws 2017, LB140, § 40; Laws 2018, LB812, § 2; Laws 2019, LB258, § 2; Laws 2020, LB909, § 4; Laws 2021, LB363, § 3; Laws 2022, LB707, § 11; Laws 2023, LB92, § 6; Laws 2024, LB279, § 1; Laws 2024, LB1074, § 39.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB279, section 1, with LB1074, section 39, to reflect all amendments.

Note: Changes made by LB279 became effective July 19, 2024. Changes made by LB1074 became operative April 18, 2024.

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

(1) Any establishing financial institution may establish and maintain any number of automatic teller machines at which all banking transactions, defined as receiving deposits of every kind and nature and crediting such to customer accounts, cashing checks and cash withdrawals, transferring funds from checking accounts to savings accounts, transferring funds from savings accounts to checking accounts, transferring funds from either checking accounts and savings accounts to accounts of other customers, transferring payments from customer accounts into accounts maintained by other customers of the financial institution or the financial institution, including preauthorized draft authority, preauthorized loans, and credit transactions, receiving payments payable at the financial institution or otherwise, account balance inquiry, and any other transaction incidental to the business of the financial institution or which will provide a benefit to the financial institution's customers or the general public, may be conducted. Any automatic teller machine owned by a nonfinancial institution third party shall be sponsored by an establishing financial institution. Neither such automatic teller machines nor the transactions conducted thereat shall be construed as the establishment of a branch or as branch banking.

(2) Any financial institution may become a user financial institution by agreeing to pay the establishing financial institution the automatic teller machine usage fee. Such agreement shall be implied by the use of such automatic teller machines.

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

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

(c) The director, upon notice and after a hearing, may terminate or suspend the use of any automatic teller machine if he or she determines that the automatic teller machine is not made available on a nondiscriminating basis or that Nebraska automatic teller machine transactions initiated at such automatic teller machine are not made on a nondiscriminating basis.

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

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

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

(4) Any consumer initiating an electronic funds transfer at an automatic teller machine for which an automatic teller machine surcharge will be imposed shall receive notice in accordance with the provisions of 15 U.S.C. 1693b(d)(3)(A) and (B), as such section existed on January 1, 2024. Such notice shall appear on the screen of the automatic teller machine or appear on a paper notice issued from such machine after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction.

(5) A point-of-sale terminal may be established at any point within this state by a financial institution, a group of two or more financial institutions, or a combination of a financial institution or financial institutions and a third party or parties. Such parties may contract with a seller of goods and services or any other third party for the operation of point-of-sale terminals.

(6) A seller of goods and services or any other third party on whose premises one or more point-of-sale terminals are established shall not be, solely by virtue of such establishment, a financial institution and shall not be subject to the laws governing, or other requirements imposed on, financial institutions, except for the requirement that it faithfully perform its obligations in connection with any transaction originated at any point-of-sale terminal on its premises.

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

(8)(a) Annually by September 1, any entity operating as a switch in Nebraska shall file a notice with the department setting forth its name, address, and contact information for an officer authorized to answer inquiries related to its operations in Nebraska.

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

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

(10) Nothing in this section shall prevent any financial institution which has a main chartered office or an approved branch located in the State of Nebraska from participating in a national automatic teller machine program to allow its customers to use automatic teller machines located outside of the State of Nebraska which are established by out-of-state financial institutions or foreign financial institutions or to allow customers of out-of-state financial institutions or foreign financial institutions to use its automatic teller machines. Such participation and any automatic teller machine usage fees charged or received pursuant to the national automatic teller machine program or usage fees charged for the use of its automatic teller machines by customers of out-of-state financial institutions or foreign financial institutions shall not be considered for purposes of determining (a) if an automatic teller machine has been made available or Nebraska automatic teller machine transactions have been made on a nondiscriminating basis for use by Nebraska customers of a user financial institution or (b) if a switch complies with subdivision (3)(d) of this section.

(11) An agreement to operate or share an automatic teller machine may not prohibit, limit, or restrict the right of the operator or owner of the automatic teller machine to charge a customer conducting a transaction using an account from a foreign financial institution an access fee or surcharge not otherwise prohibited under state or federal law.

(12) Switch fees shall not be subject to this section or be regulated by the department.

(13) Nothing in this section shall prevent a group of two or more credit unions, each of which has a main chartered office or an approved branch located in the State of Nebraska, from participating in a credit union service organization organized on or before January 1, 2015, for the purpose of owning automatic teller machines, provided that all participating credit unions have an ownership interest in the credit union service organization and that the credit

union service organization has an ownership interest in each of the participating credit unions' automatic teller machines. Such participation and any automatic teller machine usage fees associated with Nebraska automatic teller machine transactions initiated by customers of participating credit unions at such automatic teller machines shall not be considered for purposes of determining if such automatic teller machines have been made available on a nondiscriminating basis or if Nebraska automatic teller machine transactions initiated at such automatic teller machines have been made on a nondiscriminating basis, provided that all Nebraska automatic teller machine transactions initiated by customers of participating credit unions result in the same automatic teller machine usage fees for essentially the same service routed over the same switch.

(14) Nebraska automatic teller machine usage fees and any agreements relating to Nebraska automatic teller machine usage fees shall comply with subsection (3) of this section.

(15) For purposes of this section:

(a) Access means the ability to utilize an automatic teller machine or a point-of-sale terminal to conduct permitted banking transactions or purchase goods and services electronically;

(b) Account means a checking account, a savings account, a share account, or any other customer asset account held by a financial institution. Such an account may also include a line of credit which a financial institution has agreed to extend to its customer;

(c) Affiliate financial institution means any financial institution which is a subsidiary of the same bank holding company;

(d) Automatic teller machine usage fee means any per transaction fee established by a switch or otherwise established on behalf of an establishing financial institution and collected from the user financial institution and paid to the establishing financial institution for the use of the automatic teller machine. An automatic teller machine usage fee shall not include switch fees;

(e) Electronic funds transfer means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through a point-of-sale terminal, an automatic teller machine, or a personal terminal for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account;

(f) Essentially the same service means the same Nebraska automatic teller machine transaction offered by an establishing financial institution irrespective of the user financial institution, the Nebraska customer of which initiates the Nebraska automatic teller machine transaction. A Nebraska automatic teller machine transaction that is subject to a surcharge is not essentially the same service as the same banking transaction for which a surcharge is not imposed;

(g) Establishing financial institution means any financial institution which has a main chartered office or approved branch located in the State of Nebraska that establishes or sponsors an automatic teller machine or any out-of-state financial institution that establishes or sponsors an automatic teller machine;

(h) Financial institution means a bank, savings bank, building and loan association, savings and loan association, or credit union, whether chartered by the department, the United States, or a foreign state agency; any other similar

organization which is covered by federal deposit insurance; or a subsidiary of any such entity;

(i) Foreign financial institution means a financial institution located outside the United States;

(j) Nebraska automatic teller machine transaction means a banking transaction as defined in subsection (1) of this section which is (i) initiated at an automatic teller machine established in whole or in part or sponsored by an establishing financial institution, (ii) for an account of a Nebraska customer of a user financial institution, and (iii) processed through a switch regardless of whether it is routed directly or indirectly from an automatic teller machine;

(k) Personal terminal means a personal computer and telephone, wherever located, operated by a customer of a financial institution for the purpose of initiating a transaction affecting an account of the customer;

(l) Sponsoring an automatic teller machine means the acceptance of responsibility by an establishing financial institution for compliance with all provisions of law governing automatic teller machines and Nebraska automatic teller machine transactions in connection with an automatic teller machine owned by a nonfinancial institution third party;

(m) Switch fee means a fee established by a switch and assessed to a user financial institution or to an establishing financial institution other than an automatic teller machine usage fee; and

(n) User financial institution means any financial institution which has a main chartered office or approved branch located in the State of Nebraska which avails itself of and provides its customers with automatic teller machine services.

Source: Laws 1987, LB 615, § 3; Laws 1992, LB 470, § 2; Laws 1993, LB 81, § 8; Laws 1993, LB 423, § 2; Laws 1999, LB 396, § 9; Laws 2000, LB 932, § 3; Laws 2002, LB 1089, § 3; Laws 2003, LB 131, § 4; Laws 2004, LB 999, § 2; Laws 2009, LB75, § 1; Laws 2009, LB327, § 4; Laws 2013, LB100, § 1; Laws 2015, LB348, § 2; Laws 2016, LB760, § 2; Laws 2017, LB140, § 56; Laws 2018, LB812, § 3; Laws 2019, LB258, § 3; Laws 2019, LB603, § 1; Laws 2020, LB909, § 5; Laws 2021, LB363, § 4; Laws 2022, LB707, § 15; Laws 2023, LB92, § 7; Laws 2024, LB1074, § 40. Operative date April 18, 2024.

8-183.04 State or federal savings association; mutual savings association; retention of mutual form authorized.

(1) Notwithstanding any other provision of the Nebraska Banking Act or any other Nebraska law, a state or federal savings association which was formed and in operation as a mutual savings association as of July 15, 1998, may elect to retain its mutual form of corporate organization upon conversion to a state bank.

(2) All references to shareholders or stockholders for state banks shall be deemed to be references to members for such a converted savings association.

(3) The amount and type of capital required for such a converted savings association shall be as required for federal mutual savings associations in 12 C.F.R. 5.21, as such regulation existed on January 1, 2024, except that if at any time the department determines that the capital of such a converted savings

association is impaired, the director may require the members to make up the capital impairment.

(4) The director may adopt and promulgate rules and regulations governing such converted mutual savings associations. In adopting and promulgating such rules and regulations, the director may consider the provisions of sections 8-301 to 8-384 governing savings associations in mutual form of corporate organization.

Source: Laws 1998, LB 1321, § 30; Laws 2005, LB 533, § 10; Laws 2010, LB890, § 5; Laws 2017, LB140, § 79; Laws 2018, LB812, § 5; Laws 2019, LB258, § 5; Laws 2020, LB909, § 7; Laws 2021, LB363, § 6; Laws 2022, LB707, § 16; Laws 2023, LB92, § 8; Laws 2024, LB1074, § 41.
Operative date April 18, 2024.

8-1,140 Federally chartered bank; bank organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception.

Notwithstanding any of the other provisions of the Nebraska Banking Act or any other Nebraska statute, any bank incorporated under the laws of this state and organized under the provisions of the act, or under the laws of this state as they existed prior to May 9, 1933, shall directly, or indirectly through a department, a subsidiary, or subsidiaries, have all the rights, powers, privileges, benefits, and immunities which may be exercised as of January 1, 2024, by a federally chartered bank doing business in Nebraska, including the exercise of all powers and activities that are permitted for a financial subsidiary of a federally chartered bank. Such rights, powers, privileges, benefits, and immunities shall not relieve such bank from payment of state taxes assessed under any applicable laws of this state.

Source: Laws 1999, LB 396, § 5; Laws 2000, LB 932, § 4; Laws 2001, LB 53, § 2; Laws 2002, LB 957, § 7; Laws 2003, LB 217, § 9; Laws 2004, LB 999, § 3; Laws 2005, LB 533, § 11; Laws 2006, LB 876, § 12; Laws 2007, LB124, § 6; Laws 2008, LB851, § 7; Laws 2009, LB327, § 6; Laws 2010, LB890, § 6; Laws 2011, LB74, § 1; Laws 2012, LB963, § 4; Laws 2013, LB213, § 5; Laws 2014, LB712, § 1; Laws 2015, LB286, § 1; Laws 2016, LB676, § 1; Laws 2017, LB140, § 130; Laws 2018, LB812, § 6; Laws 2019, LB258, § 6; Laws 2020, LB909, § 8; Laws 2021, LB363, § 7; Laws 2021, LB649, § 38; Laws 2022, LB707, § 17; Laws 2023, LB92, § 9; Laws 2024, LB1074, § 42.
Operative date April 18, 2024.

ARTICLE 3
BUILDING AND LOAN ASSOCIATIONS

Section

8-318 Stock; share account; deposits; withdrawal methods authorized; investments by fiduciaries; rights; retirement plan, investments; building and loan association as trustee or custodian; powers and duties.

(1)(a) Shares of stock in any association, or in any federal savings and loan association incorporated under the provisions of the federal Home Owners' Loan Act, with its principal office and place of business in this state, may be subscribed for, held, transferred, surrendered, withdrawn, and forfeited and payments thereon received and receipted for by any person, regardless of age, in the same manner and with the same binding effect as though such person were of the age of majority, except that a minor or his or her estate shall not be bound on his or her subscription to stock except to the extent of payments actually made thereon.

(b) Whenever a share account is accepted by any building and loan association in the name of any person, regardless of age, the deposit may be withdrawn by the shareholder by any of the following methods:

(i) Check or other instrument in writing. The check or other instrument in writing constitutes a receipt or acquittance if the check or other instrument in writing is signed by the shareholder and constitutes a valid release in discharge to the building and loan association for all payments so made; or

(ii) Electronic means through:

(A) Preauthorized direct withdrawal;

(B) An automatic teller machine;

(C) A debit card;

(D) A transfer by telephone;

(E) A network, including the Internet; or

(F) Any electronic terminal, computer, magnetic tape, or other electronic means.

(c) This section shall not be construed to affect the rights, liabilities, or responsibilities of participants in an electronic fund transfer under the federal Electronic Fund Transfer Act, 15 U.S.C. 1693 et seq., as it existed on January 1, 2024, and shall not affect the legal relationships between a minor and any person other than the building and loan association.

(2) All trustees, guardians, personal representatives, administrators, and conservators appointed by the courts of this state may invest and reinvest in, acquire, make withdrawals in whole or in part, hold, transfer, or make new or additional investments in or transfers of shares of stock in any (a) building and loan association organized under the laws of the State of Nebraska or (b) federal savings and loan association incorporated under the provisions of the federal Home Owners' Loan Act, having its principal office and place of business in this state, without an order of approval from any court.

(3) Trustees created solely by the terms of a trust instrument may invest in, acquire, hold, and transfer such shares, and make withdrawals, in whole or in part, therefrom, without any order of court, unless expressly limited, restricted, or prohibited therefrom by the terms of such trust instrument.

(4) All building and loan associations referred to in this section are qualified to act as trustee or custodian within the provisions of the federal Self-Employed Individuals Tax Retirement Act of 1962, as amended, or under the terms and provisions of section 408(a) of the Internal Revenue Code, if the provisions of such retirement plan require the funds of such trust or custodianship to be invested exclusively in shares or accounts in the association or in other associations. If any such retirement plan, within the judgment of the associa-

tion, constitutes a qualified plan under the federal Self-Employed Individuals Tax Retirement Act of 1962, or under the terms and provisions of section 408(a) of the Internal Revenue Code, and the regulations promulgated thereunder at the time the trust was established and accepted by the association, is subsequently determined not to be such a qualified plan or subsequently ceases to be such a qualified plan, in whole or in part, the association may continue to act as trustee of any deposits theretofore made under such plan and to dispose of the same in accordance with the directions of the member and beneficiaries thereof. No association, in respect to savings made under this section, shall be required to segregate such savings from other assets of the association. The association shall keep appropriate records showing in proper detail all transactions engaged in under the authority of this section.

Source: Laws 1899, c. 17, § 7, p. 88; R.S.1913, § 492; Laws 1919, c. 190, tit. V, art. XIX, § 8, p. 726; C.S.1922, § 8090; C.S.1929, § 8-308; Laws 1939, c. 4, § 1, p. 62; C.S.Supp.,1941, § 8-308; R.S.1943, § 8-318; Laws 1953, c. 11, § 1, p. 76; Laws 1955, c. 11, § 1, p. 77; Laws 1971, LB 375, § 1; Laws 1975, LB 208, § 2; Laws 1986, LB 909, § 8; Laws 1995, LB 574, § 3; Laws 2005, LB 533, § 16; Laws 2016, LB760, § 3; Laws 2017, LB140, § 133; Laws 2018, LB812, § 7; Laws 2019, LB258, § 9; Laws 2020, LB909, § 10; Laws 2021, LB363, § 10; Laws 2022, LB707, § 18; Laws 2023, LB92, § 10; Laws 2024, LB1074, § 43.
Operative date April 18, 2024.

8-355 Federal savings and loan; associations organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception.

Notwithstanding any of the provisions of Chapter 8, article 3, or any other Nebraska statute, except as provided in section 8-345.02, any association incorporated under the laws of the State of Nebraska and organized under the provisions of such article shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of January 1, 2024, by a federal savings and loan association doing business in Nebraska. Such rights, powers, privileges, benefits, and immunities shall not relieve such association from payment of state taxes assessed under any applicable laws of this state.

Source: Laws 1971, LB 185, § 1; Laws 1972, LB 1288, § 1; Laws 1973, LB 351, § 1; Laws 1974, LB 784, § 1; Laws 1975, LB 201, § 1; Laws 1976, LB 763, § 2; Laws 1977, LB 224, § 1; Laws 1978, LB 717, § 6; Laws 1979, LB 154, § 2; Laws 1980, LB 865, § 1; Laws 1981, LB 71, § 1; Laws 1982, LB 646, § 1; Laws 1983, LB 144, § 1; Laws 1984, LB 923, § 1; Laws 1985, LB 128, § 1; Laws 1986, LB 1052, § 1; Laws 1987, LB 115, § 1; Laws 1988, LB 858, § 1; Laws 1989, LB 207, § 1; Laws 1990, LB 1016, § 1; Laws 1991, LB 98, § 1; Laws 1992, LB 470, § 4; Laws 1992, LB 985, § 1; Laws 1993, LB 288, § 1; Laws 1994, LB 876, § 1; Laws 1995, LB 41, § 1; Laws 1996, LB 949, § 1; Laws 1997, LB 35, § 1; Laws 1998, LB 1321, § 67; Laws 1999, LB 396, § 12; Laws 2000, LB 932, § 16; Laws 2001, LB 53, § 6; Laws 2002, LB 957, § 8; Laws 2003, LB 217, § 11; Laws 2004, LB 999, § 4; Laws 2005, LB 533, § 19; Laws 2006, LB 876, § 13; Laws 2007, LB124, § 7; Laws 2008, LB851, § 11; Laws 2009, LB327, § 9; Laws 2010, LB890, § 8; Laws 2011, LB74, § 2; Laws 2012,

LB963, § 11; Laws 2013, LB213, § 8; Laws 2014, LB712, § 2; Laws 2015, LB286, § 2; Laws 2016, LB676, § 2; Laws 2017, LB140, § 134; Laws 2018, LB812, § 8; Laws 2019, LB258, § 11; Laws 2020, LB909, § 11; Laws 2021, LB363, § 11; Laws 2022, LB707, § 19; Laws 2023, LB92, § 11; Laws 2024, LB1074, § 44. Operative date April 18, 2024.

ARTICLE 6
ASSESSMENTS AND FEES

Section
8-602. Department of Banking and Finance; services; schedule of fees.
8-604. Financial Institution Assessment Cash Fund; created; use; investment.

8-602 Department of Banking and Finance; services; schedule of fees.

The Director of Banking and Finance shall charge and collect fees for certain services rendered by the Department of Banking and Finance according to the following schedule:

(1) For filing and examining articles of incorporation, articles of association, and bylaws, except credit unions, one hundred dollars, and for credit unions, fifty dollars;

(2) For filing and examining an amendment to articles of incorporation, articles of association, and bylaws, except credit unions, fifty dollars, and for credit unions, fifteen dollars;

(3) For issuing to banks, credit card banks, trust companies, and building and loan associations a charter, authority, or license to do business in this state, a sum which shall be determined on the basis of one dollar and fifty cents for each one thousand dollars of authorized capital, except that the minimum fee in each case shall be two hundred twenty-five dollars;

(4) For issuing to digital asset depositories under the Nebraska Financial Innovation Act a charter to do business in this state, the sum of fifty thousand dollars;

(5) For issuing an executive officer's or loan officer's license, fifty dollars at the time of the initial license, except credit unions for which the fee shall be twenty-five dollars at the time of the initial license;

(6) For affixing certificate and seal, five dollars;

(7) For making substitution of securities held by it and issuing a receipt, fifteen dollars;

(8) For issuing a certificate of approval to a credit union, ten dollars;

(9) For investigating the applications required by sections 8-117, 8-120, 8-331, and 8-2402 and the documents required by section 8-201, the cost of such examination, investigation, and inspection, including all legal expenses and the cost of any hearing transcript, with a minimum fee under (a) sections 8-117, 8-120, and 8-2402 of two thousand five hundred dollars, (b) section 8-331 of two thousand dollars, and (c) section 8-201 of one thousand dollars. The department may require the applicant to procure and give a surety bond in such principal amount as the department may determine and conditioned for the payment of the fees provided in this subdivision;

(10) For the handling of pledged securities as provided in sections 8-210, 8-2727, and 8-3022 at the time of the initial deposit of such securities, one

dollar and fifty cents for each thousand dollars of securities deposited and a like amount on or before January 15 each year thereafter. The fees shall be paid by the entity pledging the securities;

(11) For investigating an application to move its location within the city or village limits of its original license or charter for banks, trust companies, and building and loan associations, two hundred fifty dollars;

(12) For investigating an application under subdivision (6) of section 8-115.01, five hundred dollars;

(13) For investigating an application for approval to establish or acquire a branch pursuant to section 8-157 or 8-2103 or to establish a mobile branch pursuant to section 8-157, two hundred fifty dollars;

(14) For investigating a notice of acquisition of control under subsection (1) of section 8-1502, five hundred dollars;

(15) For investigating an application for a cross-industry merger under section 8-1510, five hundred dollars;

(16) For investigating an application for a merger of two state banks, a merger of a state bank and a national bank in which the state bank is the surviving entity, or an interstate merger application in which the Nebraska state chartered bank is the resulting bank, five hundred dollars;

(17) For investigating an application or a notice to establish a branch trust office, five hundred dollars;

(18) For investigating an application or a notice to establish a representative trust office, five hundred dollars;

(19) For investigating an application to establish a credit union branch under section 21-1725.01, two hundred fifty dollars;

(20) For investigating an applicant under section 8-1513, five thousand dollars;

(21) For investigating a request to extend a conditional bank charter under section 8-117, one thousand dollars; and

(22) For investigating an application to establish a branch office, for a merger or an acquisition of control, or for a request to extend a conditional charter for a digital asset depository, five hundred dollars.

Source: Laws 1937, c. 20, § 2, p. 129; C.S.Supp.,1941, § 8-702; R.S.1943, § 8-602; Laws 1957, c. 10, § 5, p. 132; Laws 1961, c. 15, § 8, p. 113; Laws 1967, c. 23, § 2, p. 127; Laws 1969, c. 43, § 1, p. 252; Laws 1972, LB 1194, § 1; Laws 1973, LB 164, § 21; Laws 1976, LB 561, § 3; Laws 1987, LB 642, § 1; Laws 1992, LB 470, § 5; Laws 1992, LB 757, § 11; Laws 1993, LB 81, § 54; Laws 1995, LB 599, § 4; Laws 1998, LB 1321, § 68; Laws 1999, LB 396, § 13; Laws 2000, LB 932, § 17; Laws 2002, LB 1089, § 7; Laws 2002, LB 1094, § 7; Laws 2003, LB 131, § 8; Laws 2003, LB 217, § 14; Laws 2004, LB 999, § 5; Laws 2005, LB 533, § 20; Laws 2007, LB124, § 9; Laws 2009, LB327, § 10; Laws 2010, LB891, § 3; Laws 2011, LB74, § 3; Laws 2012, LB963, § 12; Laws 2013, LB616, § 50; Laws 2017, LB140, § 136; Laws 2019, LB258, § 12; Laws 2021, LB649, § 44; Laws 2023, LB92, § 12.

Cross References

Nebraska Financial Innovation Act, see section 8-3001.

8-604 Financial Institution Assessment Cash Fund; created; use; investment.

(1) The Financial Institution Assessment Cash Fund is hereby created. The fund shall be used solely for the purposes of administering and enforcing the laws specified in section 8-601.

(2) 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.

Source: Laws 2007, LB124, § 11; Laws 2024, First Spec. Sess., LB3, § 2 Effective date August 21, 2024.

Cross References

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

ARTICLE 11
SECURITIES ACT OF NEBRASKA

8-1101 Terms, defined.

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

(1) Agent means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities, but agent does not include an individual who represents (a) an issuer in (i) effecting a transaction in a security exempted by subdivision (6), (7), or (8) of section 8-1110, (ii) effecting certain transactions exempted by section 8-1111, (iii) effecting transactions in a federal covered security as described in section 18(b)(3) of the Securities Act of 1933, or (iv) effecting transactions with existing employees, limited liability company members, partners, or directors of the issuer or any of its subsidiaries if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state or (b) a broker-dealer in effecting transactions described in section 15(h)(2) of the Securities Exchange Act of 1934. A partner, limited liability company member, officer, or director of a broker-dealer is an agent only if he or she otherwise comes within this definition;

(2) Broker-dealer means any person engaged in the business of effecting transactions in securities for the account of others or for his or her own account. Broker-dealer does not include (a) an issuer-dealer, agent, bank, savings institution, or trust company, (b) an issuer effecting a transaction in its own security exempted by subdivision (5)(a), (b), (c), (d), (e), or (f) of section 8-1110 or which qualifies as a federal covered security pursuant to section

18(b)(1) of the Securities Act of 1933, (c) a person who has no place of business in this state if he or she effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, credit unions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, (d) a person who has no place of business in this state if during any period of twelve consecutive months he or she does not direct more than five offers to sell or to buy into this state in any manner to persons other than those specified in subdivision (2)(c) of this section, or (e) a person who is a resident of Canada and who has no office or other physical presence in Nebraska if the following conditions are satisfied: (i) The person must be registered with, or be a member of, a securities self-regulatory organization in Canada or a stock exchange in Canada; (ii) the person must maintain, in good standing, its provisional or territorial registration or membership in a securities self-regulatory organization in Canada, or stock exchange in Canada; (iii) the person effects, or attempts to effect, (A) a transaction with or for a Canadian client who is temporarily present in this state and with whom the Canadian broker-dealer had a bona fide customer relationship before the client entered this state or (B) a transaction with or for a Canadian client in a self-directed tax advantaged retirement plan in Canada of which that client is the holder or contributor; and (iv) the person complies with all provisions of the Securities Act of Nebraska relating to the disclosure of material information in connection with the transaction;

(3) Department means the Department of Banking and Finance. Director means the Director of Banking and Finance of the State of Nebraska except as further provided in section 8-1120;

(4) Federal covered adviser means a person who is registered under section 203 of the Investment Advisers Act of 1940;

(5) Federal covered security means any security described as a covered security under section 18(b) of the Securities Act of 1933 or rules and regulations under the act;

(6) Guaranteed means guaranteed as to payment of principal, interest, or dividends;

(7) Investment adviser means any person who for compensation engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who for compensation and as a part of a regular business issues or promulgates analyses or reports concerning securities. Investment adviser also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. Investment adviser does not include (a) an investment adviser representative, (b) a bank, savings institution, or trust company, (c) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his or her profession, (d) a broker-dealer or its agent whose performance of these services is solely incidental to its business as a broker-dealer and who receives no

special compensation for them, (e) an issuer-dealer, (f) a publisher of any bona fide newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, by electronic means, or otherwise which does not consist of the rendering of advice on the basis of the specific investment situation of each client, (g) a person who has no place of business in this state if (i) his or her only clients in this state are other investment advisers, federal covered advisers, broker-dealers, banks, savings institutions, credit unions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (ii) during the preceding twelve-month period, he or she has had five or fewer clients who are residents of this state other than those persons specified in subdivision (g)(i) of this subdivision, (h) any person that is a federal covered adviser or is excluded from the definition of investment adviser under section 202 of the Investment Adviser Act of 1940, or (i) such other persons not within the intent of this subdivision as the director may by rule and regulation or order designate;

(8) Investment adviser representative means any partner, limited liability company member, officer, or director or any person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director or other individual, except clerical or ministerial personnel, who is employed by or associated with an investment adviser that is registered or required to be registered under the Securities Act of Nebraska or who has a place of business located in this state and is employed by or associated with a federal covered adviser, and who (a) makes any recommendations or otherwise renders advice regarding securities, (b) manages accounts or portfolios of clients, (c) determines which recommendation or advice regarding securities should be given, (d) solicits, offers, or negotiates for the sale of or sells investment advisory services, or (e) supervises employees who perform any of the foregoing;

(9) Issuer means any person who issues or proposes to issue any security, except that (a) with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions, or of the fixed, restricted management, or unit type, the term issuer means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued and (b) with respect to a fractional or pooled interest in a viatical settlement contract, issuer means the person who creates, for the purpose of sale, the fractional or pooled interest. In the case of a viatical settlement contract that is not fractionalized or pooled, issuer means the person effecting a transaction with a purchaser of such contract;

(10) Issuer-dealer means (a) any issuer located in the State of Nebraska or (b) any issuer which registered its securities by qualification who proposes to sell to the public of the State of Nebraska the securities that it issues without the benefit of another registered broker-dealer. Such securities shall have been approved for sale in the State of Nebraska pursuant to section 8-1104;

(11) Nonissuer means not directly or indirectly for the benefit of the issuer;

(12) Person means an individual, a corporation, a partnership, a limited liability company, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;

(13) Sale or sell includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value. Offer or offer to sell includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock shall be considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, shall be considered to include an offer of the other security;

(14) Securities Act of 1933, Securities Exchange Act of 1934, Investment Advisers Act of 1940, Investment Company Act of 1940, Commodity Exchange Act, and the federal Interstate Land Sales Full Disclosure Act means the acts as they existed on January 1, 2024;

(15) Security means any note, stock, treasury stock, bond, debenture, units of beneficial interest in a real estate trust, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, viatical settlement contract or any fractional or pooled interest in such contract, membership interest in any limited liability company organized under Nebraska law or any other jurisdiction unless otherwise excluded from this definition, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, in general any interest or instrument commonly known as a security, or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. Security does not include any insurance or endowment policy or annuity contract issued by an insurance company. Security also does not include a membership interest in a limited liability company when all of the following exist: (a) The member enters into a written commitment to be engaged actively and directly in the management of the limited liability company; and (b) all members of the limited liability company are actively engaged in the management of the limited liability company. For the limited purposes of determining professional malpractice insurance premiums, a security issued through a transaction that is exempted pursuant to subdivision (23) of section 8-1111 shall not be considered a security;

(16) State means any state, territory, or possession of the United States as well as the District of Columbia and Puerto Rico; and

(17) Viatical settlement contract means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of all or any portion of the death benefit or ownership of a life insurance policy or contract for consideration which is less than the expected death benefit of the life insurance policy or contract. Viatical settlement contract does not include (a) the assignment, transfer, sale, devise, or bequest of a death benefit of a life insurance policy or contract made

by the viator to an insurance company or to a viatical settlement provider or broker licensed pursuant to the Viatical Settlements Act, (b) the assignment of a life insurance policy or contract to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan, or (c) the exercise of accelerated benefits pursuant to the terms of a life insurance policy or contract and consistent with applicable law.

Source: Laws 1965, c. 549, § 1, p. 1763; Laws 1973, LB 167, § 1; Laws 1977, LB 263, § 1; Laws 1978, LB 760, § 1; Laws 1989, LB 60, § 1; Laws 1991, LB 305, § 2; Laws 1993, LB 216, § 1; Laws 1993, LB 121, § 96; Laws 1994, LB 884, § 10; Laws 1995, LB 119, § 1; Laws 1996, LB 1053, § 7; Laws 1997, LB 335, § 1; Laws 2001, LB 52, § 43; Laws 2001, LB 53, § 19; Laws 2011, LB76, § 1; Laws 2013, LB214, § 1; Laws 2017, LB148, § 1; Laws 2019, LB259, § 1; Laws 2020, LB909, § 12; Laws 2021, LB363, § 12; Laws 2022, LB707, § 20; Laws 2023, LB92, § 13; Laws 2024, LB1074, § 45.
Operative date April 18, 2024.

Cross References

Viatical Settlements Act, see section 44-1101.

8-1101.01 Federal rules and regulations; fair practice or ethical rules or standards; defined.

For purposes of the Securities Act of Nebraska:

(1) Federal rules and regulations adopted under the Investment Advisers Act of 1940 or the Securities Act of 1933 means such rules and regulations as they existed on January 1, 2024; and

(2) Fair practice or ethical rules or standards promulgated by the Securities and Exchange Commission, the Financial Industry Regulatory Authority, or a self-regulatory organization approved by the Securities and Exchange Commission means such practice, rules, or standards as they existed on January 1, 2024.

Source: Laws 2017, LB148, § 2; Laws 2019, LB259, § 2; Laws 2020, LB909, § 13; Laws 2021, LB363, § 13; Laws 2022, LB707, § 21; Laws 2023, LB92, § 14; Laws 2024, LB1074, § 46.
Operative date April 18, 2024.

8-1116 Violations; injunction; receiver; appointment; additional court orders authorized.

Whenever it appears to the director that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of the Securities Act of Nebraska or any rule and regulation or order under the act, the director may in his or her discretion bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with the Securities Act of Nebraska or any rule and regulation or order under the act. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant's assets. Upon a proper showing by the director, the court may invoke its equitable powers under the law and issue an order of rescission, restitution, or disgorgement, an order freezing assets, an order requiring an accounting, or a writ of attachment

or writ of general or specific execution, directed to any person who has engaged in or is engaging in any act constituting a violation of any provision of the Securities Act of Nebraska or any rule and regulation or order under the act. Neither the director nor any receiver appointed pursuant to this section shall be required to post a bond.

Source: Laws 1965, c. 549, § 16, p. 1792; Laws 1998, LB 894, § 3; Laws 2009, LB113, § 3; Laws 2017, LB148, § 15; Laws 2024, LB1074, § 47.
Operative date April 18, 2024.

8-1120 Administration of act; Director of Banking and Finance; powers and duties; use of information for personal benefit prohibited; Securities Act Cash Fund; created; use; investment; transfers; document filed, when.

(1) Except as otherwise provided in this section, the Securities Act of Nebraska shall be administered by the Director of Banking and Finance who may employ such deputies, examiners, assistants, or counsel as may be reasonably necessary for the purpose thereof. The employment of any person for the administration of the act is subject to section 49-1499.07. The director may delegate to a deputy director or counsel any powers, authority, and duties imposed upon or granted to the director under the act, such as may be lawfully delegated under the common law or the statutes of this state. The director may also employ special counsel with respect to any investigation conducted by him or her under the act or with respect to any litigation to which the director is a party under the act.

(2) A security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company shall be registered, pursuant to the provisions of sections 8-1104 to 8-1109, with the Director of Insurance who shall as to such registrations administer and enforce the act, and as pertains to the administration and enforcement of such registration of such securities all references in the act to director shall mean the Director of Insurance.

(3)(a) It shall be unlawful for the director or any of his or her employees to use for personal benefit any information which is filed with or obtained by the director and which is not made public. Neither the director nor any of his or her employees shall disclose any confidential information except among themselves, when necessary or appropriate in a proceeding, examination, or investigation under the act, or as authorized in subdivision (3)(b) of this subsection. No provision of the act shall either create or derogate from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the director or any of his or her employees.

(b)(i) In administering the act, the director may also:

(A) Enter into agreements or relationships with other government officials, including, but not limited to, the securities administrator of a foreign state and the Securities and Exchange Commission, or self-regulatory organizations, to share resources, standardized or uniform methods or procedures, and documents, records, and information; or

(B) Accept and rely on examination or investigation reports made by other government officials, including, but not limited to, the securities administrator of a foreign state and the Securities and Exchange Commission, or self-regulatory organizations.

(ii) For purposes of this subdivision, foreign state means any state of the United States, other than the State of Nebraska, any territory of the United States, including Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands, and the District of Columbia.

(4) The director may adopt and promulgate rules and regulations and prescribe forms to carry out the act. No rule and regulation may be adopted and promulgated or form may be prescribed unless the director finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the act. In adopting and promulgating rules and regulations and prescribing forms the director may cooperate with the securities administrators of the other states and the Securities and Exchange Commission with a view to effectuating the policy of the Securities Act of Nebraska to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable. All rules and regulations and forms of the director shall be published and made available to any person upon request.

(5) No provision of the act imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule and regulation, form, or order of the director, notwithstanding that the rule and regulation or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(6) Every hearing in an administrative proceeding shall be public unless the director in his or her discretion grants a request joined in by all the respondents that the hearing be conducted privately.

(7)(a) The Securities Act Cash Fund is created. All filing fees, registration fees, and all other fees and all money collected by or paid to the director under any of the provisions of the act shall be remitted to the State Treasurer for credit to the fund, except that registration fees collected by or paid to the Director of Insurance pursuant to the provisions of the act shall be credited to the Department of Insurance Cash Fund. The Securities Act Cash Fund shall be used for the purpose of administering and enforcing the provisions of the act, except that transfers may be made to the General Fund at the direction of the Legislature. Any money in the Securities Act Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(b) The State Treasurer shall transfer thirty-four million dollars from the Securities Act Cash Fund to the General Fund on or 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. The State Treasurer shall transfer twenty-eight million dollars from the Securities Act Cash Fund to the General Fund on or before June 30, 2027, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services. The State Treasurer shall transfer twenty-eight million dollars from the Securities Act Cash Fund to the General Fund on or before June 30, 2028, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services. The State Treasurer shall transfer twenty-eight million dollars from the Securities Act Cash Fund to the General Fund on or before June 30, 2029, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

(8) A document is filed when it is received by the director. The director shall keep a register of all applications for registration and registration statements which are or have ever been effective under the Securities Act of Nebraska and all denial, suspension, or revocation orders which have ever been entered under the act. The register shall be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under such conditions as the director may prescribe.

(9) The director may, by rule and regulation or order, authorize or require the filing of any document required to be filed under the act by electronic or other means, processes, or systems.

(10) Upon request and at such reasonable charges as he or she shall prescribe, the director shall furnish to any person photostatic or other copies, certified under his or her seal of office if requested, of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under the act, any copy so certified shall be prima facie evidence of the contents of the entry or document certified.

(11) The director in his or her discretion may honor requests from interested persons for interpretative opinions.

Source: Laws 1965, c. 549, § 20, p. 1795; Laws 1969, c. 584, § 33, p. 2361; Laws 1973, LB 167, § 9; Laws 1983, LB 469, § 1; Laws 1995, LB 7, § 27; Laws 1997, LB 864, § 1; Laws 2000, LB 932, § 21; Laws 2003, LB 217, § 24; Laws 2013, LB199, § 17; Laws 2013, LB214, § 8; Laws 2017, LB148, § 18; Laws 2021, LB649, § 47; Laws 2024, LB1074, § 48; Laws 2024, First Spec. Sess., LB3, § 3.

Note: Changes made by Laws 2024, LB1074, became operative April 18, 2024.

Note: Changes made by Laws 2024, First Spec. Sess., LB3, became effective August 21, 2024.

Cross References

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

ARTICLE 17
COMMODITY CODE

Section
8-1704. CFTC rule, defined.
8-1707. Commodity Exchange Act, defined.
8-1726. Violations of code; director; powers.

8-1704 CFTC rule, defined.

CFTC rule shall mean any rule, regulation, or order of the Commodity Futures Trading Commission in effect on January 1, 2024.

Source: Laws 1987, LB 575, § 4; Laws 1993, LB 283, § 2; Laws 2011, LB76, § 4; Laws 2019, LB259, § 6; Laws 2020, LB909, § 16; Laws 2021, LB363, § 15; Laws 2022, LB707, § 23; Laws 2023, LB92, § 15; Laws 2024, LB1074, § 49.
Operative date April 18, 2024.

8-1707 Commodity Exchange Act, defined.

Commodity Exchange Act shall mean the act of Congress known as the Commodity Exchange Act, 7 U.S.C. 1, as amended on January 1, 2024.

Source: Laws 1987, LB 575, § 7; Laws 1993, LB 283, § 5; Laws 2011, LB76, § 5; Laws 2019, LB259, § 7; Laws 2020, LB909, § 17;

Laws 2021, LB363, § 16; Laws 2022, LB707, § 24; Laws 2023, LB92, § 16; Laws 2024, LB1074, § 50.
Operative date April 18, 2024.

8-1726 Violations of code; director; powers.

(1) If the director believes, whether or not based upon an investigation conducted under section 8-1725, that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of the Commodity Code or any rule, regulation, or order under the code, the director may:

(a) Issue a cease and desist order;

(b) Issue an order imposing (i) a fine in an amount that may not exceed twenty-five thousand dollars for any single violation or one hundred thousand dollars for multiple violations in a single proceeding or a series of related proceedings and (ii) the costs of investigation; or

(c) Initiate any of the actions specified in subsection (2) of this section.

(2) The director may institute any of the following actions in the appropriate district court of this state or in the appropriate courts of another state in addition to any legal or equitable remedies otherwise available:

(a) An action for a declaratory judgment;

(b) An action for a prohibitory or mandatory injunction to enjoin the violation and to ensure compliance with the Commodity Code or any rule, regulation, or order of the director;

(c) An action for disgorgement or restitution; or

(d) An action for appointment of a receiver or conservator for the defendant or the defendant's assets.

(3)(a) The fines and costs shall be in addition to all other penalties imposed by the laws of this state. The director shall collect the fines and costs and remit them to the State Treasurer. The State Treasurer shall credit the costs to the Securities Act Cash Fund and distribute the fines in accordance with Article VII, section 5, of the Constitution of Nebraska.

(b) If a person fails to pay the administrative fine or investigation costs referred to in this section, a lien in the amount of such fine and costs may be imposed upon all assets and property of such person in this state and may be recovered by suit by the director. Failure of the person to pay such fine and costs shall constitute a separate violation of the code.

Source: Laws 1987, LB 575, § 26; Laws 1993, LB 283, § 9; Laws 2019, LB259, § 8; Laws 2024, LB1074, § 51.
Operative date April 18, 2024.

ARTICLE 25
SOLICITATION FOR FINANCIAL PRODUCTS OR SERVICES

Section
8-2504. Violation; cease and desist order; fine.

8-2504 Violation; cease and desist order; fine.

(1) The Department of Banking and Finance may order any person to cease and desist whenever the Director of Banking and Finance determines that such person has violated section 8-2501 or 8-2502. Upon entry of a cease and desist order, the director shall promptly notify the affected person that such order has been entered and provide opportunity for hearing in accordance with the Administrative Procedure Act.

(2) If a person violates section 8-2501 or 8-2502 after receiving such cease and desist order, the director may, following notice and opportunity for hearing in accordance with the Administrative Procedure Act, impose a fine of up to five thousand dollars for each violation, plus the costs of investigation. Each instance in which a violation of section 8-2501 or 8-2502 takes place after receiving a cease and desist order constitutes a separate violation.

(3) The director shall remit all fines collected under this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska. All costs collected shall be remitted to the Financial Institution Assessment Cash Fund.

(4) This section does not affect the availability of any remedies otherwise available to a financial institution.

Source: Laws 2005, LB 533, § 28; Laws 2007, LB124, § 19; Laws 2024, LB1074, § 52.
Operative date July 19, 2024.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 27
NEBRASKA MONEY TRANSMITTERS ACT

Section
8-2724. Licensure requirement; applicability.
8-2729. License application; form; contents.
8-2730. Licensee; license and registration through Nationwide Mortgage Licensing System and Registry; department; powers; director; reports; powers and duties; department; duties.
8-2735. Licensee; notice to director; when; report; contents; breach of the security of the system; notification.

8-2724 Licensure requirement; applicability.

(1) The requirement for a license under the Nebraska Money Transmitters Act does not apply to:

(a) The United States or any department, agency, or instrumentality thereof;

(b) Any post office of the United States Postal Service;

(c) A state or any political subdivision thereof;

(d)(i) Banks, credit unions, digital asset depository institutions as defined in section 8-3003, building and loan associations, savings and loan associations, savings banks, or mutual banks organized under the laws of any state or the United States;

(ii) Subsidiaries of the institutions listed in subdivision (d)(i) of this subsection;

(iii) Bank holding companies which have a banking subsidiary located in Nebraska and whose debt securities have an investment grade rating by a national rating agency; or

(iv) Authorized delegates of the institutions and entities listed in subdivision (d)(i), (ii), or (iii) of this subsection, except that authorized delegates that are not banks, credit unions, building and loan associations, savings and loan associations, savings banks, mutual banks, subsidiaries of any of the foregoing, or bank holding companies shall comply with all requirements imposed upon authorized delegates under the act;

(e) The provision of electronic transfer of government benefits for any federal, state, or county governmental agency, as defined in Consumer Financial

Protection Bureau Regulation E, 12 C.F.R. part 1005, as such regulation existed on January 1, 2024, by a contractor for and on behalf of the United States or any department, agency, or instrumentality thereof or any state or any political subdivision thereof;

(f) An operator of a payment system only to the extent that the payment system provides processing, clearing, or settlement services between or among persons who are all exempt under this section in connection with wire transfers, credit card transactions, debit card transactions, automated clearinghouse transfers, or similar fund transfers; or

(g) A person, firm, corporation, or association licensed in this state and acting within this state within the scope of a license:

(i) As a collection agency pursuant to the Collection Agency Act;

(ii) As a credit services organization pursuant to the Credit Services Organization Act; or

(iii) To engage in the debt management business pursuant to sections 69-1201 to 69-1217.

(2) An authorized delegate of a licensee or of an exempt entity, acting within the scope of its authority conferred by a written contract as described in section 8-2739, is not required to obtain a license under the Nebraska Money Transmitters Act, except that such an authorized delegate shall comply with the other provisions of the act which apply to money transmission transactions.

Source: Laws 2013, LB616, § 24; Laws 2021, LB363, § 17; Laws 2021, LB649, § 48; Laws 2022, LB707, § 25; Laws 2023, LB92, § 17; Laws 2024, LB1074, § 53.
Operative date April 18, 2024.

Cross References

Collection Agency Act, see section 45-601.
Credit Services Organization Act, see section 45-801.

8-2729 License application; form; contents.

Each application for a license under the Nebraska Money Transmitters Act shall be made in writing and in a form prescribed by the director. Each application shall state or contain:

(1) For all applicants:

(a) The exact name of the applicant, the applicant's principal address, any fictitious or trade name used by the applicant in the conduct of its business, and the location of the applicant's business records;

(b) The history of the applicant's criminal convictions and material litigation for the five-year period before the date of the application;

(c) A description of the activities conducted by the applicant and a history of operations;

(d) A description of the business activities in which the applicant seeks to be engaged in this state;

(e) A list identifying the applicant's proposed authorized delegates in this state, if any, at the time of the filing of the application;

(f) A sample authorized delegate contract, if applicable;

(g) A sample form of payment instrument, if applicable;

(h) The locations at which the applicant and its authorized delegates, if any, propose to conduct money transmission in this state; and

(i) The name, address, and account information of each clearing bank or banks, which shall be covered by federal deposit insurance, on which the applicant's payment instruments and funds received for transmission or otherwise will be drawn or through which the payment instruments or other funds will be payable;

(2) If the applicant is a corporation, the applicant shall also provide:

(a) The date of the applicant's incorporation and state of incorporation;

(b) A certificate of good standing from the state in which the applicant was incorporated;

(c) A certificate of authority from the Secretary of State to conduct business in this state;

(d) A description of the corporate structure of the applicant, including the identity of any parent or subsidiary of the applicant, and a disclosure of whether any parent or subsidiary is publicly traded on any stock exchange;

(e) The name, business and residence addresses, and employment history for the five-year period immediately before the date of the application of the applicant's executive officers and the officers or managers who will be in charge of the applicant's activities to be licensed under the act;

(f) The name, business and residence addresses, and employment history for the five-year period immediately before the date of the application and the most recent personal financial statement of any key shareholder of the applicant;

(g) The history of material litigation for the five-year period immediately before the date of the application of every executive officer or key shareholder of the applicant;

(h) Background checks as provided in section 8-2730;

(i) A copy of the applicant's most recent audited financial statement including balance sheet, statement of income or loss, statement of changes in shareholder equity, and statement of changes in financial position and, if available, the applicant's audited financial statements for the immediately preceding two-year period. However, if the applicant is a wholly owned subsidiary of another corporation, the applicant may submit either the parent corporation's consolidated audited financial statements for the current year and for the immediately preceding two-year period or the parent corporation's Form 10-K reports filed with the United States Securities and Exchange Commission for the prior three years in lieu of the applicant's financial statements. If the applicant is a wholly owned subsidiary of a corporation having its principal place of business outside the United States, similar documentation filed with the parent corporation's non-United States regulator may be submitted to satisfy this subdivision; and

(j) Copies of all filings, if any, made by the applicant with the United States Securities and Exchange Commission or with a similar regulator in a country other than the United States, within the year preceding the date of filing of the application; and

(3) If the applicant is not a corporation, the applicant shall also provide:

(a) The name, business and residence addresses, personal financial statement, and employment history, for the five-year period immediately before the date of the application, of each principal of the applicant and the name, business and residence addresses, and employment history for the five-year period immedi-

ately before the date of the application of any other person or persons who will be in charge of the applicant's money transmission activities;

(b) A copy of the applicant's registration or qualification to do business in this state;

(c) The history of material litigation for the five-year period immediately before the date of the application for each individual having any ownership interest in the applicant and each individual who exercises supervisory responsibility with respect to the applicant's activities;

(d) Background checks as provided in section 8-2730; and

(e) Copies of the applicant's audited financial statements including balance sheet, statement of income or loss, and statement of changes in financial position for the current year and, if available, for the immediately preceding two-year period.

Source: Laws 2013, LB616, § 29; Laws 2021, LB363, § 20; Laws 2024, LB1074, § 54.
Operative date July 19, 2024.

8-2730 Licensee; license and registration through Nationwide Mortgage Licensing System and Registry; department; powers; director; reports; powers and duties; department; duties.

(1) Effective July 1, 2014, the department shall require licensees under the Nebraska Money Transmitters Act to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement, the department is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the department may establish, by adopting and promulgating rules and regulations or by order, requirements as necessary. The requirements may include, but are not limited to:

(a) Background checks of applicants and licensees, including, but not limited to:

(i) Fingerprints of every executive officer, director, partner, member, sole proprietor, or shareholder submitted to the Federal Bureau of Investigation and any other governmental agency or entity authorized to receive such information for a state, national, and international criminal history record information check, except that the department shall not require the submission of fingerprints by (A) an executive officer or director of an applicant or licensee which is either a publicly traded company or a wholly owned subsidiary of a publicly traded company or (B) an applicant or licensee who has previously submitted the fingerprints of an executive officer, director, partner, member, sole proprietor, or shareholder directly to the Nationwide Mortgage Licensing System and Registry and the Federal Bureau of Investigation will accept such fingerprints for a criminal background check;

(ii) Checks of civil or administrative records;

(iii) Checks of an applicant's or a licensee's credit history; or

(iv) Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry;

(b) The payment of fees to apply for or renew a license through the Nationwide Mortgage Licensing System and Registry;

(c) The setting or resetting, as necessary, of renewal processing or reporting dates;

(d) Information and reports pertaining to authorized delegates; and

(e) Amending or surrendering a license or any other such activities as the director deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

(2) In order to fulfill the purposes of the act, the department is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to the act. The department may allow such system to collect licensing fees on behalf of the department and allow such system to collect a processing fee for the services of the system directly from each licensee or applicant for a license.

(3) The director is required to regularly report enforcement actions and other relevant information to the Nationwide Mortgage Licensing System and Registry subject to the provisions contained in section 8-2731.

(4) The director shall establish a process whereby applicants and licensees may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the director.

(5) The department shall ensure that the Nationwide Mortgage Licensing System and Registry adopts a privacy, data security, and breach of security of the system notification policy. The director shall make available upon written request a copy of the contract between the department and the Nationwide Mortgage Licensing System and Registry pertaining to the breach of security of the system provisions.

(6) The department shall upon written request provide the most recently available audited financial report of the Nationwide Mortgage Licensing System and Registry.

(7) The director may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from and distributing information to the United States Department of Justice or any other governmental agency in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of subsection (1) of this section.

Source: Laws 2013, LB616, § 30; Laws 2024, LB1074, § 55.
Operative date July 19, 2024.

8-2735 Licensee; notice to director; when; report; contents; breach of the security of the system; notification.

(1) A licensee shall file notice with the director within thirty calendar days after any material change in information provided in a licensee's application as prescribed by the director.

(2) A licensee shall file a report with the director within five business days after the licensee has reason to know of the occurrence of any of the following events:

(a) The filing of a petition by or against the licensee under any bankruptcy law of the United States for liquidation or reorganization;

(b) The filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors;

(c) The filing of an action to revoke or suspend the licensee's license in a state or country in which the licensee engages in business or is licensed;

(d) The cancellation or other impairment of the licensee's bond or other security;

(e) A charge or conviction of the licensee or of an executive officer, manager, or director of, or controlling person of, the licensee, for a felony; or

(f) A charge or conviction of an authorized delegate for a felony.

(3)(a) Except as provided in subdivisions (b) and (c) of this subsection, a licensee shall notify the director in writing or through the Nationwide Mortgage Licensing System and Registry within three business days from the time that the licensee becomes aware of any breach of security of the system of computerized data owned or licensed by the licensee, which contains personal information about a Nebraska resident, or the unauthorized access to or use of such information about a Nebraska resident as a result of the breach.

(b) If a licensee would be required under Nebraska law to provide notification to a Nebraska resident regarding such incident, then the licensee shall provide a copy of such notification to the department prior to or simultaneously with the licensee's notification to the Nebraska resident.

(c) Notice required by this subsection 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.

(d) For purposes of this subsection, the terms breach of the security of the system and personal information have the same meaning as in section 87-802.

Source: Laws 2013, LB616, § 35; Laws 2024, LB1074, § 56.
Operative date July 19, 2024.

ARTICLE 29

FINANCIAL EXPLOITATION OF A VULNERABLE ADULT OR SENIOR ADULT

(a) FINANCIAL INSTITUTIONS

Section
8-2903. Financial exploitation of a vulnerable adult or senior adult; financial institution; authority to delay, refuse, or prevent certain activity; expiration; effect; immunity.

(a) FINANCIAL INSTITUTIONS

8-2903 Financial exploitation of a vulnerable adult or senior adult; financial institution; authority to delay, refuse, or prevent certain activity; expiration; effect; immunity.

(1) When a financial institution, or an employee of a financial institution, reasonably believes, or has received information from the department or a law enforcement agency demonstrating that it is reasonable to believe, that finan-

cial exploitation of a vulnerable adult or senior adult may have occurred, may have been attempted, is occurring, or is being attempted, the financial institution may, but is not required to:

(a) Delay or refuse a transaction with or involving the vulnerable adult or senior adult;

(b) Delay or refuse to permit the withdrawal or disbursement of funds contained in the vulnerable adult's or senior adult's account;

(c) Prevent a change in ownership of the vulnerable adult's or senior adult's account;

(d) Prevent a transfer of funds from the vulnerable adult's or senior adult's account to an account owned wholly or partially by another person;

(e) Refuse to comply with instructions given to the financial institution by an agent or a person acting for or with an agent under a power of attorney signed or purported to have been signed by the vulnerable adult or senior adult; or

(f) Prevent the designation or change the designation of beneficiaries to receive any property, benefit, or contract rights for a vulnerable adult or senior adult at death.

(2) A financial institution is not required to act under subsection (1) of this section when provided with information alleging that financial exploitation may have occurred, may have been attempted, is occurring, or is being attempted, but may use the financial institution's discretion to determine whether or not to act under subsection (1) of this section based on the information available to the financial institution at the time.

(3)(a)(i) A financial institution may notify any third party reasonably associated with a vulnerable adult or senior adult if the financial institution reasonably believes that the financial exploitation of a vulnerable adult or senior adult may have occurred, may have been attempted, is occurring, or is being attempted.

(ii) A third party reasonably associated with a vulnerable adult or senior adult includes, but is not limited to, the following: (A) A parent, spouse, adult child, sibling, or other known family member or close associate of a vulnerable adult or senior adult; (B) an authorized contact provided by a vulnerable adult or senior adult to the financial institution; (C) a co-owner, additional authorized signatory, or beneficiary on a vulnerable adult's or a senior adult's account; (D) an attorney in fact, trustee, conservator, guardian, or other fiduciary who has been selected by a vulnerable adult or senior adult, a court, or a third party to manage some or all of the financial affairs of the vulnerable adult or senior adult; and (E) an attorney known to represent or have represented the vulnerable adult or senior adult.

(b) A financial institution may choose not to notify any third party reasonably associated with a vulnerable adult or senior adult of suspected financial exploitation of the vulnerable adult or senior adult if the financial institution reasonably believes the third party is, may be, or may have been engaged in the financial exploitation of the vulnerable adult or senior adult or if requested to refrain from making a notification by a law enforcement agency, if such notification could interfere with a law enforcement investigation.

(c) Nothing in this subsection shall prevent a financial institution from notifying the department or a law enforcement agency, if the financial institution reasonably believes that the financial exploitation of a vulnerable adult or

senior adult may have occurred, may have been attempted, is occurring, or is being attempted.

(4) The authority granted the financial institution under subsection (1) of this section expires upon the sooner of: (a) Thirty business days after the date on which the financial institution first acted under subsection (1) of this section; (b) when the financial institution is satisfied that the transaction or act will not result in financial exploitation of the vulnerable adult or senior adult; or (c) upon termination by an order of a court of competent jurisdiction.

(5) Unless otherwise directed by order of a court of competent jurisdiction, a financial institution may extend the duration under subsection (4) of this section based on a reasonable belief that the financial exploitation of a vulnerable adult or senior adult may continue to occur or continue to be attempted.

(6) A financial institution and its bank holding company, if any, and any employees, agents, officers, and directors of the financial institution and its bank holding company, if any, shall be immune from any civil, criminal, or administrative liability that may otherwise exist (a) for delaying or refusing to execute a transaction, withdrawal, or disbursement, or for not delaying or refusing to execute such transaction, withdrawal, or disbursement under this section and (b) for actions taken in furtherance of determinations made under subsections (1) through (5) of this section.

(7)(a) Notwithstanding any other law to the contrary, the refusal by a financial institution to engage in a transaction as authorized under subsection (1) of this section shall not constitute the wrongful dishonor of an item under section 4-402, Uniform Commercial Code.

(b) Notwithstanding any other law to the contrary, a reasonable belief that payment of a check will facilitate the financial exploitation of a vulnerable adult or senior adult shall constitute reasonable grounds to doubt the collectability of the item for purposes of the federal Check Clearing for the 21st Century Act, 12 U.S.C. 5001 et seq., the federal Expedited Funds Availability Act, 12 U.S.C. 4001 et seq., and 12 C.F.R. part 229, as such acts and part existed on January 1, 2024.

Source: Laws 2020, LB909, § 20; Laws 2021, LB363, § 23; Laws 2022, LB707, § 26; Laws 2023, LB92, § 18; Laws 2024, LB1074, § 57. Operative date April 18, 2024.

ARTICLE 30

NEBRASKA FINANCIAL INNOVATION ACT

Section

Section
8-3014. Financial institution; digital asset depository department; charter amendment; director; powers and duties.
8-3015. Digital asset depository; act as; charter to operate; required; application; fee.
8-3016. Application for charter; notice; hearing; director; department; powers and duties.
8-3017. Application for charter; hearing; how conducted.
8-3018. Application for charter; director; investigation and examination.
8-3019. Application for charter; decision; criteria and requirements; approval, conditional approval, or denial; how effected.
8-3020. Conditions to commence business; compliance required; failure to commence business; effect.
8-3021. Appeal.
8-3022. Surety bond; pledge of assets; requirements; treatment.
8-3023. Reports; director; powers; examination by department; when; assessments and costs; insurance or bond required.
8-3025. Charter; suspend or revoke; grounds.
8-3026. Charter; surrendered, suspended, or revoked; effect.
8-3028. Voluntary dissolution; procedure.
8-3030. Digital asset depository; officer, director, employee, or agent; removal; grounds.

8-3002 Legislative findings and declarations.

The Legislature finds and declares that:

(1) Economic development initiatives demand buy-in and input from community stakeholders across multiple industries. The Legislature should send a strong message that Nebraska wants to bring high-tech jobs and digital asset operations to our state. Nebraska has an incredible opportunity to be a leader in this emerging technology;

(2) Nebraska desires to create an entrepreneurial ecosystem where young talent can be paired with private investors in order to create jobs, enhance our quality of life, and prevent the brain drain that is particularly acute in rural Nebraska. If Nebraska does not make intentional and meaningful changes to how it recruits and retains young people, Nebraska will be left behind;

(3) The rapid innovation of blockchain and digital ledger technology, including the growing use of virtual currency, digital assets, and other controllable electronic records has complicated the development of blockchain services and products in the marketplace;

(4) Blockchain innovators are able and willing to address banking compliance challenges such as federal customer identification, anti-money laundering, and beneficial ownership requirements to comply with regulators' concerns;

(5) Compliance with federal and state laws, including, but not limited to, know-your-customer and anti-money-laundering rules and the federal Bank Secrecy Act, is critical to ensuring the future growth and reputation of the blockchain and technology industries as a whole; and

(6) Authorizing digital asset depositories in Nebraska will provide a necessary and valuable service to blockchain innovators and customers, emphasize Nebraska's partnership with the technology and financial industries, safely grow this state's ever-evolving financial sector, and afford more opportunities for Nebraska residents.

Source: Laws 2021, LB649, § 2; Laws 2023, LB92, § 19.

8-3003 Terms, defined.

For purposes of the Nebraska Financial Innovation Act:

(1) Blockchain means a distributed digital record of controllable electronic record transactions;

(2) Centralized finance means centralized digital asset exchanges, businesses, or organizations with a valid physical address;

(3) Control has the following meaning:

(a) A person has control of a controllable electronic record if:

(i) The following conditions are met:

(A) The controllable electronic record or the system in which it is recorded, if any, gives the person:

(I) The power to derive substantially all the benefit from the controllable electronic record;

(II) Subject to subdivision (b) of this subdivision, the exclusive power to prevent others from deriving substantially all the benefit from the controllable electronic record; and

(III) Subject to subdivision (b) of this subdivision, the exclusive power to transfer control of the controllable electronic record to another person or cause another person to obtain control of a controllable electronic record that derives from the controllable electronic record; and

(B) The controllable electronic record, a record attached to or logically associated with the controllable electronic record, or the system in which the controllable electronic record is recorded, if any, enables the person to readily identify itself as having the powers specified in subdivision (a)(i) of this subdivision; or

(ii) Another person obtains control of the controllable electronic record on behalf of the person, or having previously obtained control of the controllable electronic record, acknowledges that it has control on behalf of the person.

(b) A power specified in subdivisions (3)(a)(i)(A)(II) or (III) of this section can be exclusive, even if:

(i) The controllable electronic record or the system in which it is recorded, if any, limits the use to which the controllable electronic record may be put or has protocols that are programmed to result in a transfer of control; and

(ii) The person has agreed to share the power with another person.

(c) For the purposes of subdivision (3)(a)(i)(B) of this section, a person may be identified in any way, including by name, identifying number, cryptographic key, office, or account number;

(4) Controllable electronic borrowing means the act of receiving digital assets or the use of digital assets from a lender in exchange for the payment to the lender of digital assets, interest, fees, or rewards;

(5) Controllable electronic record means an electronic record that can be subjected to control. The term has the same meaning as digital asset and does not include electronic chattel paper, electronic documents, investment property, and transferable records under the Uniform Electronic Transactions Act;

(6) Controllable electronic record exchange means a business that allows customers to purchase, sell, convert, send, receive, or trade digital assets for other digital assets;

(7) Controllable electronic record lending means the act of providing digital assets to a borrower in exchange for digital assets, interest, fees, or rewards;

(8) Controllable electronic records staking means the act of pledging a digital asset or token with an expectation of gaining digital assets, interest, fees, or other rewards on such act;

(9) Customer means a digital asset depositor or digital asset account holder;

(10) Decentralized finance means digital asset exchanges, businesses, or organizations operating independently on blockchains;

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

(12) Digital asset depository means a financial institution that securely holds liquid assets when such assets are in the form of controllable electronic records, either as a corporation organized, chartered, and operated pursuant to the Nebraska Financial Innovation Act as a digital asset depository institution or a financial institution operating a digital asset depository business as a digital asset depository department under a charter granted by the director;

(13) Digital asset depository department means a financial institution operating a digital asset depository business as a digital asset depository department under a charter granted by the director;

(14) Digital asset depository institution means a corporation operating a digital asset depository business organized and chartered pursuant to the Nebraska Financial Innovation Act;

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

(16) Financial institution means a bank, savings bank, building and loan association, or savings and loan association chartered by the United States, the department, or a foreign state agency; or a trust company;

(17) Fork means a change to the protocol of a blockchain network;

(18) Independent node verification network means a shared electronic database where copies of the same information are stored on multiple computers; and

(19) Stablecoin means a controllable electronic record designed to have a stable value that is backed by a reserve asset.

Source: Laws 2021, LB649, § 3; Laws 2023, LB92, § 20.

8-3004 Director; powers and duties.

The director shall have the power to issue to corporations desiring to transact business as a digital asset depository institution charters to transact digital asset depository business as defined in the Nebraska Financial Innovation Act. The director shall have general supervision and control over such digital asset depositories.

Source: Laws 2021, LB649, § 4; Laws 2023, LB92, § 21.

8-3005 Digital asset depository; powers; digital asset depository institution; organization; operating authority; demand deposits and loans; prohibited.

(1)(a) A digital asset depository may:

(i) Make contracts as a corporation under Nebraska law;

(ii) Sue and be sued;

(iii) Receive notes as permitted by federal law;

(iv) Carry on a nonlending digital asset banking business for customers, consistent with subdivision (2)(b) of this section;

(v) Provide payment services upon the request of a customer; and

(vi) Make an application to become a member bank of the federal reserve system.

(b) A digital asset depository shall maintain its main office and the primary office of its chief executive officer in Nebraska.

(c) As otherwise authorized by this section, a digital asset depository may conduct business with customers outside this state.

(2)(a) A digital asset depository institution, consistent with the Nebraska Financial Innovation Act, shall be organized as a corporation under the Nebraska Model Business Corporation Act to exercise the powers set forth in subsection (1) of this section.

(b) A digital asset depository institution shall not accept demand deposits of United States currency or United States currency that may be accessed or withdrawn by check or similar means for payment to third parties and except as otherwise provided in this subsection, a digital asset depository institution shall not make any loans to consumers for personal, property or household purposes, mortgage loans, or commercial loans of any fiat currency including, but not limited to, United States currency, including the provision of temporary credit relating to overdrafts. Notwithstanding this prohibition against fiat currency lending by a digital asset depository institution, a digital asset depository institution may facilitate the provision of digital asset business services resulting from the interaction of customers with centralized finance or decentralized finance platforms including, but not limited to, controllable electronic record exchange, staking, controllable electronic record lending, and controllable electronic record borrowing. A digital asset depository institution may purchase debt obligations specified by subdivision (2)(c) of section 8-3009.

(c) A digital asset depository institution may open a branch in this state or in another state in the manner set forth in section 8-157 or 8-2303. A branch in another state is subject to the laws of the host state. A digital asset depository institution, including any branch of the digital asset depository institution, may only accept digital asset deposits or provide other digital asset business services under the Nebraska Financial Innovation Act to individual customers or a customer that is a legal entity other than a natural person engaged in a bona fide business which is lawful under the laws of Nebraska, the laws of the host state if the entity is headquartered in another state, and federal law.

(3) The deposit limitations of subdivision (2)(a)(ii) of section 8-157 shall not apply to a digital asset depository.

(4) Any United States currency coming into an account established by a customer of a digital asset depository institution shall be held in a financial institution, the deposits of which are insured by the Federal Deposit Insurance Corporation, which maintained a main-chartered office in this state, any branch thereof in this state, or any branch of the financial institution which maintained the main-chartered office in this state prior to becoming a branch of such financial institution.

(5) A digital asset depository institution shall establish and maintain programs for compliance with the federal Bank Secrecy Act, in accordance with 12 C.F.R. 208.63, as the act and rule existed on January 1, 2024.

(6) A digital asset depository shall help meet the digital financial needs of the communities in which it operates, consistent with safe and sound operations, and shall maintain and update a public file available to any person on request and on any Internet website or mobile application it maintains containing specific information about its efforts to meet community needs, including:

(a) The collection and reporting of data;

(b) Its policies and procedures for accepting and responding to consumer complaints; and

(c) Its efforts to assist with financial literacy or personal finance programs to increase knowledge and skills of Nebraska students in areas such as digital assets, budgeting, credit, checking and savings accounts, loans, stocks, and insurance.

Source: Laws 2021, LB649, § 5; Laws 2022, LB707, § 27; Laws 2023, LB92, § 22; Laws 2024, LB1074, § 58.
Operative date April 18, 2024.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

8-3007 Customers; criteria.

(1) No customer shall open or maintain an account with a digital asset depository or otherwise receive any services from the digital asset depository unless the customer meets the criteria of this subsection. A customer shall:

(a) Make sufficient evidence available to the digital asset depository to enable compliance with anti-money laundering, customer identification, and beneficial ownership requirements, as determined by the federal Bank Secrecy Act guidance and the policies and practices of the institution; and

(b) If the customer is a legal entity other than a natural person:

(i) Be in good standing with the jurisdiction in the United States in which it is incorporated or organized; and

(ii) Be engaged in a business that is lawful and bona fide in Nebraska, in the host state, if applicable, and under federal law consistent with subsection (3) of this section.

(2) A customer which meets the criteria of subsection (1) of this section may be issued a digital asset depository account and otherwise receive services from the digital asset depository, contingent on the digital asset depository maintaining sufficient insurance under subsection (5) of section 8-3023.

(3) Consistent with subdivisions (1)(a)(iv) and (v) of section 8-3005, and in addition to any requirements specified by federal law, a digital asset depository shall require that any potential customer that is a legal entity other than a natural person provide reasonable evidence that the entity is engaged in a business that is lawful and bona fide in Nebraska, in the host state, if applicable, and under federal law or is likely to open a lawful, bona fide business within a federal Bank Secrecy Act compliant timeframe, as the act existed on January 1, 2024. For purposes of this subsection, reasonable evidence includes business entity filings, articles of incorporation or organization, bylaws, operat-

ing agreements, business plans, promotional materials, financing agreements, or other evidence.

Source: Laws 2021, LB649, § 7; Laws 2022, LB707, § 28; Laws 2023, LB92, § 23; Laws 2024, LB1074, § 59.
Operative date April 18, 2024.

8-3008 Digital asset depository account; disclosures to customer; requirements.

The terms and conditions of a customer's digital asset depository account at a digital asset depository shall be disclosed at the time the customer contracts for a digital asset business service. Such disclosure shall be full and complete, contain no material misrepresentations, be in readily understandable language, and shall include, as appropriate and to the extent applicable:

(1) A schedule of fees and charges the digital asset depository may assess, the manner by which fees and charges will be calculated if they are not set in advance and disclosed, and the timing of the fees and charges;

(2) A statement that the customer's digital asset depository account is not protected by the Federal Deposit Insurance Corporation;

(3) A statement whether there is support for forked networks of each digital asset;

(4) A statement that investment in digital assets is volatile and subject to market loss;

(5) A statement that investment in digital assets may result in total loss of value;

(6) A statement that legal, legislative, and regulatory changes may impact the value of digital assets;

(7) A statement that customers should perform research before investing in digital assets;

(8) A statement that transfers of digital assets are irrevocable, if applicable;

(9) A statement as to how liability for an unauthorized, mistaken, or accidental transfer shall be apportioned;

(10) A statement that digital assets are not legal tender in any jurisdiction;

(11) A statement that digital assets may be subject to cyber theft or theft and become unrecoverable;

(12) A statement about who maintains control, ownership, and access to any private key related to a digital assets customer's digital asset account; and

(13) A statement that losing private key information may result in permanent total loss of access to digital assets.

Source: Laws 2021, LB649, § 8; Laws 2023, LB92, § 24.

8-3011 Digital asset depository; notice and statement regarding insurance and risk; customer; acknowledgment.

(1) With respect to all digital asset business activities, a digital asset depository shall display and include in all advertising, in all marketing materials, on any Internet website or mobile application it maintains, and at each window or place where it accepts digital asset deposits, (a) a notice conspicuously stating that digital asset deposits and digital asset accounts are not insured by the

Federal Deposit Insurance Corporation, if applicable, and (b) the following conspicuous statement: Holdings of digital assets are speculative and involve a substantial degree of risk, including the risk of complete loss. There is no assurance that any digital asset will be viable, liquid, or solvent. Nothing in this communication is intended to imply that any digital asset held in custody by a digital asset depository is low-risk or risk-free. Digital assets held in custody are not guaranteed by a digital asset depository and are not insured by the Federal Deposit Insurance Corporation.

(2) Upon opening a digital asset depository account, a digital asset depository shall require each customer to execute a statement acknowledging that all digital asset deposits at the digital asset depository are not insured by the Federal Deposit Insurance Corporation. The digital asset depository shall permanently retain this acknowledgment, whether in electronic form or as a signature card.

Source: Laws 2021, LB649, § 11; Laws 2023, LB92, § 25.

8-3012 Digital asset depository institution; formation; articles of incorporation; contents; filing requirements; capital requirements; bank holding company; powers.

(1) Except as otherwise provided by subsection (5) of this section, five or more adult persons, including at least one Nebraska resident, may form a digital asset depository institution. The incorporators shall subscribe the articles of incorporation and transmit them and the bylaws of the digital asset depository to the director as part of an application for a charter under section 8-3015.

(2) The articles of incorporation shall include the following information:

(a) The corporate name;

(b) The object for which the corporation is organized;

(c) The term of its existence, which may be perpetual;

(d) The place in Nebraska where its main office shall be physically located and its operations conducted;

(e) The amount of capital stock and the number of shares;

(f) The name and residence of each shareholder subscribing to more than ten percent of the stock and the number of shares owned by that shareholder;

(g) The number of directors and the names of those who shall manage the affairs of the corporation for the first year; and

(h) A statement that the articles of incorporation are made to enable the incorporators to avail themselves of the advantages of the laws of the state.

(3) Copies of all amended articles of incorporation and bylaws shall be filed in the same manner as the original articles of incorporation and bylaws.

(4) The incorporators shall solicit capital prior to filing an application for a charter with the director, consistent with section 8-3013. In the event an application for a charter is not filed or is denied by the director, all capital shall be promptly returned without loss.

(5) Subject to federal and state law, a bank holding company may apply to hold a digital asset depository institution.

Source: Laws 2021, LB649, § 12; Laws 2023, LB92, § 26.

8-3013 Digital asset depository institution; capital and surplus requirements.

(1) The capital stock of each digital asset depository institution chartered under the Nebraska Financial Innovation Act shall be subscribed for as paid-up stock. No digital asset depository institution shall be chartered with capital stock of less than ten million dollars.

(2) No digital asset depository institution shall commence business until the full amount of its authorized capital is subscribed and all capital stock is fully paid in. No digital asset depository institution may be chartered without a paid-up surplus fund of at least three years of estimated operating expenses in the amount disclosed pursuant to subsection (2) of section 8-3015 or in another amount required by the director.

(3) A digital asset depository institution may acquire additional capital prior to the granting of a charter and shall report this capital as an amendment to its charter application.

Source: Laws 2021, LB649, § 13; Laws 2023, LB92, § 27.

8-3014 Financial institution; digital asset depository department; charter amendment; director; powers and duties.

(1) Any financial institution, having adopted or amended its articles of incorporation to authorize the conduct of a digital asset depository business may be further chartered by the director to transact a digital asset depository business in a digital asset depository department in connection with such financial institution.

(2) The director has the authority to issue to financial institutions amendments to their charters to transact a digital asset depository business, has general supervision and control over such digital asset depository departments of financial institutions, and may require the injection of additional capital.

(3) The director, before granting to any financial institution the right to operate a digital asset depository department, shall require such financial institution to make an application for amendment of its charter, setting forth such information as the director may require.

(4) A digital asset depository department of a financial institution when chartered under subsection (1) of this section shall be separate and apart from every other department of the financial institution and shall have all the powers, duties, and obligations of a digital asset depository institution as set forth in the Nebraska Financial Innovation Act.

(5) Any financial institution authorized to transact a digital asset depository business in a digital asset depository department pursuant to subsection (1) of this section may conduct such digital asset depository business at the office of any financial institution which is a subsidiary of the same bank holding company as the authorized financial institution.

(6) A financial institution may deposit or have on deposit funds of an account controlled by the financial institution's digital asset depository department unless prohibited by applicable law.

Source: Laws 2021, LB649, § 14; Laws 2023, LB92, § 28.

8-3015 Digital asset depository; act as; charter to operate; required; application; fee.

(1) No corporation shall act as a digital asset depository without first obtaining a charter to operate from the director under the Nebraska Financial Innovation Act.

(2) The incorporators under section 8-3012 shall apply to the director for a charter. The application shall contain the digital asset depository institution's articles of incorporation, bylaws, a detailed business plan, a comprehensive estimate of operating expenses for the first three years of operation, a complete proposal for compliance with the provisions of the Nebraska Financial Innovation Act, evidence of the capital and surplus required under section 8-3013, and any investors or owners holding ten percent or more equity in the digital asset depository institution. The director may prescribe the form of application.

(3) A financial institution may apply to the director for a charter to operate a digital asset depository business as a department. The application shall contain a detailed business plan, a comprehensive estimate of operating expenses for the first three years of operation, and a complete proposal for compliance with the provisions of the Nebraska Financial Innovation Act. The director may prescribe the form of application.

(4) Each application for a charter shall be accompanied by an application fee of fifty thousand dollars.

Source: Laws 2021, LB649, § 15; Laws 2023, LB92, § 29.

8-3016 Application for charter; notice; hearing; director; department; powers and duties.

(1) After a substantially complete application for a digital asset depository institution charter or a digital asset depository department charter has been submitted, the director shall notify the applicants in writing within thirty calendar days of any deficiency in the required information or that the application has been accepted for filing. When the director is satisfied that all required information has been furnished, the director shall establish a time and place for a public hearing which shall be conducted not less than sixty days, nor more than one hundred twenty days, after notice from the director to the applicants that the application is in order.

(2) Within thirty days after receipt of notice of the time and place of the public hearing, the department shall cause notice of filing of the application and the hearing to be published at the applicant's expense in a newspaper of general circulation within the county where the proposed digital asset depository is to be located. Publication shall be made at least once a week for three consecutive weeks before the hearing, stating the proposed location of the digital asset depository, the names of the applicants for a charter, the nature of the activities to be conducted by the proposed digital asset depository, and other information required by rule and regulation. The director shall electronically send notice of the hearing to state and national banks, federal savings and loan associations, state and federal credit unions, and other financial institutions in the state, federal agencies, and financial industry trade groups.

Source: Laws 2021, LB649, § 16; Laws 2023, LB92, § 30.

8-3017 Application for charter; hearing; how conducted.

The hearing required by section 8-3016 shall be conducted under the Administrative Procedure Act and shall comply with the requirements of the act.

Source: Laws 2021, LB649, § 17; Laws 2023, LB92, § 31.

Cross References

Administrative Procedure Act, see section 84-920.

8-3018 Application for charter; director; investigation and examination.

Upon receiving an application for a charter to become a digital asset depository institution or for a charter to operate a digital asset depository department, the applicable fee, and other information required by the director, the director shall make a careful investigation and examination of the following:

(1) The character, reputation, criminal record, financial standing, and ability of the shareholders owning ten percent or more equity in the applicant;

(2) The character, financial responsibility, criminal background, banking or other financial experience, and business qualifications of those proposed as officers and directors;

(3) Whether the applicant or any of its officers, directors, or shareholders owning ten percent or more equity in the applicant have ever been convicted of any (i) misdemeanor involving any aspect of a digital asset depository business or any business of a similar nature or (ii) felony;

(4) Whether the applicant or any of its officers, directors, or shareholders owning ten percent or more equity in the applicant have ever been permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of a digital asset depository business or any business of a similar nature;

(5) A criminal history record information check of the applicant, its officers, directors, and shareholders owning ten percent or more equity in the applicant. The direct cost of the criminal history record information check shall be paid by the applicant; and

(6) The application for a charter, including the adequacy and plausibility of the business plan of the digital asset depository, the benefits to the customers, and whether the applicant has offered a complete proposal for compliance with the Nebraska Financial Innovation Act.

Source: Laws 2021, LB649, § 18; Laws 2023, LB92, § 32.

8-3019 Application for charter; decision; criteria and requirements; approval, conditional approval, or denial; how effected.

(1) Within ninety days after receipt of the transcript of the public hearing, the director shall render a decision on the application based on the following criteria and requirements:

(a) Whether the character, reputation, criminal record, financial standing, and ability of the shareholders owning ten percent or more equity in the applicant are sufficient to afford reasonable promise of a successful operation;

(b) That the digital asset depository will be operated by officers of integrity and responsibility;

(c) Whether the character, financial responsibility, criminal background, and banking or other financial experience and business qualifications of those

proposed as officers and directors are sufficient to afford reasonable promise of a successful operation;

(d) The adequacy and plausibility of the business plan of the digital asset depository, including the ongoing customer expectations of the digital asset depository as determined by the director;

(e) Compliance by the digital asset depository institution with the capital and surplus requirements of section 8-3013;

(f) Whether the digital asset depository institution is being formed for no other purpose than legitimate objectives authorized by law;

(g) That the name of the proposed digital asset depository institution includes the words ''digital asset bank'' so that it does not resemble the name of any other financial institution transacting business in the state so as to cause confusion;

(h) That the digital asset depository will be operated in a safe and sound manner;

(i) That the digital asset depository shall help meet the digital financial needs of the communities in which it operates, consistent with safe and sound operations, and shall maintain and update a public file and on any Internet website or mobile application it maintains containing specific information about its efforts to meet community needs, including:

(i) The collection and reporting of data;

(ii) Its policies and procedures for accepting and responding to consumer complaints; and

(iii) Its efforts to assist with financial literacy or personal finance programs to increase knowledge and skills of Nebraska students in areas such as digital assets, budgeting, credit, checking and savings accounts, loans, stocks, and insurance;

(j) Whether the applicants have complied with all provisions of state law and are eligible to apply for membership in the federal reserve system; and

(k) Any other considerations in addition to statutory requirements submitted by the applicant pursuant to operational order, rules and regulations, or request of the department.

(2) The director shall approve an application upon making favorable findings on the criteria set forth in subsection (1) of this section. The director may conditionally approve an application by specifying conditions relating to the criteria or may deny the application. The director shall state findings of fact and conclusions of law as part of such decision and shall issue an order approving, conditionally approving, or denying the application.

Source: Laws 2021, LB649, § 19; Laws 2023, LB92, § 33.

8-3020 Conditions to commence business; compliance required; failure to commence business; effect.

(1) If an application is approved, a charter shall not be issued and the digital asset depository shall not commence business before satisfaction of all conditions precedent contained in the director's order or conditional order.

(2) If an approved digital asset depository fails to commence business in good faith within twelve months after the issuance of a charter, the charter shall expire. The director, for good cause and upon an application filed prior to the

expiration of the twelve-month period, may extend the time within which the digital asset depository may open for business.

Source: Laws 2021, LB649, § 20; Laws 2023, LB92, § 34.

8-3021 Appeal.

Any decision of the department or director in approving, conditionally approving, or denying a charter for a digital asset depository is appealable in accordance with the Administrative Procedure Act.

Source: Laws 2021, LB649, § 21; Laws 2023, LB92, § 35.

Cross References

Administrative Procedure Act, see section 84-920.

8-3022 Surety bond; pledge of assets; requirements; treatment.

(1) Except as otherwise provided by subsection (2) of this section, a digital asset depository shall, before transacting any business, pledge or furnish a surety bond to the director to cover costs likely to be incurred by the director in a liquidation or conservatorship of the digital asset depository. The amount of the surety bond or pledge of assets under subsection (2) of this section shall be determined by the director in an amount sufficient to defray the costs of a liquidation or conservatorship.

(2) In lieu of a bond, a digital asset depository may irrevocably pledge specified assets equivalent to a bond under subsection (1) of this section. Any assets pledged to the director under this subsection shall be held in a state or nationally chartered bank, trust company, federal reserve bank, or savings and loan association having a principal or branch office in this state, excluding affiliated institutions. All costs associated with pledging and holding such assets are the responsibility of the digital asset depository.

(3) Assets pledged to the director shall not include money and shall be of the same nature and quality as those required under section 8-210.

(4) The digital asset depository shall have the right, with the approval of the director, to substitute other securities for those deposited and shall be required to do so on written order of the director made for good cause shown. The digital asset depository shall pay the fees prescribed in section 8-602 for pledging and substitution of securities. So long as the digital asset depository so depositing shall continue to be solvent and is not in violation of the Nebraska Financial Innovation Act, such digital asset depository shall be permitted to receive the interest or dividends on such deposit.

(5) Surety bonds shall run to the State of Nebraska and shall be approved under the terms and conditions required under section 8-110.

(6) The director may by order or rules and regulations establish additional investment guidelines or investment options for purposes of the pledge or surety bond required by this section.

(7) In the event of a liquidation or conservatorship of a digital asset depository pursuant to section 8-3027, the director may, without regard to priorities, preferences, or adverse claims, reduce the surety bond or assets pledged under this section to cash as soon as practicable and utilize the cash to defray the costs associated with the liquidation or conservatorship.

(8) Income from assets pledged under subsection (2) of this section shall be paid to the digital asset depository no less than annually, unless a liquidation or conservatorship takes place.

(9) Upon evidence that the amount of the current surety bond or pledged assets is insufficient, the director may require a digital asset depository to increase its surety bond or pledged assets by providing not less than thirty days' written notice to the digital asset depository.

Source: Laws 2021, LB649, § 22; Laws 2023, LB92, § 36.

8-3023 Reports; director; powers; examination by department; when; assessments and costs; insurance or bond required.

(1) The director may call for reports verified under oath from a digital asset depository at any time as necessary to inform the director of the condition of the digital asset depository. Such reports shall be available to the public.

(2) All reports required of a digital asset depository by the director and all materials relating to examinations of a digital asset depository shall be subject to the provisions of sections 8-103 and 8-108.

(3) Every digital asset depository is subject to examination by the department to determine the condition and resources of a digital asset depository, the mode of managing digital asset depository affairs and conducting business, the actions of officers and directors in the investment and disposition of funds, the safety and prudence of digital asset depository management, compliance with the requirements of the Nebraska Financial Innovation Act, and such other matters as the director may require.

(4) A digital asset depository shall pay an assessment in a sum to be determined by the director in accordance with section 8-601 and approved by the Governor and the costs of any examination or investigation as provided in sections 8-108 and 8-606.

(5) A digital asset depository shall maintain appropriate insurance or a bond covering the operational risks of the digital asset depository, which shall include coverage for directors' and officers' liability, errors and omissions liability, information technology infrastructure and activities liability, and business operations, as determined by the director.

Source: Laws 2021, LB649, § 23; Laws 2023, LB92, § 37.

8-3025 Charter; suspend or revoke; grounds.

The director may suspend or revoke the charter of a digital asset depository if, after notice and opportunity for a hearing, the director determines that:

(1) The digital asset depository has failed or refused to comply with an order issued under section 8-1,136, 8-2504, or 8-2743;

(2) The application for a charter contained a materially false statement, misrepresentation, or omission; or

(3) An officer, a director, or an agent of the digital asset depository, in connection with an application for a charter, an examination, a report, or other document filed with the director, knowingly made a materially false statement, misrepresentation, or omission to the department, the director, or the duly authorized agent of the department or director.

Source: Laws 2021, LB649, § 25; Laws 2023, LB92, § 38.

8-3026 Charter; surrendered, suspended, or revoked; effect.

If the charter of a digital asset depository is surrendered, suspended, or revoked, the digital asset depository shall continue to be subject to the provisions of the Nebraska Financial Innovation Act during any liquidation or conservatorship.

Source: Laws 2021, LB649, § 26; Laws 2023, LB92, § 39.

8-3028 Voluntary dissolution; procedure.

(1) A digital asset depository institution may voluntarily dissolve in accordance with this section. Voluntary dissolution shall be accomplished by either liquidating the digital asset depository institution or reorganizing the digital asset depository institution into an appropriate business entity that does not engage in any activity authorized only for a digital asset depository institution. Upon complete liquidation or completion of the reorganization, the director shall revoke the charter of the digital asset depository institution. Thereafter, the corporation or business entity shall not use the words digital asset depository or digital asset bank in its business name or in connection with its ongoing business.

(2) A digital asset depository institution may dissolve its charter either by liquidation or reorganization. The board of directors shall file an application for dissolution with the director, accompanied by a filing fee established by an order or the rules and regulations of the director. The application shall include a comprehensive plan for dissolution setting forth the proposed disposition of all assets and liabilities in reasonable detail to effect a liquidation or reorganization, and any other plans required by the director. The plan of dissolution shall provide for the discharge or assumption of all of the known and unknown claims and liabilities of the digital asset depository institution. Additionally, the application for dissolution shall include other evidence, certifications, affidavits, documents, or information as the director may require, including demonstration of how assets and liabilities will be disposed, the timetable for effecting disposition of the assets and liabilities, and a proposal of the digital asset depository institution for addressing any claims that are asserted after dissolution has been completed. The director shall examine the application for compliance with this section, the business entity laws applicable to the required type of dissolution, and applicable orders and rules and regulations. The director may conduct a special examination of the digital asset depository institution, consistent with subsection (3) of section 8-3023, for purposes of evaluating the application.

(3) If the director finds that the application is incomplete, the director shall return it for completion not later than sixty days after it is filed. If the application is found to be complete by the director, the director shall approve or deny the application not later than thirty days after it is filed. If the director approves the application, the digital asset depository institution may proceed with the dissolution pursuant to the plan outlined in the application, subject to any further conditions the director may prescribe. If the digital asset depository institution subsequently determines that the plan of dissolution needs to be amended to complete the dissolution, it shall file an amended plan with the director and obtain approval to proceed under the amended plan. If the director does not approve the application or amended plan, the digital asset

depository institution may appeal the decision to the director pursuant to the Administrative Procedure Act.

(4) Upon completion of all actions required under the plan of dissolution and satisfaction of all conditions prescribed by the director, the digital asset depository institution shall submit a written report of its actions to the director. The report shall contain a certification made under oath that the report is true and correct. Following receipt of the report, the director, no later than sixty days after the filing of the report, shall examine the digital asset depository institution to determine whether the director is satisfied that all required actions have been taken in accordance with the plan of dissolution and any conditions prescribed by the director. If all requirements and conditions have been met, the director shall, within thirty days of the examination, notify the digital asset depository institution in writing that the dissolution has been completed and issue an order of dissolution.

(5) Upon receiving an order of dissolution, the digital asset depository institution shall surrender its charter to the director. The digital asset depository institution shall then file articles of dissolution and other documents required by sections 21-2,184 to 21-2,201 for a corporation with the Secretary of State. In the case of reorganization, the digital asset depository institution shall file the documents required by the Secretary of State to finalize the reorganization.

(6) If the director determines that all required actions under the plan for dissolution, or as otherwise required by the director, have not been completed, the director shall notify the digital asset depository institution, not later than thirty days after this determination, in writing, of what additional actions shall be taken in order for the institution to be eligible for a certificate of dissolution. The director shall establish a reasonable deadline of up to thirty days for the submission of evidence that additional actions have been taken and the director may extend any deadline upon good cause. If the digital asset depository institution fails to file a supplemental report showing that the additional actions have been taken before the deadline, or submits a report that is found not to be satisfactory by the director, the director shall notify the digital asset depository institution in writing that its voluntary dissolution is not approved, and the institution may appeal the decision to the director pursuant to the Administrative Procedure Act.

(7) A financial institution operating a digital asset depository department may, upon adoption of a resolution by its board of directors, and upon compliance with the provisions of this section, insofar as determined by the director by order or rule and regulation, surrender its charter for a digital asset depository department for cancellation to the department.

Source: Laws 2021, LB649, § 28; Laws 2023, LB92, § 40.

Cross References

Administrative Procedure Act, see section 84-920.

8-3030 Digital asset depository; officer, director, employee, or agent; removal; grounds.

Each officer, director, employee, or agent of a digital asset depository, following written notice from the director, is subject to removal upon order of the director if such officer, director, employee, or agent knowingly, willfully, or negligently:

(1) Fails to perform any duty required by the Nebraska Financial Innovation Act or other applicable law;

(2) Fails to conform to any order or rules and regulations of the director; or

(3) Endangers the interest of a customer or the safety and soundness of the digital asset depository.

Source: Laws 2021, LB649, § 30; Laws 2023, LB92, § 41.

CHAPTER 9
BINGO AND OTHER GAMBLING

Article.
1. General Provisions. 9-1,101.
2. Bingo. 9-204, 9-204.04.
4. Lotteries and Raffles. 9-402 to 9-429.
5. Small Lotteries and Raffles. 9-502 to 9-511.
6. County and City Lotteries. 9-601 to 9-651.01.
8. State Lottery. 9-810 to 9-836.01.
11. Nebraska Racetrack Gaming Act. 9-1103 to 9-1110.
13. Gambling Winnings Setoff for Outstanding Debt Act. 9-1301 to 9-1313.

ARTICLE 1
GENERAL PROVISIONS

Section
9-1,101. Department of Revenue; Charitable Gaming Division; created; duties; Charitable Gaming Operations Fund; created; use; investment; investigators; powers; fees authorized; administration of Nebraska Commission on Problem Gambling.

9-1,101 Department of Revenue; Charitable Gaming Division; created; duties; Charitable Gaming Operations Fund; created; use; investment; investigators; powers; fees authorized; administration of Nebraska Commission on Problem Gambling.

(1) The Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, and section 9-701 shall be administered and enforced by the Charitable Gaming Division of the Department of Revenue, which division is hereby created. The Department of Revenue shall make annual reports to the Governor, Legislature, Auditor of Public Accounts, and Attorney General on all tax revenue received, expenses incurred, and other activities relating to the administration and enforcement of such acts. The report submitted to the Legislature shall be submitted electronically.

(2) The Charitable Gaming Operations Fund is hereby created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(3)(a) Forty percent of the taxes collected pursuant to sections 9-239, 9-344, 9-429, and 9-648 shall be available to the Charitable Gaming Division for administering and enforcing the acts listed in subsection (1) of this section and providing administrative support for the Nebraska Commission on Problem Gambling. The remaining sixty percent shall be transferred to the General Fund. Any portion of the forty percent not used by the division in the administration and enforcement of such acts and section shall be distributed as provided in this subsection.

(b) Beginning July 1, 2019, through June 30, 2025, on or before the last day of the last month of each calendar quarter, the State Treasurer shall transfer

one hundred thousand dollars from the Charitable Gaming Operations Fund to the Compulsive Gamblers Assistance Fund.

(c) Any money remaining in the Charitable Gaming Operations Fund after the transfer pursuant to subdivision (b) of this subsection not used by the Charitable Gaming Division in its administration and enforcement duties pursuant to this section may be transferred to the General Fund and the Compulsive Gamblers Assistance Fund at the direction of the Legislature.

(4) The Tax Commissioner shall employ investigators who shall be vested with the authority and power of a law enforcement officer to carry out the laws of this state administered by the Tax Commissioner or the Department of Revenue and to enforce sections 28-1101 to 28-1117 relating to possession of a gambling device. For purposes of enforcing sections 28-1101 to 28-1117, the authority of the investigators shall be limited to investigating possession of a gambling device, notifying local law enforcement authorities, and reporting suspected violations to the county attorney for prosecution.

(5) The Charitable Gaming Division may charge a fee for publications and listings it produces. The fee shall not exceed the cost of publication and distribution of such items. The division may also charge a fee for making a copy of any record in its possession equal to the actual cost per page. The division shall remit the fees to the State Treasurer for credit to the Charitable Gaming Operations Fund.

(6) The taxes collected and available to the Charitable Gaming Division pursuant to section 77-3012 shall be used by the division for enforcement of the Mechanical Amusement Device Tax Act and maintenance of the central server established pursuant to section 77-3013.

(7) For administrative purposes only, the Nebraska Commission on Problem Gambling shall be located within the Charitable Gaming Division. The division shall provide office space, furniture, equipment, and stationery and other necessary supplies for the commission. Commission staff shall be appointed, supervised, and terminated by the director of the Gamblers Assistance Program pursuant to section 9-1004.

Source: Laws 1986, LB 1027, § 185; Laws 1988, LB 1232, § 1; Laws 1989, LB 767, § 1; Laws 1990, LB 1055, § 3; Laws 1991, LB 427, § 1; Laws 1993, LB 397, § 1; Laws 1994, LB 694, § 1; Laws 1994, LB 1066, § 8; Laws 2000, LB 659, § 1; Laws 2001, LB 541, § 2; Laws 2002, LB 1310, § 2; Laws 2007, LB638, § 1; Laws 2010, LB879, § 1; Laws 2012, LB782, § 11; Laws 2013, LB6, § 8; Laws 2018, LB945, § 9; Laws 2019, LB298, § 13; Laws 2020, LB1009, § 2; Laws 2021, LB384, § 7; Laws 2023, LB818, § 7; Laws 2024, LB685, § 1.
Effective date July 19, 2024.

Cross References

Mechanical Amusement Device Tax Act, see section 77-3011.
Nebraska Bingo Act, see section 9-201.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska County and City Lottery Act, see section 9-601.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Small Lottery and Raffle Act, see section 9-501.
Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 2
BINGO

Section
9-204. Bingo, defined.
9-204.04. Bingo card monitoring device, defined.

9-204 Bingo, defined.

(1) Bingo shall mean that form of gambling in which:

(a) The winning numbers are determined by random selection from a pool of seventy-five or ninety numbered designators; and

(b) A player marks by physically daubing or covering or, automatically or manually with the aid of a bingo card monitoring device, enters or otherwise conceals those randomly selected numbers which match on a bingo card that the player has purchased or leased only at the time and place of the bingo occasion.

(2) Bingo shall not mean or include:

(a) Any scheme which uses any mechanical gaming device, computer gaming device, electronic gaming device, or video gaming device which has the capability of awarding something of value, free games redeemable for something of value, or tickets or stubs redeemable for something of value;

(b) Any activity which is authorized or regulated under the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, section 9-701, or Chapter 2, article 12; or

(c) Any activity which is prohibited under Chapter 28, article 11.

Source: Laws 1978, LB 351, § 4; Laws 1982, LB 602A, § 1; Laws 1983, LB 259, § 3; R.S.1943, (1983), § 9-127; Laws 1986, LB 1027, § 5; Laws 1991, LB 849, § 44; Laws 1993, LB 138, § 2; Laws 1994, LB 694, § 6; Laws 2003, LB 429, § 3; Laws 2023, LB775, § 2.

Cross References

Nebraska County and City Lottery Act, see section 9-601.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

9-204.04 Bingo card monitoring device, defined.

Bingo card monitoring device shall mean a technological aid which allows a bingo player to automatically or manually enter bingo numbers as they are announced at a bingo occasion and which enters or otherwise conceals those numbers on bingo cards which are electronically stored in and displayed on the device. A bingo card monitoring device shall not mean or include any device (1) into which currency, coins, or tokens may be inserted or from which currency, coins, tokens, or any receipt for monetary value can be dispensed or (2) which, once provided to a bingo player, is capable of communicating with any other bingo card monitoring device or any other form of electronic device or computer, except that such device may communicate with its host system.

Source: Laws 2003, LB 429, § 5; Laws 2023, LB775, § 3.

ARTICLE 4
LOTTERIES AND RAFFLES

Section
9-402. Purpose of act.
9-422. Lottery or raffle; restriction on gross proceeds; violation; penalty.
9-426. Special permit to conduct raffle and lottery; fee.
9-427. Lottery or raffle; gross proceeds; use; restrictions.
9-429. Lottery or raffle; gross proceeds; tax; deficiencies.

9-402 Purpose of act.

(1) The purpose of the Nebraska Lottery and Raffle Act is to protect the health and welfare of the public, to protect the economic welfare and interest in certain lotteries and raffles with gross proceeds greater than fifteen thousand dollars, to insure that the profits derived from the operation of any such lottery or raffle are accurately reported in order that their revenue-raising potential be fully exposed, to insure that the profits are used for legitimate purposes, and to prevent the purposes for which the profits of any such lottery or raffle are to be used from being subverted by improper elements.

(2) The purpose of the Nebraska Lottery and Raffle Act is also to completely and fairly regulate each level of the traditional marketing scheme of tickets or stubs for such lotteries and raffles to insure fairness, quality, and compliance with the Constitution of Nebraska. To accomplish such purpose, the regulation and licensure of nonprofit organizations and any other person involved in the marketing scheme are necessary.

(3) The Nebraska Lottery and Raffle Act shall apply to all lotteries and raffles with gross proceeds greater than fifteen thousand dollars, except for lotteries by the sale of pickle cards conducted in accordance with the Nebraska Pickle Card Lottery Act, lotteries conducted by a county, city, or village in accordance with the Nebraska County and City Lottery Act, and lottery games conducted in accordance with the State Lottery Act.

(4) All such lotteries and raffles shall be played and conducted only by the methods permitted in the Nebraska Lottery and Raffle Act. No other form, means of selection, or method of play shall be allowed.

Source: Laws 1986, LB 1027, § 123; Laws 1991, LB 849, § 49; Laws 1993, LB 138, § 7; Laws 2024, LB1204, § 1.
Effective date July 19, 2024.

Cross References

Nebraska County and City Lottery Act, see section 9-601.
Nebraska Pickle Card Lottery Act, see section 9-301.
State Lottery Act, see section 9-801.

9-422 Lottery or raffle; restriction on gross proceeds; violation; penalty.

No person, except a licensed organization operating pursuant to the Nebraska Lottery and Raffle Act, shall conduct any lottery or raffle with gross proceeds greater than fifteen thousand dollars. Any lottery or raffle conducted in violation of this section is hereby declared to be a public nuisance. Any person who violates this section shall be guilty of a Class III misdemeanor. Nothing in this section shall be construed to apply to any lottery conducted in accordance with the Nebraska County and City Lottery Act, any lottery by the

sale of pickle cards conducted in accordance with the Nebraska Pickle Card Lottery Act, or any lottery game conducted pursuant to the State Lottery Act.

Source: Laws 1984, LB 949, § 63; R.S.Supp.,1984, § 9-199; Laws 1986, LB 1027, § 143; Laws 1991, LB 849, § 52; Laws 1993, LB 138, § 10; Laws 2024, LB1204, § 2.
Effective date July 19, 2024.

Cross References

Nebraska County and City Lottery Act, see section 9-601.
Nebraska Pickle Card Lottery Act, see section 9-301.
State Lottery Act, see section 9-801.

9-426 Special permit to conduct raffle and lottery; fee.

(1) A licensed organization may obtain from the department a special permit to conduct one raffle and one lottery. The cost of the special permit shall be ten dollars. The special permit shall exempt the licensed organization from subsection (2) of section 9-427 and from section 9-430. The organization shall comply with all other requirements of the Nebraska Lottery and Raffle Act.

(2) The special permit shall be valid for one year and shall be issued by the department upon the proper application by the licensed organization. The special permit shall become invalid upon termination, revocation, or cancellation of the organization's license to conduct a lottery or raffle. The application shall be in such form and contain such information as the department may prescribe.

(3) No licensed organization conducting a raffle or lottery pursuant to a special permit shall pay persons selling tickets or stubs for the raffle or lottery, except that nothing in this subsection shall prohibit the awarding of prizes to such persons based on ticket or stub sales.

Source: Laws 1985, LB 486, § 1; R.S.Supp.,1985, § 9-199.01; Laws 1986, LB 1027, § 147; Laws 2000, LB 1086, § 18; Laws 2020, LB1056, § 1; Laws 2024, LB1204, § 3.
Effective date July 19, 2024.

9-427 Lottery or raffle; gross proceeds; use; restrictions.

(1) The gross proceeds of any lottery or raffle shall be used solely for lawful purposes, awarding of prizes, and allowable expenses.

(2) Not less than sixty-five percent of the gross proceeds of any lottery or raffle shall be used for the awarding of prizes, and not more than ten percent of the gross proceeds of a lottery or raffle shall be used to pay the allowable expenses of operating such scheme, except that if prizes are donated to the licensed organization to be awarded in connection with a raffle, the prizes awarded shall have a fair market value equal to at least sixty-five percent of the gross proceeds of the raffle and the licensed organization shall use the proceeds for allowable expenses, optional additional prizes, and a lawful purpose.

Source: Laws 1983, LB 259, § 50; Laws 1984, LB 949, § 56; Laws 1985, LB 486, § 3; Laws 1985, LB 408, § 34; R.S.Supp.,1985, § 9-185; Laws 1986, LB 1027, § 148; Laws 1994, LB 694, § 106; Laws 2024, LB1204, § 4.
Effective date July 19, 2024.

9-429 Lottery or raffle; gross proceeds; tax; deficiencies.

Any licensed organization or any other organization conducting a lottery or raffle activity required to be licensed pursuant to the Nebraska Lottery and Raffle Act shall pay to the department a tax of two percent of the gross proceeds of each lottery or raffle having gross proceeds greater than fifteen thousand dollars. Such tax shall be remitted annually by September 30 each year on forms approved and provided by the department. The department shall remit the tax to the State Treasurer for credit to the Charitable Gaming Operations Fund. All deficiencies of the tax imposed by this section shall accrue interest and be subject to a penalty as provided for sales and use taxes in the Nebraska Revenue Act of 1967.

Source: Laws 1983, LB 259, § 61; Laws 1984, LB 949, § 70; R.S.Supp.,1984, § 9-196; Laws 1986, LB 1027, § 150; Laws 1991, LB 427, § 51; Laws 1994, LB 694, § 107; Laws 2020, LB1056, § 2; Laws 2024, LB1204, § 5.
Effective date July 19, 2024.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

ARTICLE 5
SMALL LOTTERIES AND RAFFLES

Section
9-502. Act, purpose.
9-510. Repealed. Laws 2024, LB1204, § 39.
9-511. Nonprofit organization; conduct lottery or raffle; conditions.

9-502 Act, purpose.

(1) The purpose of the Nebraska Small Lottery and Raffle Act is to allow qualifying nonprofit organizations to conduct lotteries and raffles with gross proceeds not greater than fifteen thousand dollars subject to minimal regulation.

(2) The Nebraska Small Lottery and Raffle Act shall apply to all lotteries and raffles with gross proceeds not greater than fifteen thousand dollars, except for lotteries by the sale of pickle cards conducted in accordance with the Nebraska Pickle Card Lottery Act, lotteries conducted by a county, city, or village in accordance with the Nebraska County and City Lottery Act, and lottery games conducted pursuant to the State Lottery Act.

(3) All such lotteries and raffles shall be played and conducted only by the methods permitted in the Nebraska Small Lottery and Raffle Act. No other form or method shall be authorized or permitted.

Source: Laws 1986, LB 1027, § 160; Laws 1991, LB 849, § 53; Laws 1993, LB 138, § 11; Laws 2024, LB1204, § 6.
Effective date July 19, 2024.

Cross References

Nebraska County and City Lottery Act, see section 9-601.
Nebraska Pickle Card Lottery Act, see section 9-301.
State Lottery Act, see section 9-801.

9-510 Repealed. Laws 2024, LB1204, § 39.

9-511 Nonprofit organization; conduct lottery or raffle; conditions.

Any qualifying nonprofit organization may conduct a lottery or raffle that has gross proceeds not greater than fifteen thousand dollars. Each chance in such lottery or raffle shall have an equal likelihood of being a winning chance. The gross proceeds shall be used solely for charitable or community betterment purposes, awarding of prizes, and expenses. Any qualifying nonprofit organization may conduct one lottery per calendar month that has gross proceeds not greater than fifteen thousand dollars. Any qualifying nonprofit organization may conduct one or more raffles in a calendar month if the total gross proceeds from such raffles do not exceed fifteen thousand dollars during such month.

Source: Laws 1986, LB 1027, § 169; Laws 2024, LB1204, § 7.
Effective date July 19, 2024.

ARTICLE 6
COUNTY AND CITY LOTTERIES

Section

9-601 Act, how cited.

Sections 9-601 to 9-653 shall be known and may be cited as the Nebraska County and City Lottery Act.

Source: Laws 1986, LB 1027, § 172; Laws 1989, LB 767, § 47; Laws 1991, LB 427, § 54; Laws 1991, LB 795, § 4; Laws 1993, LB 563, § 2; Laws 2002, LB 545, § 44; Laws 2011, LB490, § 1; Laws 2014, LB259, § 1; Laws 2023, LB775, § 4.

9-603 Definitions, where found.

For purposes of the Nebraska County and City Lottery Act, the definitions found in sections 9-603.02 to 9-618 shall be used.

Source: Laws 1986, LB 1027, § 174; Laws 1989, LB 767, § 48; Laws 2002, LB 545, § 45; Laws 2003, LB 3, § 4; Laws 2011, LB490, § 2; Laws 2014, LB259, § 2; Laws 2023, LB775, § 5.

9-604.02 Digital-on-premises ticket, defined.

Digital-on-premises ticket means a digital ticket purchased in person on a mobile or other electronic device verified to be present at the location of the lottery operator or an authorized sales outlet location in accordance with subdivision (3)(b) of section 9-651.01.

Source: Laws 2023, LB775, § 6.

9-606 Gross proceeds, defined.

Gross proceeds shall mean the total aggregate receipts received from the conduct of any lottery conducted by any county, city, or village without any reduction for prizes, discounts, taxes, or expenses and shall include receipts from admission costs, any consideration necessary for participation, and the value of any free tickets, games, or plays used, except that gross proceeds shall not include any admission costs collected at any location where the lottery is also available to the public free of any admission charge.

Source: Laws 1986, LB 1027, § 177; Laws 2023, LB775, § 7.

9-607 Lottery, defined; manner of play; designation.

(1) Lottery shall mean a gambling scheme in which:

(a) The players pay or agree to pay something of value for an opportunity to win;

(b) Winning opportunities are represented by tickets;

(c) Winners are solely determined by one of the following two methods:

(i) By a random drawing of tickets differentiated by sequential enumeration from a receptacle by hand whereby each ticket has an equal chance of being chosen in the drawing; or

(ii) By use of a game known as keno in which a player selects up to twenty numbers from a total of eighty numbers on a ticket and a computer, other electronic selection device, or electrically operated blower machine which is not player-activated randomly selects up to twenty numbers from the same pool of eighty numbers and the winning players are determined by the correct matching of the numbers on the ticket selected by the players with the numbers randomly selected by the computer, other electronic selection device, or electrically operated blower machine, except that (A) no keno game shall permit or require player activation of lottery equipment and (B) the random selection of numbers by the computer, other electronic selection device, or electrically operated blower machine shall not occur within five minutes of the completion of the previous selection of random numbers;

(d) The holders of the winning tickets are to receive cash or prizes redeemable for cash. Selection of a winner or winners shall be predicated solely on chance; and

(e) Tickets are issued either (i) on paper or (ii) with the consent of the governing body of the county, city, or village conducting the lottery, digitally to a mobile or other device which, at the time of purchase, is verified to be present at the location of the lottery operator or an authorized sales outlet location as provided in subdivision (3)(b) of section 9-651.01.

(2) Lottery shall not include:

(a) Any gambling scheme which uses any mechanical gaming device, computer gaming device, electronic gaming device, or video gaming device which has the capability of awarding something of value, free games redeemable for something of value, or tickets or stubs redeemable for something of value;

(b) Any activity authorized or regulated under the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, section 9-701, or Chapter 2, article 12; or

(c) Any activity prohibited under Chapter 28, article 11.

(3) Notwithstanding the requirement in subdivision (1)(c)(ii) of this section that a player select up to twenty numbers, a player may select more than twenty numbers on a ticket when a top or bottom, left or right, edge, or way ticket is played. For a top or bottom ticket, the player shall select all numbers from one through forty or all numbers from forty-one through eighty. For a left or right ticket, the player shall select all numbers ending in one through five or all numbers ending in six through zero. For an edge ticket, the player shall select all of the numbers comprising the outside edge of the ticket. For a way ticket, the player shall select a combination of groups of numbers in multiple ways on a single ticket.

(4) A county, city, or village conducting a keno lottery shall designate the method of winning number selection to be used in the lottery and submit such designation in writing to the department prior to conducting a keno lottery. Only those methods of winning number selection described in subdivision (1)(c)(ii) of this section shall be permitted, and the method of winning number selection initially utilized may only be changed once during that business day as set forth in the designation. A county, city, or village shall not change the method or methods of winning number selection filed with the department or allow it to be changed once such initial designation has been made unless (a) otherwise authorized in writing by the department based upon a written request from the county, city, or village or (b) an emergency arises in which case a ball draw method of number selection would be switched to a number selection by a random number generator. An emergency situation shall be reported by the county, city, or village to the department within twenty-four hours of its occurrence.

Source: Laws 1986, LB 1027, § 178; Laws 1989, LB 767, § 53; Laws 1991, LB 795, § 7; Laws 1991, LB 849, § 56; Laws 1993, LB 563, § 4; Laws 1993, LB 138, § 14; Laws 2011, LB490, § 4; Laws 2023, LB775, § 8.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

9-646.01 No extension of credit; accounts and other payment methods, authorized; limitations.

(1)(a) No person or licensee, or any employee or agent thereof, accepting wagers on a lottery conducted pursuant to the Nebraska County and City Lottery Act shall extend credit from the gross proceeds of a lottery to participants in the lottery for the purchase of lottery tickets. No person shall purchase or be allowed to purchase any lottery ticket or make or be allowed to make any wager pursuant to the act unless he or she pays for such ticket or wager with cash, a debit card, the cash balance of a payment application, a transfer from a deposit account at a financial institution, or an account established in the name of the player with the lottery operator and funded as provided in subsection (2) of this section. For purposes of this section, cash shall mean United States currency having the same face value as the price of the ticket or wager. A credit card shall not be accepted for payment for any wager on keno.

(b) A participant shall not use a debit card to purchase more than two hundred dollars of keno wagers from a lottery operator in a single calendar day.

(2) A lottery operator may allow participants to create an account to be used for lottery play. Such accounts may only be funded with cash, a debit card, the cash balance of a payment application, or a transfer from a deposit account at a financial institution. The lottery operator may also allow a participant to deposit prize money won from the lottery and refunds from the lottery into a lottery play account. A participant shall not deposit funds into any such account from a debit card transaction if the total amount of funds from all such debit card transactions in that calendar day would exceed two hundred dollars.

Source: Laws 1993, LB 563, § 18; Laws 1997, LB 248, § 33; Laws 2023, LB775, § 9.

9-651 Lottery ticket; requirements.

Each county, city, or village conducting a lottery shall have its name clearly associated with each ticket used in the lottery. No such ticket shall be sold unless such name is clearly identified.

Source: Laws 1986, LB 1027, § 182; R.S.1943, (1987), § 9-611; Laws 1989, LB 767, § 90; Laws 2023, LB775, § 10.

9-651.01 Lottery ticket, keno game; digital-on-premises ticket; purchase and sale; requirements; controls.

(1) Any purchase of a ticket for a keno game shall be made in person at the location of the lottery operator or an authorized sales outlet location.

(2) The lottery operator shall file with the department the address of each location where digital-on-premises tickets are sold. The lottery operator shall use reasonable safeguards approved by the department to ensure that digital-on-premises tickets are only accessible to individuals nineteen years of age or older.

(3) The lottery operator shall submit controls, for approval by the department, that include the following at the location of the lottery operator or the locations of its associated authorized sales outlets at which digital-on-premises tickets are sold:

(a) Any specific procedure and any technology partner used to fulfill the requirements set forth by the department;

(b) Any location detection procedure to reasonably detect and dynamically monitor the location of a player attempting to purchase a digital-on-premises ticket for a keno game. The location procedures shall be designed so that a player outside the permitted boundary is rejected and the player is notified. The permitted boundary shall be established in such a manner that access is not regularly available away from the property on which the licensed premises is situated and such boundary is as closely matching to the actual or legal boundaries of the licensed premises as reasonably possible;

(c) Any other specific controls as designated by the department;

(d) A process to prominently display and easily impose any limitation parameters relating to the purchase of a digital-on-premises ticket for a keno game; and

(e) An easy and obvious method for a player to make a complaint and to enable the player to notify the department if such complaint has not been or cannot be addressed by the lottery operator.

(4) The department shall approve or deny the controls within thirty days after submission. If denied, the department shall provide the reasons for denial and allow the lottery operator to resubmit revised controls.

(5) The department may adopt and promulgate rules and regulations relating to digital-on-premises tickets. Such rules and regulations shall be adopted and promulgated no later than January 1, 2024.

Source: Laws 2023, LB775, § 11.

ARTICLE 8
STATE LOTTERY

Section

9-810 Lottery ticket; restrictions on sale and purchase; computation of retail sales; termination of liability; prize credited against certain tax liability or debt; procedure.

(1) A person under nineteen years of age shall not purchase a lottery ticket. No lottery ticket shall be sold to any person under nineteen years of age. No person shall purchase a lottery ticket for a person under nineteen years of age, and no person shall purchase a lottery ticket for the benefit of a person under nineteen years of age.

(2) No lottery ticket shall be sold and no prize shall be awarded to the Tax Commissioner, the director, or any employee of the division or any spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of abode of the Tax Commissioner, the director, or any employee of the division.

(3) With respect to a lottery game retailer under contract to sell lottery tickets whose rental payment for premises is contractually computed in whole or in part on the basis of a percentage of retail sales and when the computation of retail sales is not explicitly defined to include the sale of lottery tickets, the amount of retail sales for lottery tickets by the retailer for purposes of such a computation may not exceed the amount of compensation received by the retailer from the division.

(4) Once any prize is awarded in conformance with the State Lottery Act and any rules and regulations adopted under the act, the state shall have no further liability with respect to that prize.

(5) Prior to the payment of any lottery prize in excess of five hundred dollars for a winning lottery ticket presented for redemption to the division, the division shall check the name and social security number of the winner with a list provided by the Department of Revenue of people identified as having an

outstanding state tax liability and a list of people certified by the Department of Health and Human Services as owing a debt as defined in section 77-27,161. The division shall credit any such lottery prize against any outstanding state tax liability owed by such winner and the balance of such prize amount, if any, shall be paid to the winner by the division. The division shall credit any such lottery prize against any certified debt in the manner set forth in sections 77-27,160 to 77-27,173. If the winner has both an outstanding state tax liability and a certified debt, the division shall first credit any such lottery prize against any certified debt in the manner set forth in sections 77-27,160 to 77-27,173 until such debt is satisfied and then against any outstanding state tax liability until such liability is satisfied.

Source: Laws 1991, LB 849, § 10; Laws 1993, LB 563, § 23; Laws 1993, LB 138, § 26; Laws 1996, LB 1044, § 44; Laws 1997, LB 307, § 1; Laws 2024, LB1317, § 47.
Operative date July 19, 2024.

9-812 State Lottery Operation Trust Fund; State Lottery Operation Cash Fund; State Lottery Prize Trust Fund; created; transfers; investment; unclaimed prize money; use.

(1) All money received from the operation of lottery games conducted pursuant to the State Lottery Act in Nebraska shall be credited to the State Lottery Operation Trust Fund, which fund is hereby created. All payments of the costs of establishing and maintaining the lottery games shall be made from the State Lottery Operation Cash Fund. In accordance with legislative appropriations, money for payments for expenses of the division shall be transferred from the State Lottery Operation Trust Fund to the State Lottery Operation Cash Fund, which fund is hereby created. All money necessary for the payment of lottery prizes shall be transferred from the State Lottery Operation Trust Fund to the State Lottery Prize Trust Fund, which fund is hereby created. The amount used for the payment of lottery prizes shall not be less than forty percent of the dollar amount of the lottery tickets which have been sold.

(2) A portion of the dollar amount of the lottery tickets which have been sold on an annualized basis shall be transferred from the State Lottery Operation Trust Fund as provided in subsection (3) of this section. The dollar amount transferred pursuant to this subsection shall equal the greater of (a) the dollar amount transferred in fiscal year 2002-03 or (b) any amount which constitutes at least twenty-two percent and no more than twenty-five percent of the dollar amount of the lottery tickets which have been sold on an annualized basis. To the extent that funds are available, the Tax Commissioner and director may authorize a transfer exceeding twenty-five percent of the dollar amount of the lottery tickets sold on an annualized basis.

(3) Of the money available to be transferred as provided in this subsection:

(a) The first five hundred thousand dollars shall be transferred to the Compulsive Gamblers Assistance Fund to be used as provided in section 9-1006;

(b) Forty-four and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be used for education and transferred pursuant to section 79-3501;

(c) Forty-four and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Environmental Trust Fund to be used as provided in the Nebraska Environmental Trust Act;

(d) Ten percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska State Fair Board if the most populous city within the county in which the fair is located provides matching funds equivalent to ten percent of the funds available for transfer. Such matching funds may be obtained from the city and any other private or public entity, except that no portion of such matching funds shall be provided by the state. If the Nebraska State Fair ceases operations, ten percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the General Fund; and

(e) One percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Compulsive Gamblers Assistance Fund to be used as provided in section 9-1006.

(4) Any money in the State Lottery Operation Trust Fund, the State Lottery Operation Cash Fund, or the State Lottery Prize Trust Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(5) Unclaimed prize money on a winning lottery ticket shall be retained for a period of time prescribed by rules and regulations. If no claim is made within such period, the prize money shall be used at the discretion of the Tax Commissioner for any of the purposes prescribed in this section.

Source: Laws 1991, LB 849, § 12; Laws 1992, LB 1257, § 57; Laws 1993, LB 138, § 28; Laws 1993, LB 563, § 24; Laws 1994, LB 647, § 5; Laws 1994, LB 694, § 119; Laws 1994, LB 1066, § 11; Laws 1995, LB 275, § 1; Laws 1995, LB 860, § 1; Laws 1996, LB 900, § 1015; Laws 1996, LB 1069, § 1; Laws 1997, LB 118, § 1; Laws 1997, LB 347, § 1; Laws 1997, LB 710, § 1; Laws 1997, LB 865, § 1; Laws 1998, LB 924, § 16; Laws 1998, LB 1228, § 7; Laws 1998, LB 1229, § 1; Laws 1999, LB 386, § 1; Laws 2000, LB 659, § 2; Laws 2000, LB 1243, § 1; Laws 2001, LB 797, § 1; Laws 2001, LB 833, § 1; Laws 2001, Spec. Sess., LB 3, § 1; Laws 2002, LB 1105, § 418; Laws 2002, LB 1310, § 3; Laws 2002, Second Spec. Sess., LB 1, § 1; Laws 2003, LB 367, § 1; Laws 2003, LB 574, § 21; Laws 2004, LB 1083, § 83; Laws 2004, LB 1091, § 1; Laws 2006, LB 1208, § 1; Laws 2007, LB638, § 16; Laws 2009, LB286, § 4; Laws 2009, LB545, § 1; Laws 2009, LB547, § 1; Laws 2009, First Spec. Sess., LB2, § 1; Laws 2010, LB956, § 1; Laws 2011, LB333, § 1; Laws 2011, LB575, § 7; Laws 2011, LB637, § 22; Laws 2012, LB1079, § 9; Laws 2013, LB6, § 9; Laws 2013, LB366, § 8; Laws 2013, LB495, § 1; Laws 2013, LB497, § 1; Laws 2014, LB967, § 2; Laws 2015, LB519, § 1; Laws 2016, LB930, § 1; Laws 2016, LB1067, § 1; Laws 2017, LB512, § 5; Laws 2021, LB528, § 2; Laws 2023, LB705, § 52.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska Environmental Trust Act, see section 81-15,167.
Nebraska State Funds Investment Act, see section 72-1260.

9-823 Rules and regulations; enumerated; Tax Commissioner; duties.

The Tax Commissioner shall adopt and promulgate rules and regulations necessary to carry out the State Lottery Act. The rules and regulations shall include provisions relating to the following:

(1) The lottery games to be conducted subject to the following conditions:

(a) No lottery game shall use the theme of dog racing or horseracing;

(b) In any lottery game utilizing tickets, each ticket in such game shall bear a unique number distinguishing it from every other ticket in such lottery game;

(c) No name of an elected official shall appear on the tickets of any lottery game; and

(d) In any instant-win game, the overall estimated odds of winning some prize shall be printed on each ticket and shall also be available at the office of the division at the time such lottery game is offered for sale to the public;

(2) The retail sales price for lottery tickets;

(3) The types and manner of payment of prizes to be awarded for winning tickets in lottery games;

(4) The method for determining winners, the frequency of drawings, if any, or other selection of winning tickets subject to the following conditions:

(a) No lottery game shall be based on the results of a dog race, horserace, or other sports event;

(b) If the lottery game utilizes the drawing of winning numbers, a drawing among entries, or a drawing among finalists (i) the drawings shall be witnessed by an independent certified public accountant, (ii) any equipment used in the drawings shall be inspected by the independent certified public accountant and an employee of the division or designated agent both before and after the drawing, and (iii) the drawing shall be recorded on videotape with an audio track; and

(c) Drawings in an instant-win game, other than grand prize drawings or other runoff drawings, shall not be held more often than weekly. Drawings or selections in an online game shall not be held more often than daily;

(5) The validation and manner of payment of prizes to the holders of winning tickets subject to the following conditions:

(a) The prize shall be given to the person who presents a winning ticket, except that for awards in excess of five hundred dollars, the winner shall also provide his or her social security number or tax identification number;

(b) A prize may be given to only one person per winning ticket, except that a prize shall be divided between the holders of winning tickets if there is more than one winning ticket per prize;

(c) For the convenience of the public, the director may authorize lottery game retailers to pay winners of up to five hundred dollars after performing validation procedures on their premises appropriate to the lottery game involved;

(d) No prize shall be paid to any person under nineteen years of age, and any prize resulting from a lottery ticket held by a person under nineteen years of

age shall be awarded to the parent or guardian or custodian of the person under the Nebraska Uniform Transfers to Minors Act;

(e) No prize shall be paid for tickets that are stolen, counterfeit, altered, fraudulent, unissued, produced or issued in error, unreadable, not received or not recorded by the division by acceptable deadlines, lacking in captions that confirm and agree with the lottery play symbols as appropriate to the lottery game involved, or not in compliance with additional specific rules and regulations and public or confidential validation and security tests appropriate to the particular lottery game involved;

(f) No particular prize in any lottery game shall be paid more than once. In the event of a binding determination by the director that more than one claimant is entitled to a particular prize, the sole right of such claimants shall be the award to each of them of an equal share in the prize;

(g) After the expiration of the claim period for prizes for each lottery game, the director shall make available a detailed tabulation of the total number of tickets actually sold in the lottery game and the total number of prizes of each prize denomination that were actually claimed and paid; and

(h) The division and any lottery contractor shall not publicly disclose the identity of any person awarded a prize of two hundred fifty thousand dollars or more except upon written authorization of such person;

(6) Requirements for eligibility for participation in grand prize drawings or other runoff drawings, including requirements for submission of evidence of eligibility;

(7) The locations at which tickets may be sold except that no ticket may be sold at a retail liquor establishment holding a license for the sale of alcoholic liquor at retail for consumption on the licensed premises unless the establishment holds a Class C liquor license with a sampling designation as provided in subsection (6) of section 53-124;

(8) The method to be used in selling tickets;

(9) The contracting with persons as lottery game retailers to sell tickets and the manner and amount of compensation to be paid to such retailers;

(10)(a) The form and type of marketing of informational and educational material.

(b) Beginning on September 1, 2019, all lottery advertisements shall disclose the odds of winning the prize with the largest value for any lottery game in a clear and conspicuous manner. Such disclosure shall be in a font size of not less than thirty-five percent of the largest font used in the advertisement, except that for any online advertisement, such disclosure shall be in a font size of at least ten points. This subdivision (b) shall not apply to advertisements printed, distributed, broadcast, or otherwise disseminated or conducted prior to September 1, 2019;

(11) Any arrangements or methods to be used in providing proper security in the storage and distribution of tickets or lottery games; and

(12) All other matters necessary or desirable for the efficient and economical operation and administration of lottery games and for the convenience of the purchasers of tickets and the holders of winning tickets.

Source: Laws 1991, LB 849, § 23; Laws 1992, LB 907, § 25; Laws 1992, LB 1257, § 58; Laws 1993, LB 138, § 43; Laws 1994, LB 1313,

§ 1; Laws 1995, LB 343, § 4; Laws 2010, LB861, § 4; Laws 2019, LB252, § 1; Laws 2024, LB1204, § 8.
Effective date July 19, 2024.

Cross References

Nebraska Uniform Transfers to Minors Act, see section 43-2701.

9-836.01 Division; sale of tangible personal property; distribution of profits.

The division may endorse and sell for profit tangible personal property related to the lottery. Any money received as profit by the division pursuant to this section shall be remitted to the State Treasurer for credit to the State Lottery Operation Trust Fund to be distributed pursuant to the requirements of section 9-812.

Source: Laws 1994, LB 694, § 118; Laws 1998, LB 924, § 17; Laws 2003, LB 574, § 22; Laws 2010, LB956, § 2; Laws 2013, LB497, § 2; Laws 2021, LB528, § 3; Laws 2023, LB705, § 53.

ARTICLE 11

NEBRASKA RACETRACK GAMING ACT

Section
9-1103. Terms, defined.
9-1104. Authorized gaming operator; license; authorized activities; condition of licensure; limitation on participation; deduction for debt or tax liability; procedure.
9-1106. Commission; powers and duties.
9-1107. Racing and Gaming Commission's Racetrack Gaming Fund; created; use; investment.
9-1110. Sports wagering.

9-1103 Terms, defined.

For purposes of the Nebraska Racetrack Gaming Act:

(1) Authorized gaming operator means a person or entity licensed pursuant to the act to operate games of chance within a licensed racetrack enclosure;

(2) Authorized gaming operator license means a license to operate games of chance as an authorized gaming operator at a licensed racetrack enclosure;

(3)(a) Except as otherwise provided in subdivision (b) of this subdivision, authorized sporting event means a professional sporting event, a collegiate sporting event, an international sporting event, a professional motor race event, a professional sports draft, an individual sports award, an electronic sport, or a simulated game; and

(b) Authorized sporting event does not include an instate collegiate sporting event in which an instate collegiate or university team is a participant, a parimutuel wager, a fantasy sports contest, a minor league sporting event, a sporting event at the high school level or below regardless of the age of any individual participant, or any sporting event excluded by the commission;

(4) Collegiate sporting event means an athletic event or competition of an intercollegiate sport played at the collegiate level for which eligibility requirements for participation by a student athlete are established by a national association for the promotion or regulation of collegiate athletics;

(5) Commission means the State Racing and Gaming Commission;

(6) Designated sports wagering area means an area, as approved by the commission, in which sports wagering is conducted;

(7) Game of chance means any game which has the elements of chance, prize, and consideration, including any wager on a slot machine, table game, counter game, or card game, a keno lottery conducted in accordance with the Nebraska County and City Lottery Act, or sports wagering. Game of chance does not include any game the operation of which is prohibited at a casino by federal law;

(8) Gaming device means an electronic, mechanical, or other device which plays a game of chance when activated by a player using currency, a token, or other item of value;

(9) International sporting event means an international team or individual sporting event governed by an international sports federation or sports governing body, including sporting events governed by the International Olympic Committee and the International Federation of Association Football;

(10) Licensed racetrack enclosure means all real property licensed and utilized for the conduct of a race meeting, including the racetrack and any grandstand, concession stand, office, barn, barn area, employee housing facility, parking lot, and additional area designated by the commission in accordance with the Constitution of Nebraska and applicable Nebraska law;

(11) Limited gaming device means an electronic gaming device which (a) offers games of chance, (b) does not dispense currency, tokens, or other items of value, and (c) does not have a cash winnings hopper, mechanical or simulated spinning reel, or side handle;

(12) Prohibited participant means any individual whose participation may undermine the integrity of the wagering or the sporting event or any person who is prohibited from sports wagering for other good cause shown as determined by the commission, including, but not limited to: (a) Any individual placing a wager as an agent or proxy; (b) any person who is an athlete, a coach, a referee, or a player in any sporting event overseen by the sports governing body of such person based on publicly available information; (c) a person who holds a paid position of authority or influence sufficient to exert influence over the participants in a sporting event, including, but not limited to, any coach, manager, handler, or athletic trainer, or a person with access to certain types of exclusive information, on any sporting event overseen by the sports governing body of such person based on publicly available information; or (d) a person identified as prohibited from sports wagering by any list provided by a sports governing body to the commission;

(13) Racing license means a license issued for a licensed racetrack enclosure by the commission; and

(14) Sports wagering means the acceptance of wagers on an authorized sporting event by any system of wagering as authorized by the commission. Sports wagering does not include (a) placing a wager on the performance or nonperformance of any individual athlete participating in a single game or match of a collegiate sporting event in which a collegiate team from this state is participating, (b) placing an in-game wager on any game or match of a collegiate sporting event in which a collegiate team from this state is participating, (c) placing a wager on the performance or nonperformance of any individual athlete under eighteen years of age participating in a professional or

international sporting event, or (d) placing a wager on the performance of athletes in an individual sporting event excluded by the commission.

Source: Initiative Law 2020, No. 430, § 3; Laws 2021, LB561, § 28; Laws 2023, LB775, § 12.

Cross References

Nebraska County and City Lottery Act, see section 9-601.

9-1104 Authorized gaming operator; license; authorized activities; condition of licensure; limitation on participation; deduction for debt or tax liability; procedure.

(1) The operation of games of chance at a licensed racetrack enclosure may be conducted by an authorized gaming operator who holds an authorized gaming operator license.

(2) No more than one authorized gaming operator license shall be granted for each licensed racetrack enclosure within the state. It shall not be a requirement that the person or entity applying for or to be granted such authorized gaming operator license hold a racing license or be the same person or entity who operates the licensed racetrack enclosure at which such authorized gaming operator license shall be granted.

(3) Gaming devices, limited gaming devices, and all other games of chance may be operated by authorized gaming operators at a licensed racetrack enclosure.

(4) No person younger than twenty-one years of age shall play or participate in any way in any game of chance or use any gaming device or limited gaming device at a licensed racetrack enclosure.

(5) No authorized gaming operator shall permit an individual younger than twenty-one years of age to play or participate in any game of chance or use any gaming device or limited gaming device conducted or operated pursuant to the Nebraska Racetrack Gaming Act.

(6) If the licensed racetrack enclosure at which such authorized gaming operator conducts games of chance does not hold the minimum number of live racing meets required under section 2-1205, the authorized gaming operator shall be required to cease operating games of chance at such licensed racetrack enclosure until such time as the commission determines the deficiency has been corrected.

(7) Beginning on the implementation date designated by the Tax Commissioner pursuant to subsection (1) of section 9-1312, prior to the winnings payment of any casino winnings as defined in section 9-1303, an authorized gaming operator shall check the collection system to determine if the winner has a debt or an outstanding state tax liability as required by the Gambling Winnings Setoff for Outstanding Debt Act. If such authorized gaming operator determines that the winner is subject to the collection system, the operator shall deduct the amount of debt and outstanding state tax liability identified in the collection system from the winnings payment and shall remit the net winnings payment of casino winnings, if any, to the winner and the amount deducted to the

Department of Revenue to be credited against such debt or outstanding state tax liability as provided in section 9-1306.

Source: Initiative Law 2020, No. 430, § 4; Laws 2022, LB876, § 15; Laws 2024, LB1317, § 48.
Operative date July 19, 2024.

Cross References

Gambling Winnings Setoff for Outstanding Debt Act, see section 9-1301.

9-1106 Commission; powers and duties.

The commission shall:

(1) License and regulate authorized gaming operators for the operation of all games of chance authorized pursuant to the Nebraska Racetrack Gaming Act, including adopting, promulgating, and enforcing rules and regulations governing such authorized gaming operators consistent with the act;

(2) Regulate the operation of games of chance in order to prevent and eliminate corrupt practices and fraudulent behavior, and thereby promote integrity, security, and honest administration in, and accurate accounting of, the operation of games of chance which are subject to the act;

(3) Establish criteria to license applicants for authorized gaming operator licenses and all other types of gaming licenses for other positions and functions incident to the operation of games of chance, including adopting, promulgating, and enforcing rules, regulations, and eligibility standards for such authorized gaming operator licenses, gaming licenses, and positions and functions incident to the operation of games of chance;

(4) Charge fees for applications for licenses and for the issuance of authorized gaming operator licenses and all other types of gaming licenses to successful applicants which shall be payable to the commission;

(5) Charge fees to authorized gaming operators in an amount necessary to offset the cost of oversight and regulatory services to be provided which shall be payable to the commission;

(6) Impose a one-time authorized gaming operator license fee of five million dollars on each authorized gaming operator for each licensed racetrack enclosure payable to the commission. The license fee may be paid over a period of five years with one million dollars due at the time the license is issued;

(7) Grant, deny, revoke, and suspend authorized gaming operator licenses and all other types of gaming licenses based upon reasonable criteria and procedures established by the commission to facilitate the integrity, productivity, and lawful conduct of gaming within the state;

(8) Grant or deny for cause applications for authorized gaming operator licenses of not less than twenty years in duration, subject to an annual review by the commission and receipt by the commission of a fifty-thousand-dollar annual review fee, with no more than one such authorized gaming operator license granted for any licensed racetrack enclosure within the state;

(9) Conduct background investigations of applicants for authorized gaming operator licenses and all other types of gaming licenses;

(10) Adopt and promulgate rules and regulations for the standards of manufacture of gaming equipment;

(11) Inspect the operation of any authorized gaming operator conducting games of chance for the purpose of certifying the revenue thereof and receiving complaints from the public;

(12) Issue subpoenas for the attendance of witnesses or the production of any records, books, memoranda, documents, or other papers or things at or prior to any hearing as is necessary to enable the commission to effectively discharge its duties;

(13) Administer oaths or affirmations as necessary to carry out the act;

(14) Have the authority to impose, subject to judicial review, appropriate administrative fines and penalties for each violation of the act or any rules and regulations adopted and promulgated pursuant to the act in an amount not to exceed:

(a) For any licensed racetrack enclosure with an authorized gaming operator operating games of chance for one year or less, fifty thousand dollars per violation; or

(b) For any licensed racetrack enclosure with an authorized gaming operator operating games of chance for more than one year, three times the highest daily amount of gross receipts derived from wagering on games of chance during the twelve months preceding the violation at such licensed racetrack enclosure gaming facility per violation;

(15) Collect and remit administrative fines and penalties collected under this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska;

(16) Adopt and promulgate rules and regulations for any gaming taxes assessed to authorized gaming operators;

(17) Collect and account for any gaming taxes assessed to authorized gaming operators and remit such taxes to the State Treasurer or county treasurer as required by Nebraska law;

(18) Promote treatment of gaming-related behavioral disorders;

(19) Establish procedures for the governance of the commission;

(20) Acquire necessary offices, facilities, counsel, and staff;

(21) Establish procedures for an applicant for a staff position to disclose conflicts of interest as part of the application for employment;

(22) Establish a process to allow a person to be voluntarily excluded from wagering in any game of chance under the act in accordance with section 9-1118;

(23) Remit all license and application fees collected under the Nebraska Racetrack Gaming Act to the State Treasurer for credit to the Racing and Gaming Commission's Racetrack Gaming Fund;

(24) Conduct or cause to be conducted a statewide horseracing market analysis to study the racing market as it currently exists across the state and within the locations in Nebraska of the racetracks in Adams, Dakota, Douglas, Hall, Lancaster, and Platte counties as of the date of the market analysis. Such market analysis shall be completed as soon as practicable but not later than January 1, 2025, and every five years thereafter and shall be submitted electronically to the General Affairs Committee of the Legislature and to the Governor. Such market analysis shall examine the market potential and make recommendations involving:

(a) The number of live racing days per track, number of races run, and number of horses that should be entered per race;

(b) The number of Nebraska-bred horses available in the market for running races, including foals dropped in the state for the past three years at the time of the market analysis;

(c) The circuit scheduled in the state and if any overlapping dates would be beneficial to the circuit and market as a whole;

(d) The total number of horses available for the total annual schedule, with separate analysis for thoroughbred races and quarterhorse races;

(e) The purse money available per race and per track;

(f) The strength of the potential and ongoing simulcast market;

(g) The staffing patterns and problems that exist at each track, including unfilled positions;

(h) The positive and negative effects, including financial, on each existing racetrack at the time of the market analysis in the event the commission approves a new racetrack application;

(i) The potential to attract new owners and horses from other states;

(j) The market potential for expansion at each licensed racetrack enclosure to the live race meet days and the number of live horseraces required by section 2-1205, and the room for expansion, if any, for additional licensed racetrack enclosures into the market in Nebraska and the locations most suitable for such expansion; and

(k) Any other data and analysis required by the commission;

(25) Conduct or cause to be conducted a statewide casino gaming market analysis study across the state and within each location of a racetrack in Adams, Dakota, Douglas, Hall, Lancaster, and Platte counties. Such market analysis study shall be completed as soon as practicable but not later than January 1, 2025, and every five years thereafter and shall be submitted electronically to the General Affairs Committee of the Legislature and to the Governor. The market analysis study shall include:

(a) A comprehensive assessment of the potential casino gaming market conditions;

(b) An evaluation of the effects on the Nebraska market from competitive casino gaming locations outside of the state;

(c) Information identifying underperforming or underserved markets within Nebraska;

(d) A comprehensive study of potential casino gaming revenue in Nebraska; and

(e) Any other data and analysis required by the commission;

(26) Conduct or cause to be conducted a statewide socioeconomic-impact study of horseracing and casino gaming across the state and at each licensed racetrack enclosure and gaming facility in Adams, Dakota, Douglas, Hall, Lancaster, and Platte counties. Such socioeconomic-impact study shall be completed as soon as practicable but not later than January 1, 2025, and shall be submitted electronically to the General Affairs Committee of the Legislature and to the Governor. The study shall include:

(a) Information on financial and societal impacts of horseracing and casino gaming, including crime and local businesses;

(b) An analysis of problem gambling within the state; and

(c) A comparison of the economy of counties which contain a licensed racetrack enclosure operating games of chance and counties which do not contain such a licensed racetrack enclosure as of the date of the study, which comparison shall include:

(i) The population of such counties;

(ii) Jobs created by each licensed racetrack enclosure operating games of chance in such counties;

(iii) Unemployment rates in such counties;

(iv) Information on family and household income in such counties;

(v) Retail sales in such counties;

(vi) Property values in such counties;

(vii) An analysis of the impact on community services, including police protection expenditures, fire protection expenditures, road, bridge, and sidewalk expenditures, and capital project expenditures in such counties;

(viii) Impact on community health in such counties;

(ix) Divorce rates in such counties;

(x) Information on available education and education levels in such counties;

(xi) Life expectancy in such counties;

(xii) Homelessness in such counties; and

(xiii) Any other data and analysis required by the commission;

(27) Approve or deny an application for any licensed racetrack enclosure which is not in existence or operational as of April 20, 2022, or any licensed racetrack enclosure in existence and operational as of November 1, 2020, that applies to move such licensed racetrack enclosure pursuant to section 2-1205, on the basis of the placement and location of such licensed racetrack enclosure and based on the market as it exists as of the most recent issuance of the statewide horseracing market analysis, statewide casino gaming market analysis, and statewide socioeconomic-impact studies conducted by the commission pursuant to this section. The commission shall deny a licensed racetrack enclosure or gaming operator license application if it finds that approval of such application in such placement and location would be detrimental to the racing or gaming market that exists across the state based on the most recent statewide horseracing market analysis, statewide casino gaming market analysis, and statewide socioeconomic-impact studies;

(28) Do all things necessary and proper to carry out its powers and duties under the Nebraska Racetrack Gaming Act, including the adoption and promulgation of rules and regulations and such other actions as permitted by the Administrative Procedure Act;

(29) Recommend to the Governor and to the General Affairs Committee of the Legislature amendments to all laws administered by the commission; and

(30) As appropriate and as recommended by the executive director of the commission, delegate to an adjudication subcommittee of the commission those powers and duties of the commission as necessary to carry out and effectuate the purposes of the Nebraska Racetrack Gaming Act and investigate and

respond to violations of the Nebraska Racetrack Gaming Act. The adjudication subcommittee staff shall be appointed by the executive director. No person may be appointed to the adjudication subcommittee if such person is involved in the investigation of any violation being heard or investigated by the subcommittee. Any action of the adjudication subcommittee may be appealed to the commission or may be reviewed by the commission on its own initiative. The adjudication subcommittee may impose a fine, consistent with the Nebraska Racetrack Gaming Act, not to exceed fifteen thousand dollars, upon a finding that the act or any rule or regulation adopted and promulgated under the act has been violated. The commission shall remit any fines collected under this subdivision to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Initiative Law 2020, No. 430, § 6; Laws 2021, LB561, § 30; Laws 2022, LB876, § 16; Laws 2023, LB775, § 13.

Cross References

Administrative Procedure Act, see section 84-920.

9-1107 Racing and Gaming Commission's Racetrack Gaming Fund; created; use; investment.

The Racing and Gaming Commission's Racetrack Gaming Fund is created. The fund shall consist of all license, application, and other fees collected under the Nebraska Racetrack Gaming Act. The fund shall be used for administration of the Nebraska Racetrack Gaming Act. Any money in the Racing and Gaming Commission's Racetrack Gaming 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.

Source: Laws 2021, LB561, § 31; Laws 2022, LB876, § 19; Laws 2024, First Spec. Sess., LB3, § 4.
Effective date August 21, 2024.

Cross References

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

9-1110 Sports wagering.

(1) The commission may permit an authorized gaming operator to conduct sports wagering. Any sports wager shall be placed in person or at a wagering kiosk in the designated sports wagering area at the licensed racetrack enclosure. A parimutuel wager in accordance with sections 2-1201 to 2-1218 may be placed in the designated sports wagering area at the licensed racetrack enclosure. An individual employed and authorized to accept a sports wager may also accept a parimutuel wager.

(2) A floor plan identifying the designated sports wagering area, including the location of any wagering kiosks, shall be filed with the commission for review and approval. Modification to a previously approved plan must be submitted for approval at least ten days prior to implementation. The area shall not be accessible to persons under twenty-one years of age and shall have a sign posted to restrict access. Exceptions to this subsection must be approved in writing by the commission.

(3) The authorized gaming operator shall submit controls for approval by the commission, that include the following for operating the designated sports wagering area:

(a) Specific procedures and technology partners to fulfill the requirements set forth by the commission;

(b) Other specific controls as designated by the commission;

(c) A process to easily and prominently impose limitations or notification for wagering parameters, including, but not limited to, deposits and wagers; and

(d) An easy and obvious method for a player to make a complaint and to enable the player to notify the commission if such complaint has not been or cannot be addressed by the sports wagering operator.

(4) The commission shall develop policies and procedures to ensure a prohibited participant is unable to place a sports wager or parimutuel wager.

(5) Beginning on the implementation date designated by the Tax Commissioner pursuant to subsection (1) of section 9-1312, prior to the winnings payment of any sports wagering winnings as defined in section 9-1303, an authorized gaming operator shall check the collection system to determine if the winner has a debt or an outstanding state tax liability as required by the Gambling Winnings Setoff for Outstanding Debt Act. If such authorized gaming operator determines that the winner is subject to the collection system, the operator shall deduct the amount of debt and outstanding state tax liability identified in the collection system from the winnings payment and shall remit the net winnings payment of sports wagering winnings, if any, to the winner and the amount deducted to the Department of Revenue to be credited against such debt or outstanding state tax liability as provided in section 9-1306.

Source: Laws 2021, LB561, § 34; Laws 2022, LB876, § 20; Laws 2023, LB775, § 14; Laws 2024, LB1317, § 49.
Operative date July 19, 2024.

ARTICLE 13

GAMBLING WINNINGS SETOFF FOR OUTSTANDING DEBT ACT

Section

9-1301 Act, how cited.

Sections 9-1301 to 9-1313 shall be known and may be cited as the Gambling Winnings Setoff for Outstanding Debt Act.

Source: Laws 2024, LB1317, § 33.
Operative date July 19, 2024.

9-1302 Act; purposes.

The purposes of the Gambling Winnings Setoff for Outstanding Debt Act are to:

(1) Establish and maintain a procedure to set off against an obligor's casino winnings, parimutuel winnings, sports wagering winnings, or cash device winnings any debt (a) that is assigned to the Department of Health and Human Services or that any individual not eligible as a public assistance recipient is attempting to collect through the Title IV-D child support enforcement program, (b) that has accrued through written contract, subrogation, or court judgment, and (c) that is in the form of a liquidated amount due and owing for the care, support, or maintenance of a child or for medical or spousal support; and

(2) Establish and maintain a procedure to set off against a taxpayer's casino winnings, parimutuel winnings, sports wagering winnings, or cash device winnings the amount of such taxpayer's outstanding state tax liability as determined by the Department of Revenue.

Source: Laws 2024, LB1317, § 34.
Operative date July 19, 2024.

9-1303 Terms, defined.

For purposes of the Gambling Winnings Setoff for Outstanding Debt Act, unless the context otherwise requires:

(1) Applicable winnings means any casino winnings, parimutuel winnings, sports wagering winnings, or cash device winnings;

(2) Cash device winnings means any cash prize won by a player of a cash device as defined in section 77-3001 that requires the operator, distributor, or manufacturer of such cash device to provide the player with an Internal Revenue Service Form 1099;

(3) Casino winnings means any winnings that are required to be reported on Internal Revenue Service Form W-2G won by a player from a game of chance at a licensed racetrack enclosure under the jurisdiction of the State Racing and Gaming Commission;

(4) Claimant means:

(a) The Department of Health and Human Services with respect to collection of a debt owed by a parent in a case involving a recipient of aid to dependent children in which rights to child, spousal, or medical support payments have been assigned to this state;

(b) An individual who is not eligible as a public assistance recipient and to whom a debt is owed that the individual is attempting to collect through the Title IV-D child support enforcement program; or

(c) Any person or entity entitled to receive child support, spousal support, or medical support as defined in section 43-1712.01 pursuant to an order issued by a court or agency of another state or jurisdiction, including an agency of another state or jurisdiction to which a person has assigned his or her right to receive such support. Such a claimant shall submit certification and documentation to the Department of Health and Human Services sufficient to satisfy the requirements of section 43-1730;

(5) Collection system means the collection system developed and implemented pursuant to section 9-1304;

(6) Debt means any liquidated amount of arrears that has accrued through assignment, contract, subrogation, court judgment, or operation of law, regardless of whether there is an outstanding judgment for such amount, and that is for the care, support, or maintenance of a child or for medical or spousal support;

(7) Net winnings payment means the winnings payment amount minus the debt and outstanding state tax liability balance;

(8) Obligor means any individual (a) owing money to or having a delinquent account with any claimant that has not been satisfied by court order, set aside by court order, or discharged in bankruptcy or (b) owing money on an outstanding state tax liability;

(9) Operator means an authorized gaming operator as defined in section 9-1103, any corporation or association licensed under sections 2-1201 to 2-1218 and authorized to conduct parimutuel wagering at a licensed racetrack, and any operator, distributor, or manufacturer of a cash device licensed under the Mechanical Amusement Device Tax Act;

(10) Outstanding state tax liability means any liability arising from any tax or fee, including penalties and interest, under any tax program administered by the Tax Commissioner, Department of Labor, or Department of Motor Vehicles;

(11) Parimutuel winnings means any winnings that are required to be reported on Internal Revenue Service Form W-2G and have tax withheld by the operator and that are won by a player from a parimutuel wager at a licensed racetrack under the jurisdiction of the State Racing and Gaming Commission;

(12) Sports wagering winnings means any winnings that are required to be reported on Internal Revenue Service Form W-2G and have tax withheld by the operator and that are won by a player from sports wagering as defined in section 9-1103 on a sports wager authorized by the State Racing and Gaming Commission;

(13) Spousal support has the same meaning as in section 43-1715; and

(14) Winnings payment means a payout of casino winnings, parimutuel winnings, sports wagering winnings, or cash device winnings to which an individual is entitled as a result of playing or wagering.

Source: Laws 2024, LB1317, § 35.
Operative date July 19, 2024.

Cross References

Mechanical Amusement Device Tax Act, see section 77-3011.

9-1304 Collection system; development; submission of debt or outstanding state tax liability; setoff; authorized.

(1)(a) The Department of Revenue, in consultation with the Department of Health and Human Services, shall develop and implement a secure, electronic collection system to carry out the purposes of the Gambling Winnings Setoff for Outstanding Debt Act.

(b) The collection system shall include access to the name of an obligor, the social security number of an obligor, and any other information that assists the operator in identifying an obligor. The collection system shall inform the

operator of the total amount owed without detailing the source of any of the amounts owed.

(2) The Department of Health and Human Services may submit any certified debt of twenty-five dollars or more to the collection system except when the validity of the debt is legitimately in dispute. The submission of debts of past-due support shall be a continuous process that allows the amount of debt to fluctuate up or down depending on the actual amount owed.

(3) The Department of Revenue may submit to the collection system any amount of outstanding state tax liability owed by a taxpayer except when the validity of the outstanding state tax liability is legitimately in dispute. The inclusion of outstanding state tax liability in the amount owed shall be a continuous process that allows the amount owed to fluctuate up or down depending on the actual amount of outstanding state tax liability owed.

(4) If the name of the obligor is retrieved from the collection system by the operator, the retrieval of such name shall be evidence of a valid lien upon and claim of lien against any applicable winnings of the obligor whose name is electronically retrieved from the collection system. If an obligor's applicable winnings are required to be set off pursuant to the Gambling Winnings Setoff for Outstanding Debt Act, the full amount of the debt and outstanding state tax liability shall be collected from any applicable winnings due the obligor.

(5) The information obtained by an operator from the collection system in accordance with this section shall retain its confidentiality and shall only be used by the operator for the purposes of complying with the Gambling Winnings Setoff for Outstanding Debt Act. An employee or prior employee of an operator who unlawfully discloses any such information for any other purpose, except as otherwise specifically authorized by law, shall be subject to the same penalties specified by law for unauthorized disclosure of confidential information by an agent or employee of the operator.

(6) The information obtained by the Department of Health and Human Services or the Department of Revenue from the operator in accordance with this section shall retain its confidentiality and shall only be used by either department in the pursuit of such department's debt or outstanding state tax liability collection duties and practices. An employee or prior employee of the Department of Health and Human Services or the Department of Revenue who unlawfully discloses any such information for any other purpose, except as specifically authorized by law, shall be subject to the penalties specified by law for unauthorized disclosure of confidential information by an agent or employee of either such department.

(7) The amount of debt and outstanding state tax liability owed shall be prima facie evidence of the validity of the liability.

Source: Laws 2024, LB1317, § 36.
Operative date July 19, 2024.

9-1305 Operator; collection system; check required; violations; penalty.

(1) Beginning on the applicable implementation date designated by the Tax Commissioner pursuant to subsection (1) or (2) of section 9-1312, prior to making a winnings payment, an operator shall check the collection system to determine if there is a debt or an outstanding state tax liability owed by the winner. An operator shall have access to the collection system to look up

winners that are due winnings payments for purposes of complying with the Gambling Winnings Setoff for Outstanding Debt Act. An operator shall not access the system for any other purpose.

(2)(a) An operator at a licensed racetrack enclosure or licensed racetrack that fails to check the collection system for a debt or an outstanding state tax liability or fails to collect the amounts owed shall be subject to a fine by the State Racing and Gaming Commission of not more than ten thousand dollars.

(b) The State Racing and Gaming Commission shall establish a schedule for fines pursuant to this section that considers both the proportionality of the offense and the number of instances of past offenses.

(3) An operator licensed by the Department of Revenue that fails to check the collection system for a debt or an outstanding state tax liability or collect the amounts owed may be considered in violation of such license and subject to any penalties authorized for a violation of the license under the Mechanical Amusement Device Tax Act.

Source: Laws 2024, LB1317, § 37.
Operative date July 19, 2024.

Cross References

Mechanical Amusement Device Tax Act, see section 77-3011.

9-1306 Operator; deduction from winnings payment; remittance; requirements.

(1) Beginning on the applicable implementation date designated by the Tax Commissioner pursuant to subsection (1) or (2) of section 9-1312, prior to making a winnings payment and after the operator has checked the collection system as provided in section 9-1305, the operator shall deduct the amount of debt and outstanding state tax liability identified in the collection system from the winnings payment and shall remit the net winnings payment, if any, to the winner and the amount deducted to the Department of Revenue in a manner prescribed by the department.

(2) If an operator determines that an obligor identified using the collection system is entitled to a winnings payment, the operator shall notify the Department of Revenue in a manner prescribed by the department that a balance of debt or outstanding state tax liability owed by the winner is being remitted to the department.

(3) The Department of Revenue shall first credit any such winnings payment against any debt of such winner certified by the Department of Health and Human Services until such debt is satisfied and then against any outstanding state tax liability owed by such winner until such liability is satisfied on a pro rata basis.

Source: Laws 2024, LB1317, § 38.
Operative date July 19, 2024.

9-1307 Notice of claim to winnings payment; contents.

(1) Within twenty days after a remittance pursuant to section 9-1306 due to an outstanding state tax liability, the Department of Revenue shall notify the winner of the remittance. The notice shall state (a) the basis for the claim to the outstanding state tax liability by the Department of Revenue, (b) the application of the winnings payment against the outstanding state tax liability of the

obligor, (c) the obligor's opportunity to give written notice of intent to contest the validity of the claim before the Department of Revenue within thirty days after the date of the mailing of the notice, (d) the mailing address to which the request must be sent, and (e) that a failure to contest the claim in writing within the thirty-day period will be deemed a waiver of the opportunity to contest the claim resulting in a setoff by default.

(2)(a) Within twenty days after notification from the Department of Revenue of a remittance pursuant to section 9-1306 due to owing a debt certified by the Department of Health and Human Services, the Department of Health and Human Services shall send written notification to the obligor of an assertion of its rights, or of the rights of an individual not eligible as a public assistance recipient, to all or a portion of the obligor's winnings payment.

(b) The written notification shall clearly set forth (i) the basis for the claim to the winnings payment, (ii) the intention to apply the winnings payment against the debt owed to a claimant, (iii) the obligor's opportunity to give written notice of intent to contest the validity of the claim before the Department of Health and Human Services within thirty days after the date of the mailing of the notice, (iv) the mailing address to which the request for a hearing must be sent, and (v) that failure to apply for a hearing in writing within the thirty-day period will be deemed a waiver of the opportunity to contest the claim resulting in a setoff by default.

Source: Laws 2024, LB1317, § 39.
Operative date July 19, 2024.

9-1308 Contested claims; procedure.

(1)(a) A written request by a winner pursuant to subsection (1) of section 9-1307 shall be effective upon mailing the request, postage prepaid and properly addressed, to the Department of Revenue.

(b) Any appeal or action taken as a result of a decision pursuant to subdivision (1)(a) of this section shall be in accordance with the Administrative Procedure Act.

(2)(a) A written request for a hearing by a winner pursuant to subsection (2) of section 9-1307 shall be effective upon mailing the request, postage prepaid and properly addressed, to the Department of Health and Human Services.

(b) If the Department of Health and Human Services receives a written request for a hearing contesting a claim, the department shall grant a hearing to the obligor to determine whether the claim is valid. If the amount asserted as due and owing is not correct, an adjustment to the claimed amount shall be made. No issues shall be reconsidered at the hearing which have been previously litigated.

(c) Any appeal of an action taken at or as a result of a hearing held pursuant to subdivision (2)(b) of this section shall be in accordance with the Administrative Procedure Act.

Source: Laws 2024, LB1317, § 40.
Operative date July 19, 2024.

Cross References

Administrative Procedure Act, see section 84-920.

9-1309 Collection system; additional remedy.

The collection remedy authorized by the Gambling Winnings Setoff for Outstanding Debt Act is in addition to and not in substitution for any other remedy available by law.

Source: Laws 2024, LB1317, § 41.
Operative date July 19, 2024.

9-1310 Operator; immunity from liability; when.

An operator, acting in good faith, shall not be liable to any person for actions taken pursuant to the Gambling Winnings Setoff for Outstanding Debt Act. Neither the State Racing and Gaming Commission nor the Department of Revenue shall initiate any administrative action or impose penalties on an operator who voluntarily reports to the commission activity described in section 9-1311.

Source: Laws 2024, LB1317, § 42.
Operative date July 19, 2024.

9-1311 Prohibited acts; penalty.

Any person who knowingly or intentionally attempts to avoid the application of a setoff under the Gambling Winnings Setoff for Outstanding Debt Act by passing any applicable winnings to another person to present for a cash payout or by providing fraudulent identification during a cash payout is guilty of a Class I misdemeanor.

Source: Laws 2024, LB1317, § 43.
Operative date July 19, 2024.

9-1312 Collection system; implementation date.

(1) The Tax Commissioner shall designate an implementation date for the required use by operators of the collection system developed pursuant to section 9-1304 prior to making a winnings payment for casino winnings, parimutuel winnings, or sports wagering winnings, which date shall be on or after January 1, 2025, but on or before January 1, 2026. The Tax Commissioner shall provide at least ninety days' notice of the implementation date on the Department of Revenue's website before such implementation date goes into effect.

(2) The Tax Commissioner shall designate an implementation date for the required use by operators of the collection system developed pursuant to section 9-1304 prior to making a winnings payment for cash device winnings, which date shall be on or after January 1, 2025, and after the establishment of the control server by the Department of Revenue to receive data and accurate revenue and income reporting from cash devices pursuant to the Mechanical Amusement Device Tax Act, but on or before January 1, 2027. The Tax Commissioner shall provide at least ninety days' notice of the implementation date on the Department of Revenue's website before such implementation date goes into effect.

Source: Laws 2024, LB1317, § 44.
Operative date July 19, 2024.

Cross References

Mechanical Amusement Device Tax Act, see section 77-3011.

9-1313 Rules and regulations.

The Department of Health and Human Services, the Department of Revenue, and the State Racing and Gaming Commission may adopt and promulgate rules and regulations to carry out the Gambling Winnings Setoff for Outstanding Debt Act.

Source: Laws 2024, LB1317, § 45.
Operative date July 19, 2024.

CHAPTER 10
BONDS

Article.
1. General Provisions. 10-110.
4. Internal Improvement Bonds. 10-402 to 10-405.
5. Funding Bonds of Counties. 10-507.
7. School District Bonds. 10-711.
8. County Aid Bonds. 10-804.

ARTICLE 1
GENERAL PROVISIONS

Section
10-110. County bonds; retirement; taxes; levy and collection; duties of county officers.

10-110 County bonds; retirement; taxes; levy and collection; duties of county officers.

The county clerk shall ascertain from the assessment roll of the county the amount of taxable property in such county and the percentage required to be levied thereon to pay the interest and to create a sinking fund. The county board shall levy such percentage upon the taxable property of the county, and the county clerk shall place the same upon the tax roll of the county in a separate column or columns, designating the purposes for which the taxes are levied. The taxes shall be collected by the county treasurer in the same manner that other taxes are collected.

Source: Laws 1875, § 5, p. 171; R.S.1913, § 375; C.S.1922, § 292; C.S. 1929, § 11-111; R.S.1943, § 10-110; Laws 2001, LB 420, § 5; Laws 2023, LB92, § 42.

ARTICLE 4
INTERNAL IMPROVEMENT BONDS

Section
10-402. County and city bonds; election; proposition; contents; additional levy.
10-403. County and city bonds; proposition; rate of interest.
10-405. County and city bonds; payment; tax levy.

10-402 County and city bonds; election; proposition; contents; additional levy.

The proposition of the question must be accompanied by a provision to levy a tax annually for the payment of the interest on the bonds. An additional amount shall be levied and collected to pay the principal of such bonds.

Source: Laws 1869, § 2, p. 92; Laws 1870, § 1, p. 15; R.S.1913, § 406; C.S.1922, § 323; C.S.1929, § 11-402; R.S.1943, § 10-402; Laws 2023, LB92, § 43.

10-403 County and city bonds; proposition; rate of interest.

The proposition shall state the rate of interest such bond shall draw.

Source: Laws 1869, § 3, p. 92; R.S.1913, § 407; C.S.1922, § 324; C.S. 1929, § 11-403; R.S.1943, § 10-403; Laws 2023, LB92, § 44.

10-405 County and city bonds; payment; tax levy.

It shall be the duty of the proper officers of such county or city to cause to be annually levied, collected, and paid to the holders of such bonds a special tax on all taxable property within the county or city sufficient to pay the annual interest and principal of the bonds. Not more than twenty percent of the principal of such bonds shall be collected in any one year.

Source: Laws 1869, § 5, p. 93; Laws 1870, § 2, p. 15; R.S.1913, § 409; C.S.1922, § 326; C.S.1929, § 11-405; R.S.1943, § 10-405; Laws 1947, c. 15, § 4, p. 83; Laws 2023, LB92, § 45.

ARTICLE 5

FUNDING BONDS OF COUNTIES

Section
10-507. Tax levy; limit.

10-507 Tax levy; limit.

The county board of any county issuing bonds under sections 10-501 to 10-509 shall levy a tax annually for the payment of the interest on the bonds. An additional amount shall be levied and collected sufficient to pay the principal of such bonds at maturity. Not more than twenty percent of the principal of such bonds shall be levied and collected in any one year.

Source: Laws 1879, § 138, p. 389; R.S.1913, § 422; C.S.1922, § 339; C.S.1929, § 11-507; R.S.1943, § 10-507; Laws 2023, LB92, § 46.

ARTICLE 7

SCHOOL DISTRICT BONDS

Section
10-711. Tax levy; sinking fund; exception; funds; distribution.

10-711 Tax levy; sinking fund; exception; funds; distribution.

It shall be the duty of the county board in each county to levy annually upon all the taxable property in each school district in such county a tax sufficient to pay the interest that will accrue or is accruing upon any bonds that have been or will be issued by such school district and to provide a sinking fund for the final redemption of the same. Such levy shall be made with the annual levy of the county and the taxes collected with other taxes and when collected shall be paid over to the county treasurer of the county in which the administrative office of such school district is located and shall remain in the hands of such county treasurer as a specific fund for the payment of the interest upon such bonds and for the final payment of the same at maturity. At the request of the school board of any district, the county board shall omit making a levy to pay the principal of the bonds when no bonds will be due within fifteen years thereafter.

Source: Laws 1879, § 13, p. 173; R.S.1913, § 458; C.S.1922, § 375; C.S.1929, § 11-911; Laws 1933, c. 22, § 2, p. 193; C.S.Supp.,1941, § 11-911; R.S.1943, § 10-711; Laws 1969, c. 50, § 1, p. 269; Laws 1990, LB 924, § 6; Laws 2023, LB92, § 47.

ARTICLE 8
COUNTY AID BONDS

Section
10-804. Election; proposition; contents; payment; tax levy.

10-804 Election; proposition; contents; payment; tax levy.

The proposition, when submitted, shall state the amount necessary to be raised each year for the payment of the interest on the bonds and for the payment of the principal thereof at maturity. When such bonds shall have been issued or authorized to be issued, the proper officers of such county shall cause to be annually levied and collected a special tax upon all taxable property of such county to raise the annual amount designated in the proposition and to pay the interest and principal of such bonds.

Source: Laws 1913, c. 229, § 5, p. 664; R.S.1913, § 475; C.S.1922, § 392; C.S.1929, § 11-1005; R.S.1943, § 10-804; Laws 2023, LB92, § 48.

CHAPTER 12
CEMETERIES

Article.
7. Cemetery Lots, Abandonment and Reversion. 12-701, 12-702.
13. State Veteran Cemetery System. 12-1301.

ARTICLE 7
CEMETERY LOTS, ABANDONMENT AND REVERSION

Section
12-701. Conveyed lots; reversion; conditions; procedure; effect.
12-702. Conveyed lots; reversion; sale authorized; proceeds; disposition.

12-701 Conveyed lots; reversion; conditions; procedure; effect.

(1) For purposes of this section, lot owner means the purchaser of a cemetery lot or such purchaser's heirs, administrators, trustees, legatees, devisees, or assigns.

(2) Whenever a county, city, or village has acquired real estate for the purpose of maintaining a cemetery or has acquired a cemetery from a cemetery association pursuant to section 12-530, or a city or village is the owner of a cemetery pursuant to section 15-239, 16-241, or 17-926, and such county, city, or village or its predecessor in title has conveyed any platted lot or other designated piece of ground within the area of such cemetery, all rights to such conveyed platted lot or other designated piece of ground, other than ground in which dead human remains are actually buried and all ground within two feet of such human remains, may be revested in the county, city, or village in the following manner and subject to the following conditions:

(a) No interment shall have been made in the lot or other designated piece of ground for a period of at least thirty years prior to the commencement of any proceedings to revest such lot or other designated piece of ground pursuant to this section;

(b) If a lot owner is a resident of the county where the cemetery is located, the governing body of the county, city, or village shall cause to be served upon such lot owner a notice that proceedings have been initiated to revest all rights in such lot in the county, city, or village and that such lot owner may, within the time provided by the notice, file with the county clerk, city clerk, or village clerk a statement in writing explaining how rights in the lot were acquired and that such person desires to assert interment rights in the lot. The notice shall be served in the manner provided for service of summons in a civil case and shall provide a period of not less than thirty days in which such statement can be filed. If the governing body ascertains that the statement filed by the lot owner is a valid claim asserting the rights of the lot owner in the lot, all further proceedings by the governing body to revest title of the lot in the county, city, or village shall be terminated by the governing body as to the lot identified in the statement;

(c) If it is determined that the lot owner is not a resident of the county and cannot be found in the county, the governing body may cause the notice

required by subdivision (b) of this subsection to be published once each week for two consecutive weeks in a newspaper of general circulation within the county, city, or village where such lot is located. Such notice shall contain a general description of the title reversion proceedings to be undertaken by the governing body pursuant to this section, the relevant lot number and description, and name of the lot owner. In addition, the notice shall notify the lot owner that such lot owner may, within the time provided by the notice, file with the county clerk, city clerk, or village clerk a statement setting forth how such lot owner acquired rights in the lot and that such lot owner desires to assert such rights. If the governing body ascertains that the statement filed by the lot owner is a valid claim asserting the rights of the lot owner in the lot, all further proceedings by the governing body to revest all interests in the lot in the county, city, or village shall be terminated by the governing body as to the lot identified in the statement;

(d) All notices, including proof of service, and all rules and regulations, ordinances, or resolutions adopted by the governing body relative to reversion proceedings under this section shall be made a part of the public records of such governing body;

(e) Any lot owner who fails to timely file a statement asserting a right in a lot in accordance with subdivisions (b) and (c) of this subsection shall be deemed to have abandoned such right in such lot. The appropriate governing body may then bring an action in the district court of the county in which the cemetery is located against all lot owners in default, joining as many parties so in default as it may desire in one action, to have the rights of the parties in such lots or parcels terminated and the property restored to the governing body of such cemetery free of any right, title, or interest of all such defaulting parties or their heirs, administrators, trustees, legatees, devisees, or assigns. Such action in all other respects shall be brought and determined in the same manner as other actions to determine title to real estate;

(f) In all cases brought under this section, the fact that the lot owner has not, for a term of more than thirty successive years, had occasion to make an interment in the lot and did not, upon notification provided pursuant to this section, assert a claim in such lot, shall be considered prima facie evidence that the lot owner has abandoned any rights such lot owner may have had in such lot;

(g) A certified copy of the judgments in such actions quieting title may be filed in the office of the register of deeds in and for the county in which the cemetery is situated; and

(h) All notices and all proceedings pursuant to this section shall distinctly describe the portion of such lot unused for burial purposes and the county, city, or village shall leave sufficient ingress to, and egress from, any grave upon the lot, either by duly dedicated streets or alleys in the cemetery, or by leaving sufficient amounts of the unused portions of the cemetery for such purposes.

(3) This section shall not apply to any lot in any cemetery association where a perpetual care contract has been entered into between such cemetery or the county, city, or village and the owner of such lot.

(4) Compliance with the terms of this section shall fully revest the county, city, or village with, and divest the lot owner of record of, title to such lot or portions of such lot unused for burial purposes as though the lot had never been conveyed to any person, and such county, city, or village shall have, hold,

and enjoy such unclaimed portions of such lot for its own uses and purposes, subject to the laws of this state, to the charter of such cemetery, and to the rules and regulations, ordinances, or resolutions of such governing county, city, or village.

(5) Any transfer by a lot owner of the interment right to a lot shall be subject to any rules and regulations, ordinances, or resolutions adopted and promulgated by the county, city, or village.

Source: Laws 1935, c. 26, § 1, p. 120; C.S.Supp.,1941, § 13-701; R.S. 1943, § 12-701; Laws 1953, c. 18, § 1, p. 85; Laws 1955, c. 19, § 1, p. 94; Laws 1957, c. 242, § 5, p. 819; Laws 1963, c. 39, § 2, p. 211; Laws 1986, LB 960, § 6; Laws 2024, LB257, § 1. Effective date July 19, 2024.

12-702 Conveyed lots; reversion; sale authorized; proceeds; disposition.

A county, city, or village that is the reversionary owner of a lot, part of a lot, lots, or parts of lots pursuant to section 12-701 may sell the same and convey title to such lots or parts of lots. Any funds realized from the sale of such lot, part of lot, lots, or parts of lots shall constitute a fund to be used solely for the care and upkeep of the used portion of such lot, part of lot, lots, or parts of lots and for the general maintenance of such cemetery. Such funds may be invested as long as such investor acts as a fiduciary and complies with the prudent investor rule set forth in sections 30-3883 to 30-3889.

Source: Laws 1935, c. 26, § 2, p. 121; C.S.Supp.,1941, § 13-702; R.S. 1943, § 12-702; Laws 1953, c. 18, § 2, p. 86; Laws 1963, c. 39, § 3, p. 212; Laws 2024, LB257, § 2.
Effective date July 19, 2024.

ARTICLE 13

STATE VETERAN CEMETERY SYSTEM

Section
12-1301. Director of Veterans' Affairs; state veteran cemetery system; powers and duties; Veteran Cemetery Construction Fund; Nebraska Veteran Cemetery System Endowment Fund; Nebraska Veteran Cemetery System Operation Fund; created; use; investment.

12-1301 Director of Veterans' Affairs; state veteran cemetery system; powers and duties; Veteran Cemetery Construction Fund; Nebraska Veteran Cemetery System Endowment Fund; Nebraska Veteran Cemetery System Operation Fund; created; use; investment.

(1)(a) The Director of Veterans' Affairs shall establish and operate a state veteran cemetery system. The system shall consist of a facility in the city of Grand Island, subject to subdivision (b) of this subsection, and may include a facility in Box Butte County. The director may seek and expend private, state, and federal funds for the establishment, construction, maintenance, administration, and operation of the cemetery system as provided in this section. Any gift, bequest, or devise of real property and any acquisition of real property with the proceeds of a donation, gift, bequest, devise, or grant from an individual, an organization, a corporation, a foundation, or a similar entity or from a nonfederal governmental agency for the cemetery system shall be subject to the approval requirements of section 81-1,113 notwithstanding the value of the real

property. All funds received for the construction of the cemetery system shall be remitted to the State Treasurer for credit to the Veteran Cemetery Construction Fund. Any funds remaining in the Veteran Cemetery Construction Fund following the completion of construction of the facilities comprising the state veteran cemetery system shall upon such completion be transferred to the Nebraska Veteran Cemetery System Endowment Fund, and the Veteran Cemetery Construction Fund shall thereafter terminate.

(b) Beginning on August 7, 2020, the Director of Veterans' Affairs shall negotiate with the city of Grand Island to acquire an exclusive option for the transfer of title to the former Nebraska Veterans' Memorial Cemetery in the city of Grand Island and land adjacent to the cemetery, as identified in the required program statement, owned by the city of Grand Island. After being granted funding assistance from the National Cemetery Administration, the director shall accept from the city of Grand Island, at no cost, title to the real estate described in this subdivision in order to establish a state cemetery for veterans. The director shall prepare an initial program statement and make a request to the Legislature for funding as required by section 81-1108.41. The expenses of the initial program statement shall be paid from the Nebraska Veteran Cemetery System Operation Fund.

(2)(a) A trust fund to be known as the Nebraska Veteran Cemetery System Endowment Fund is hereby created. The fund shall consist of:

(i) Gifts, bequests, grants, or contributions from private or public sources designated for the maintenance, administration, or operation of the state veteran cemetery system;

(ii) Any funds transferred from the Veteran Cemetery Construction Fund following the completion of construction of the three facilities comprising the state veteran cemetery system; and

(iii) Following the termination of the Veteran Cemetery Construction Fund, any funds received by the state from any source for the state veteran cemetery system.

(b) No revenue from the General Fund shall be remitted to the Nebraska Veteran Cemetery System Endowment Fund. The Legislature shall not appropriate or transfer money from the Nebraska Veteran Cemetery System Endowment Fund for any purpose other than as provided in this section. Any money in the Nebraska Veteran Cemetery System 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. No portion of the principal of the Nebraska Veteran Cemetery System Endowment Fund shall be expended for any purpose except investment pursuant to this subdivision. All investment earnings from the Nebraska Veteran Cemetery System Endowment Fund shall be credited on a quarterly basis to the Nebraska Veteran Cemetery System Operation Fund.

(3) There is hereby created the Nebraska Veteran Cemetery System Operation Fund. Money in the fund shall be used for the operation, administration, and maintenance of the state veteran cemetery system. The fund may be used for the expenses of the initial program statement under subdivision (1)(b) 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.

(4) The Director of Veterans' Affairs may make formal application to the federal government regarding federal financial assistance for the construction of any of the facilities comprising the state veteran cemetery system which is located in a county with a population of less than one hundred thousand persons when he or she determines that the requirements for such assistance have been met.

(5) The director may make formal application to the federal government regarding financial assistance for the construction of any facility comprising a portion of the state veteran cemetery system located in a county with a population of more than one hundred thousand persons when sufficient funds have been remitted to the Nebraska Veteran Cemetery System Endowment Fund such that (a) the projected annual earnings from such fund available for transfer to the Nebraska Veteran Cemetery System Operation Fund plus (b) the projected annual value of formal agreements that have been entered into between the state and any political subdivisions or private entities to subsidize or undertake the operation, administration, or maintenance of any of the facilities within the state veteran cemetery system, has a value that is sufficient to fund the operation, administration, and maintenance of any cemetery created pursuant to this subsection.

(6) The director may expend such funds as may be available for any of the purposes authorized in this section.

(7) The director, with the approval of the Governor, may enter into agreements for cemetery construction, administration, operation, or maintenance with qualified persons, political subdivisions, or business entities. The director shall provide lots in the cemetery system for the interment of deceased veterans as defined by the National Cemetery Administration of the United States Department of Veterans Affairs. The director shall provide lots for the interment of those veterans' spouses, minor children, and unmarried adult children who were physically or mentally disabled and incapable of self-support. Section 12-501 does not apply to the state veteran cemetery system.

(8) The Veteran Cemetery Construction Fund is created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(9) The director may adopt and promulgate rules and regulations to carry out this section. The rules and regulations shall include requirements for proof of residency, cost of burial if any, and standards for cemeteries, including decorations and headstones.

Source: Laws 1999, LB 84, § 1; Laws 2004, LB 1231, § 1; Laws 2005, LB 54, § 2; Laws 2005, LB 227, § 1; Laws 2006, LB 996, § 1; Laws 2009, LB154, § 1; Laws 2011, LB264, § 1; Laws 2017, LB331, § 18; Laws 2020, LB911, § 1; Laws 2024, LB998, § 8.
Operative date July 1, 2025.

Cross References

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

CHAPTER 13

CITIES, COUNTIES, AND OTHER POLITICAL SUBDIVISIONS

ARTICLE 2

COMMUNITY DEVELOPMENT

13-201 Transferred to section 77-3113.

13-202 Transferred to section 77-3114.

13-203 Transferred to section 77-3115.

13-204 Transferred to section 77-3116.

13-205 Transferred to section 77-3117.

13-206 Transferred to section 77-3118.

13-207 Transferred to section 77-3119.

13-208 Transferred to section 77-3120.

ARTICLE 3

POLITICAL SUBDIVISIONS; PARTICULAR CLASSES AND PROJECTS

(k) REGULATION OF FIREARMS AND OTHER WEAPONS

(k) REGULATION OF FIREARMS AND OTHER WEAPONS

13-330 Ownership, possession, storage, transportation, sale, and transfer of firearms and other weapons; power of counties, cities, and villages; ordinance, permit, or regulation; null and void.

(1) The Legislature finds and declares that the regulation of the ownership, possession, storage, transportation, sale, and transfer of firearms and other weapons is a matter of statewide concern.

(2) Notwithstanding the provisions of any home rule charter, counties, cities, and villages shall not have the power to:

(a) Regulate the ownership, possession, storage, transportation, sale, or transfer of firearms or other weapons, except as expressly provided by state law; or

(b) Require registration of firearms or other weapons.

(3) Any county, city, or village ordinance, permit, or regulation in violation of subsection (2) of this section is declared to be null and void.

Source: Laws 2009, LB430, § 5; Laws 2010, LB817, § 2; R.S.1943, (2022), § 18-1703; Laws 2023, LB77, § 1.

ARTICLE 4

POLITICAL SUBDIVISIONS; LAWS APPLICABLE TO ALL

13-406 Membership dues; fees for lobbying services; disclosure required.

(1) For purposes of this section, political subdivision means a village, a city, a county, a school district, a community college, an educational service unit, a public power district, a natural resources district, or any other unit of local government.

(2) Each political subdivision shall publicly disclose the following on its website:

(a) Membership dues paid annually to any association or organization, identifying each such association or organization and the dues amounts paid; and

(b) Fees paid to any individual lobbyist or lobbying firm other than any fees paid for lobbying services that may be included in the membership dues described in subdivision (2)(a) of this section.

(3) For any political subdivision that does not have a website, the information described in subsection (2) of this section shall be made available upon request to any member of the public at the office of such political subdivision.

Source: Laws 2024, LB304, § 1.
Effective date July 19, 2024.

13-407 Restricting or prohibiting types or fuel sources of energy; prohibited, when.

(1) No county, city, village, or other political subdivision of the state shall enact or implement any ordinance, code, resolution, rule, regulation, or policy that restricts, prohibits, or has the effect of restricting or prohibiting the types or fuel sources of energy that may be used, delivered, converted, or supplied by the following entities to serve customers that such entities are authorized to serve:

(a) A natural gas utility;

(b) A natural gas transmission company; or

(c) A retail marketer or dispenser of propane.

(2) This section does not apply to ordinances, codes, resolutions, rules, regulations, or policies:

(a) Governing a natural gas utility owned or operated and directly controlled by a city or village; or

(b) Regulating a retail marketer or dispenser of propane.

Source: Laws 2024, LB867, § 12.
Operative date July 19, 2024.

ARTICLE 5
BUDGETS

(a) NEBRASKA BUDGET ACT

(d) BUDGET LIMITATIONS

(a) NEBRASKA BUDGET ACT

13-508 Adopted budget statement; certified taxable valuation; levy.

(1) After publication and hearing thereon and within the time prescribed by law, each governing body shall file with and certify to the levying board or boards on or before September 30 of each year or September 30 of the final year of a biennial period and file with the auditor a copy of the adopted budget statement which complies with sections 13-518 to 13-522 or 79-1023 to 79-1030, if applicable, together with the amount of the tax required to fund the adopted budget, setting out separately (a) the amount to be levied for the payment of principal or interest on bonds issued or authorized to be issued by the governing body or the legal voters of the political subdivision and (b) the amount to be levied for all other purposes. Proof of publication shall be

attached to the statements. For fiscal years prior to fiscal year 2017-18, learning communities shall also file a copy of such adopted budget statement with member school districts on or before September 1 of each year. If the prime rate published by the Federal Reserve Board is ten percent or more at the time of the filing and certification required under this subsection, the governing body, in certifying the amount required, may make allowance for delinquent taxes not exceeding five percent of the amount required plus the actual percentage of delinquent taxes for the preceding tax year or biennial period and for the amount of estimated tax loss from any pending or anticipated litigation which involves taxation and in which tax collections have been or can be withheld or escrowed by court order. For purposes of this section, anticipated litigation shall be limited to the anticipation of an action being filed by a taxpayer who or which filed a similar action for the preceding year or biennial period which is still pending. Except for such allowances, a governing body shall not certify an amount of tax more than one percent greater or lesser than the amount determined under section 13-505.

(2) Each governing body shall use the certified taxable values as provided by the county assessor pursuant to section 13-509 for the current year in setting or certifying the levy. Each governing body may designate one of its members to perform any duty or responsibility required of such body by this section.

Source: Laws 1969, c. 145, § 7, p. 672; Laws 1971, LB 129, § 3; Laws 1977, LB 391, § 1; Laws 1979, LB 178, § 1; R.S.1943, (1983), § 23-927; Laws 1989, LB 643, § 1; Laws 1992, LB 1063, § 4; Laws 1992, Second Spec. Sess., LB 1, § 4; Laws 1993, LB 310, § 6; Laws 1993, LB 734, § 19; Laws 1995, LB 452, § 2; Laws 1996, LB 299, § 11; Laws 1996, LB 900, § 1018; Laws 1996, LB 1362, § 3; Laws 1997, LB 269, § 10; Laws 1998, LB 306, § 2; Laws 1998, Spec. Sess., LB 1, § 1; Laws 1999, LB 86, § 5; Laws 2002, LB 568, § 4; Laws 2006, LB 1024, § 2; Laws 2008, LB1154, § 1; Laws 2009, LB166, § 1; Laws 2013, LB111, § 5; Laws 2016, LB1067, § 2; Laws 2017, LB432, § 1; Laws 2018, LB377, § 1; Laws 2021, LB644, § 6; Laws 2022, LB1165, § 3; Laws 2024, First Spec. Sess., LB34, § 14.
Effective date August 21, 2024.

13-509 County assessor; certify taxable value; when; annexation of property; governing body; duties.

(1) On or before August 20 of each year, the county assessor shall certify to each governing body or board empowered to levy or certify a tax levy the current taxable value of the taxable real and personal property subject to the applicable levy. The certification shall be provided to the governing body or board (a) by mail if requested by the governing body or board, (b) electronically, or (c) by listing such certification on the county assessor's website.

(2) Current taxable value for real property shall mean the value established by the county assessor and equalized by the county board of equalization and the Tax Equalization and Review Commission. Current taxable value for tangible personal property shall mean the net book value reported by the taxpayer and certified by the county assessor.

(3) If a political subdivision annexes property since the last time taxable values were certified under subsection (1) of this section, the governing body of

such political subdivision shall file and record a certified copy of the annexation ordinance, petition, or resolution in the office of the register of deeds or, if none, the county clerk and the county assessor of the county in which the annexed property is located. The annexation ordinance, petition, or resolution shall include a full legal description of the annexed property. If the register of deeds or county clerk receives and records such ordinance, petition, or resolution prior to July 1 or, for annexations by a city of the metropolitan class, prior to August 1, the valuation of the real and personal property annexed shall be considered in the taxable valuation of the annexing political subdivision for the current year. If the register of deeds or county clerk receives and records such ordinance, petition, or resolution on or after July 1 or, for annexations by a city of the metropolitan class, on or after August 1, the valuation of the real and personal property annexed shall be considered in the taxable valuation of the annexing political subdivision for the following year.

(4) If the legal voters of a political subdivision have approved a bond since the last time taxable values were certified under subsection (1) of this section, the governing body of such political subdivision shall file a copy of the bond language approved by the legal voters of the political subdivision and a full legal description of the property subject to the bond with the county assessor of the county or counties in which such political subdivision is located. If the county assessor receives such copy and full legal description prior to July 1 or, for bonds of a city of the metropolitan class, prior to August 1, the valuation of the real and personal property subject to the bond shall be included in the value certified by the county assessor pursuant to subsection (1) of this section for the current year. If the county assessor receives such copy and full legal description on or after July 1 or, for bonds of a city of the metropolitan class, on or after August 1, the valuation of the real and personal property subject to the bond shall be included in the value certified by the county assessor pursuant to subsection (1) of this section for the following year.

Source: Laws 1977, LB 391, § 3; Laws 1979, LB 187, § 256; Laws 1984, LB 835, § 1; R.S.Supp.,1986, § 23-927.01; Laws 1991, LB 829, § 1; Laws 1992, LB 1063, § 5; Laws 1992, Second Spec. Sess., LB 1, § 5; Laws 1993, LB 734, § 20; Laws 1994, LB 902, § 12; Laws 1995, LB 452, § 3; Laws 1997, LB 271, § 12; Laws 1997, LB 397, § 2; Laws 1998, LB 306, § 3; Laws 1999, LB 194, § 1; Laws 1999, LB 813, § 1; Laws 2005, LB 261, § 1; Laws 2009, LB166, § 2; Laws 2010, LB1071, § 1; Laws 2017, LB217, § 2; Laws 2019, LB524, § 1; Laws 2023, LB92, § 49.

(d) BUDGET LIMITATIONS

13-518 Terms, defined.

For purposes of sections 13-518 to 13-522:

(1) Allowable growth means (a) for governmental units other than community colleges, the percentage increase in taxable valuation in excess of the base limitation established under section 77-3446, if any, due to improvements to real property as a result of new construction, additions to existing buildings, any improvements to real property which increase the value of such property, and any increase in valuation due to annexation and any personal property valuation over the prior year and (b) for community colleges, the percentage

increase in excess of the base limitation, if any, in full-time equivalent students from the second year to the first year preceding the year for which the budget is being determined;

(2) Capital improvements means (a) acquisition of real property or (b) acquisition, construction, or extension of any improvements on real property;

(3) Governing body has the same meaning as in section 13-503, except that for fiscal years beginning on or after July 1, 2025, such term shall not include the governing body of any county, city, or village;

(4) Governmental unit means every political subdivision which has authority to levy a property tax or authority to request levy authority under section 77-3443, except that such term shall not include (a) sanitary and improvement districts which have been in existence for five years or less, (b) school districts, or (c) for fiscal years beginning on or after July 1, 2025, counties, cities, or villages;

(5) Qualified sinking fund means a fund or funds maintained separately from the general fund to pay for acquisition or replacement of tangible personal property with a useful life of five years or more which is to be undertaken in the future but is to be paid for in part or in total in advance using periodic payments into the fund. The term includes sinking funds under subdivision (13) of section 35-508 for firefighting and rescue equipment or apparatus;

(6) Restricted funds means (a) property tax, excluding any amounts refunded to taxpayers, (b) payments in lieu of property taxes, (c) local option sales taxes, (d) motor vehicle taxes, (e) state aid, (f) transfers of surpluses from any user fee, permit fee, or regulatory fee if the fee surplus is transferred to fund a service or function not directly related to the fee and the costs of the activity funded from the fee, (g) any funds excluded from restricted funds for the prior year because they were budgeted for capital improvements but which were not spent and are not expected to be spent for capital improvements, (h) the tax provided in sections 77-27,223 to 77-27,227 beginning in the second fiscal year in which the county will receive a full year of receipts, and (i) any excess tax collections returned to the county under section 77-1776. Funds received pursuant to the nameplate capacity tax levied under section 77-6203 for the first five years after a renewable energy generation facility has been commissioned are nonrestricted funds; and

(7) State aid means:

(a) For all governmental units, state aid paid pursuant to sections 60-3,202 and 77-3523 and reimbursement provided pursuant to section 77-1239;

(b) For municipalities, state aid to municipalities paid pursuant to sections 39-2501 to 39-2520, 60-3,190, and 77-27,139.04 and insurance premium tax paid to municipalities;

(c) For counties, state aid to counties paid pursuant to sections 60-3,184 to 60-3,190, insurance premium tax paid to counties, and reimbursements to counties from funds appropriated pursuant to section 29-3933;

(d) For community colleges, state aid to community colleges paid pursuant to the Community College Aid Act;

(e) For educational service units, state aid appropriated under sections 79-1241.01 and 79-1241.03; and

(f) For local public health departments as defined in section 71-1626, state aid as distributed under section 71-1628.08.

Source: Laws 1996, LB 299, § 1; Laws 1997, LB 269, § 11; Laws 1998, LB 989, § 1; Laws 1998, LB 1104, § 4; Laws 1999, LB 36, § 2; Laws 1999, LB 86, § 7; Laws 1999, LB 881, § 6; Laws 2001, LB 335, § 1; Laws 2002, LB 259, § 6; Laws 2002, LB 876, § 3; Laws 2003, LB 540, § 1; Laws 2003, LB 563, § 16; Laws 2004, LB 1005, § 1; Laws 2005, LB 274, § 222; Laws 2007, LB342, § 30; Laws 2009, LB218, § 1; Laws 2009, LB549, § 1; Laws 2010, LB1048, § 1; Laws 2010, LB1072, § 1; Laws 2011, LB59, § 1; Laws 2011, LB383, § 1; Laws 2012, LB946, § 8; Laws 2015, LB259, § 4; Laws 2015, LB424, § 1; Laws 2017, LB382, § 1; Laws 2019, LB3, § 1; Laws 2021, LB509, § 1; Laws 2024, First Spec. Sess., LB34, § 15.
Effective date August 21, 2024.

Cross References

Community College Aid Act, see section 85-2231.

13-520 Limitations; not applicable to certain restricted funds.

The limitations in section 13-519 shall not apply to (1) restricted funds budgeted for capital improvements, (2) restricted funds expended from a qualified sinking fund for acquisition or replacement of tangible personal property with a useful life of five years or more, (3) restricted funds pledged to retire bonds as defined in subdivision (1) of section 10-134 and approved according to law, (4) restricted funds used by a public airport to retire interest-free loans from the Division of Aeronautics of the Department of Transportation in lieu of bonded indebtedness at a lower cost to the public airport, (5) restricted funds budgeted in support of a service which is the subject of an agreement or a modification of an existing agreement whether operated by one of the parties to the agreement or by an independent joint entity or joint public agency, (6) restricted funds budgeted to pay for repairs to infrastructure damaged by a natural disaster which is declared a disaster emergency pursuant to the Emergency Management Act, (7) restricted funds budgeted to pay for judgments, except judgments or orders from the Commission of Industrial Relations, obtained against a governmental unit which require or obligate a governmental unit to pay such judgment, to the extent such judgment is not paid by liability insurance coverage of a governmental unit, (8) restricted funds budgeted to pay benefits under the Firefighter Cancer Benefits Act, (9) the dollar amount by which restricted funds budgeted by a natural resources district to administer and implement ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act exceed its restricted funds budgeted to administer and implement ground water management activities and integrated management activities for FY2003-04, or (10) restricted funds equal to the amount of local option sales and use tax budgeted to be collected within a good life district established pursuant to section 77-4405.

Source: Laws 1996, LB 299, § 3; Laws 1998, LB 989, § 3; Laws 1999, LB 86, § 8; Laws 1999, LB 87, § 54; Laws 1999, LB 141, § 1; Laws 2004, LB 962, § 4; Laws 2009, LB121, § 2; Laws 2015, LB261,

§ 2; Laws 2017, LB339, § 73; Laws 2019, LB212, § 2; Laws 2021, LB432, § 10; Laws 2024, LB1317, § 50.
Operative date April 24, 2024.

Cross References

Emergency Management Act, see section 81-829.36.
Firefighter Cancer Benefits Act, see section 35-1002.
Nebraska Ground Water Management and Protection Act, see section 46-701.

ARTICLE 6
FINANCES

Section
13-609. Electronic payments; acceptance; conditions; central bank digital currency; acceptance prohibited.

13-609 Electronic payments; acceptance; conditions; central bank digital currency; acceptance prohibited.

(1)(a) Any county treasurer, county official, or political subdivision official may accept credit cards, charge cards, or debit cards, whether presented in person or electronically, or electronic funds transfers as a method of cash payment of any tax, levy, excise, duty, custom, toll, interest, penalty, fine, license, fee, or assessment of whatever kind or nature, whether general or special, as provided by section 77-1702.

(b) A county treasurer, county official, or political subdivision official shall not accept a central bank digital currency as a method of cash payment of any tax, levy, excise, duty, custom, toll, interest, penalty, fine, license, fee, or assessment of whatever kind or nature.

(2) The total amount of such taxes, levies, excises, duties, customs, tolls, interest, penalties, fines, licenses, fees, or assessments of whatever kind or nature, whether general or special, paid for by credit card, charge card, debit card, or electronic funds transfer shall be collected by the county treasurer, county official, or political subdivision official.

(3) Any political subdivision operating a facility in a proprietary capacity may choose to accept credit cards, charge cards, or debit cards, whether presented in person or electronically, or electronic funds transfers as a means of cash payment and may adjust the price for services to reflect the handling and payment costs.

(4) The county treasurer, county official, or political subdivision official shall obtain, for each transaction, authorization for use of any credit card, charge card, or debit card used pursuant to this section from the financial institution, vending service company, credit card or charge card company, or third-party merchant bank providing such service.

(5) The types of credit cards, charge cards, or debit cards accepted and the payment services provided shall be determined by the State Treasurer and the Director of Administrative Services with the advice of a committee convened by the State Treasurer and the director. The committee shall consist of the State Treasurer, the Tax Commissioner, the director, and representatives from counties, cities, and other political subdivisions as may be appropriate. The committee shall develop recommendations for the contracting of such services. The State Treasurer and the director shall contract with one or more credit card,

charge card, or debit card companies or third-party merchant banks for services on behalf of the state and those counties, cities, and political subdivisions that choose to participate in the state contract for such services. The State Treasurer and the director shall consider, for purposes of this section, any negotiated discount, processing, or transaction fee imposed by a credit card, charge card, or debit card company or third-party merchant bank as an administrative expense. Counties, cities, and other political subdivisions that choose not to participate in the state contract may choose types of credit cards, charge cards, and debit cards and may negotiate and contract independently or collectively as a governmental entity with one or more financial institutions, vending service companies, credit card, charge card, or debit card companies, or third-party merchant banks for the provision of such services. All county officials within each county choosing to accept credit cards, charge cards, and debit cards shall contract for services through the same financial institutions, vending service companies, credit card, charge card, or debit card companies, or third-party merchant banks for the provision of such services. County officials who accept credit cards, charge cards, and debit cards shall notify the county board of such decision and the discount or administrative fees charged for such service.

(6) A county treasurer, county official, or political subdivision official authorizing acceptance of credit card or charge card payments shall be authorized but not required to impose a surcharge or convenience fee upon the person making a payment by credit card or charge card so as to wholly or partially offset the amount of any discount or administrative fees charged to the political subdivision, but the surcharge or convenience fee shall not exceed the surcharge or convenience fee imposed by the credit card or charge card companies or third-party merchant banks which have contracted under subsection (5) of this section. The surcharge or convenience fee shall be applied only when allowed by the operating rules and regulations of the credit card or charge card involved or when authorized in writing by the credit card or charge card company involved. When a person elects to make a payment to a political subdivision by credit card or charge card and such a surcharge or convenience fee is imposed, the payment of such surcharge or convenience fee shall be deemed voluntary by such person and shall be in no case refundable. If a payment is made electronically by credit card, charge card, debit card, or electronic funds transfer as part of a system for providing or retrieving information electronically, the county treasurer, county official, or political subdivision official shall be authorized but not required to impose an additional surcharge or convenience fee upon the person making a payment.

(7) For purposes of this section:

(a) Central bank digital currency means a digital medium of exchange, token, or monetary unit of account issued by the United States Federal Reserve System or any analogous federal agency that is made directly available to the consumer by such federal entities. Central bank digital currency includes a digital medium of exchange, token, or monetary unit of account so issued that is processed or validated directly by such federal entities; and

(b) Electronic funds transfer means the movement of funds by nonpaper means, usually through a payment system, including, but not limited to, an automated clearinghouse or the Federal Reserve's Fedwire system.

Source: Laws 1997, LB 70, § 2; Laws 2002, LB 994, § 1; Laws 2024, LB1074, § 60.
Operative date July 19, 2024.

ARTICLE 8
INTERLOCAL COOPERATION ACT

Section
13-809. Joint entity; issuance of bonds; amounts; use; election; when required.

13-809 Joint entity; issuance of bonds; amounts; use; election; when required.

(1) Subject to subsections (2) and (3) of this section, any joint entity may from time to time issue its bonds in such principal amounts as its governing body shall deem necessary to provide sufficient funds to carry out any of the joint entity's purposes and powers, including the establishment or increase of reserves, the payment of interest accrued during construction of a project and for such period thereafter as the governing body may determine, and the payment of all other costs or expenses of the joint entity incident to and necessary or convenient to carry out its purposes and powers.

(2) Bonds issued on or after April 18, 2018, for purposes of the Public Facilities Construction and Finance Act shall be subject to a vote prior to issuance as provided in such act.

(3)(a) For any joint entity created on or after February 14, 2024, that includes a Nebraska school district or an educational service unit, such joint entity shall not issue any bonds until the question of issuing such bonds has been submitted to the qualified electors of each Nebraska school district or educational service unit that is part of the joint entity at an election called for that purpose as provided in this section and, within each such school district or educational service unit, a majority of the qualified electors voting on the question voted in favor of issuing the bonds.

(b) The joint entity shall give notice of the election at least fifty days prior to the election. The question of issuing bonds may be submitted at the statewide primary or general election. The election shall be conducted in accordance with the Election Act.

(c) The question of bond issues, when defeated, shall not be resubmitted in substance for a period of at least six months after the date of such election.

Source: Laws 1991, LB 731, § 9; Laws 2018, LB1000, § 1; Laws 2024, LB299, § 1.
Effective date February 14, 2024.

Cross References

Election Act, see section 32-101.
Public Facilities Construction and Finance Act, see section 72-2301.

ARTICLE 12
NEBRASKA PUBLIC TRANSPORTATION ACT

Section
13-1205. Department; powers, duties, and responsibilities; enumerated.

13-1205 Department; powers, duties, and responsibilities; enumerated.

The department shall have the following powers, duties, and responsibilities:

(1) To collect and maintain data on the level of public transportation services and needs in the state and identify areas not being adequately served by existing public or private transportation services;

(2) To assess the regional and statewide effect of changes, improvement, and route abandonments in the state's public transportation system;

(3) To develop a six-year statewide transit plan and programs for public transportation in coordination with local plans and programs developed by municipalities, counties, transit authorities, and regional metropolitan transit authorities;

(4) To provide planning and technical assistance to agencies of the state, political subdivisions, or groups seeking to improve public transportation;

(5) To advise, consult, and cooperate with agencies of the state, the federal government, and other states, interstate agencies, political subdivisions, and groups concerned with public transportation;

(6) To cooperate with the Public Service Commission by providing periodic assessments to the commission when determining the effect of proposed regulatory decisions on public transportation;

(7) To administer federal and state programs providing financial assistance to public transportation, except those federal and state programs in which a municipality, county, transit authority, regional metropolitan transit authority, or other state agency is designated as the administrator;

(8) To develop and administer a safety oversight program to oversee rail transit systems operated by the state, an interstate agency, or any political subdivision; and

(9) To exercise all other powers necessary and proper for the discharge of its duties, including the adoption and promulgation of reasonable rules and regulations to carry out the Nebraska Public Transportation Act.

Source: Laws 1975, LB 443, § 9; Laws 1979, LB 322, § 4; Laws 1981, LB 545, § 4; Laws 1981, LB 144, § 4; R.S.1943, (1983), § 19-3905; Laws 1993, LB 158, § 4; Laws 2012, LB782, § 16; Laws 2013, LB222, § 3; Laws 2019, LB492, § 28; Laws 2023, LB138, § 2.

ARTICLE 22

LOCAL GOVERNMENT MISCELLANEOUS EXPENDITURES

Section
13-2202. Terms, defined.

13-2202 Terms, defined.

For purposes of the Local Government Miscellaneous Expenditure Act:

(1) Elected and appointed officials and employees shall mean the elected and appointed officials and employees of any local government;

(2) Governing body shall mean, in the case of a city of any class, the city council; in the case of a village, cemetery district, community hospital for two or more adjoining counties, county hospital, road improvement district, sanitary drainage district, or sanitary and improvement district, the board of trustees; in the case of a county, the county board; in the case of a municipal county, the council; in the case of a township, the town board; in the case of a school district, the school board; in the case of a rural or suburban fire protection district, reclamation district, natural resources district, regional metropolitan transit authority, or hospital district, the board of directors; in the case of a county, district, or city-county health department, the board of health;

in the case of an educational service unit, the board; in the case of a community college, the Community College Board of Governors for the area the board serves; in the case of an airport authority, the airport authority board; in the case of a weed control authority, the board; in the case of a county agricultural society, the board of governors; and in the case of a learning community, the learning community coordinating council;

(3) Local government shall mean cities of any class, villages, cemetery districts, community hospitals for two or more adjoining counties, county hospitals, road improvement districts, counties, townships, sanitary drainage districts, sanitary and improvement districts, school districts, rural or suburban fire protection districts, reclamation districts, natural resources districts, regional metropolitan transit authorities, hospital districts, county health departments, district health departments, city-county health departments, educational service units, community colleges, airport authorities, weed control authorities, county agricultural societies, and learning communities;

(4) Public funds shall mean such public funds as defined in section 13-503 as are under the direct control of governing bodies of local governments;

(5) Public meeting shall mean all regular, special, or called meetings, formal or informal, of any governing body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the governing body; and

(6) Volunteer shall mean a person who is not an elected or appointed official or an employee of a local government and who, at the request or with the permission of the local government, engages in activities related to the purposes or functions of the local government or for its general benefit.

Source: Laws 1993, LB 734, § 10; Laws 1997, LB 250, § 3; Laws 2001, LB 142, § 27; Laws 2009, LB392, § 4; Laws 2019, LB492, § 31; Laws 2024, LB1143, § 1.
Effective date July 19, 2024.

ARTICLE 26

CONVENTION CENTER FACILITY FINANCING ASSISTANCE ACT

Section
13-2602. Legislative findings.
13-2603. Terms, defined.
13-2604. State assistance.
13-2605. State assistance; application; contents.
13-2609. Tax Commissioner; duties; certain retailers and operators; reports required.
13-2610. Convention Center Support Fund; created; use; investment; distribution to certain areas; development fund; committee; duties; report; recipient; report.
13-2611. Bonds; issuance; election.
13-2612. Act; applications; limitation.

13-2602 Legislative findings.

(1) The Legislature finds that it will be beneficial to the economic well-being of the people of this state that there be convention and meeting center facilities and sports arena facilities of appropriate size and quality to host regional, national, or international events. Regional refers to states that border Nebraska; national refers to states other than those that border Nebraska; and international refers to nations other than the United States.

(2) The Legislature further finds that such facilities may (a) generate new economic activity as well as additional state and local taxes from persons residing within and outside the state and (b) create new economic opportunities for residents.

(3) In order that the state may receive any long-term economic and fiscal benefits from such facilities, a need exists to provide some state assistance to political subdivisions endeavoring to construct, acquire, substantially reconstruct, expand, operate, improve, or equip such facilities.

(4) Therefore, it is deemed to be in the best interest of both the state and its political subdivisions that the state assist political subdivisions in financing the construction, acquisition, substantial reconstruction, expansion, operation, improvement, or equipping of such facilities.

(5) The amount of state assistance provided under the Convention Center Facility Financing Assistance Act shall be limited to a designated portion of state sales tax revenue collected by retailers and operators doing business at such facilities on sales at such facilities, state sales tax revenue collected on primary and secondary box office sales of admissions to such facilities, and state sales tax revenue collected by associated hotels and nearby retailers.

Source: Laws 1999, LB 382, § 2; Laws 2007, LB551, § 1; Laws 2023, LB727, § 16.

Cross References

Limitation on applications, see section 13-2612.

13-2603 Terms, defined.

For purposes of the Convention Center Facility Financing Assistance Act:

(1) Associated hotel means any publicly or privately owned facility in which the public may, for a consideration, obtain sleeping accommodations and which is located, in whole or in part, within six hundred yards of an eligible facility, measured from any point of the exterior perimeter of the eligible facility but not from any parking facility or other structure, except that if the eligible facility is within six hundred yards of the State Capitol, the area used in determining associated hotels shall be one or more areas selected by the applicant which aggregate the same total amount of square footage that such area would have contained had the eligible facility not been within six hundred yards of the State Capitol. The area used in determining associated hotels shall be depicted on a map submitted pursuant to section 13-2605;

(2) Board means a board consisting of the Governor, the State Treasurer, the chairperson of the Nebraska Investment Council, the chairperson of the Nebraska State Board of Public Accountancy, and a professor of economics on the faculty of a state postsecondary educational institution appointed to a two-year term on the board by the Coordinating Commission for Postsecondary Education. For administrative and budget purposes only, the board shall be considered part of the Department of Revenue;

(3) Bond means a general obligation bond, redevelopment bond, lease-purchase bond, revenue bond, or combination of any such bonds;

(4) Convention and meeting center facility means a temperature-controlled building and personal property primarily used as a convention and meeting center, including an auditorium, an exhibition hall, a facility for onsite food preparation and serving, an onsite, directly connected parking facility for the

use of the convention and meeting center facility, a nearby parking facility for the use of the convention and meeting center facility, and an onsite administrative office of the convention and meeting center facility;

(5)(a) Eligible facility means any publicly owned convention and meeting center facility approved for state assistance on or before June 1, 2007, any publicly owned sports arena facility attached to such convention and meeting center facility, or any publicly owned convention and meeting center facility or publicly owned sports arena facility acquired, constructed, improved, or equipped after June 1, 2007; and

(b) Beginning with applications for financial assistance received on or after February 1, 2008, eligible facility does not include any publicly owned sports arena facility with a seating capacity greater than sixteen thousand seats;

(6) General obligation bond means any bond or refunding bond issued by a political subdivision and which is payable exclusively from the proceeds of an ad valorem tax;

(7) Nearby parking facility means any parking lot, parking garage, or other parking structure that is not directly connected to a convention and meeting center facility but which is located, in whole or in part, within six hundred yards of a convention and meeting center facility, measured from any point of the exterior perimeter of such facility but not from any other parking facility or other structure;

(8) Nearby retailer means a retailer as defined in section 77-2701.32 that is located, in whole or in part, within six hundred yards of an eligible facility the application for which is approved on or after June 7, 2023, measured from any point of the exterior perimeter of the eligible facility but not from any parking facility or other structure, except that if the eligible facility is within six hundred yards of the State Capitol, the area used in determining nearby retailers shall be one or more areas selected by the applicant which aggregate the same total amount of square footage that such area would have contained had the eligible facility not been within six hundred yards of the State Capitol. The area used in determining nearby retailers shall be depicted on a map submitted pursuant to section 13-2605;

(9) Political subdivision means any local governmental body formed and organized under state law and any joint entity or joint public agency created under state law to act on behalf of political subdivisions which has statutory authority to issue general obligation bonds;

(10) Revenue bond means any bond or refunding bond issued by a political subdivision which is limited or special rather than a general obligation bond of the political subdivision and which is not payable from the proceeds of an ad valorem tax; and

(11) Sports arena facility means any enclosed temperature-controlled building primarily used for competitive sports, including arenas, dressing and locker facilities, concession areas, parking facilities, and onsite administrative offices connected with operating the facilities.

Source: Laws 1999, LB 382, § 3; Laws 2007, LB551, § 2; Laws 2008, LB912, § 1; Laws 2016, LB884, § 1; Laws 2022, LB927, § 1; Laws 2023, LB727, § 17.

Cross References

Limitation on applications, see section 13-2612.

13-2604 State assistance.

Any political subdivision that has acquired, constructed, improved, or equipped or has approved a bond issue to acquire, construct, improve, or equip eligible facilities may apply to the board for state assistance. The state assistance shall be used:

(1) To pay back amounts expended or borrowed through one or more issues of bonds to be expended by the political subdivision to acquire, construct, improve, repair, replace, and equip any eligible facilities until repayment in full of the amounts expended or borrowed by the political subdivision, including the principal of and interest on bonds, for all of its eligible facilities;

(2) To pay for capital improvements to any eligible facilities; and

(3) To acquire, construct, improve, repair, replace, and equip nearby parking facilities.

Source: Laws 1999, LB 382, § 4; Laws 2010, LB779, § 3; Laws 2016, LB884, § 2; Laws 2022, LB927, § 2; Laws 2023, LB727, § 18.

Cross References

Limitation on applications, see section 13-2612.

13-2605 State assistance; application; contents.

(1) All applications for state assistance under the Convention Center Facility Financing Assistance Act shall be in writing and shall include a certified copy of the approving action of the governing body of the applicant describing the proposed eligible facility and the anticipated financing.

(2) The application shall contain:

(a) A description of the proposed financing of the eligible facility, including the estimated principal and interest requirements for the bonds proposed to be issued in connection with the eligible facility or the amounts necessary to repay the original investment by the applicant in the eligible facility;

(b) Documentation of local financial commitment to support the project, including all public and private resources pledged or committed to the project;

(c) A map identifying the area to be used in determining associated hotels and nearby retailers; and

(d) Any other project information deemed appropriate by the board.

(3) Upon receiving an application for state assistance, the board shall review the application and notify the applicant of any additional information needed for a proper evaluation of the application.

(4) Any state assistance received pursuant to the act shall be used only for public purposes.

(5) Approval of an application for state assistance by the board after June 7, 2023, pursuant to section 13-2607 shall establish the area to be used for determining associated hotels and nearby retailers as the aggregate area depicted in the map accompanying the application for state assistance as submitted pursuant to subdivision (2)(c) of this section.

(6) Each political subdivision that had an application for state assistance approved prior to October 1, 2016, shall submit a map to the Department of Revenue showing the area that lies within six hundred yards of the eligible facility as such area is described in subdivision (1) of section 13-2603. The

department shall approve such area if it satisfies the requirements of subdivision (1) of section 13-2603.

Source: Laws 1999, LB 382, § 5; Laws 2007, LB551, § 3; Laws 2016, LB884, § 3; Laws 2023, LB727, § 19.

Cross References

Limitation on applications, see section 13-2612.

13-2609 Tax Commissioner; duties; certain retailers and operators; reports required.

(1) If an application is approved, the Tax Commissioner shall:

(a) Audit or review audits of the approved convention and meeting center facility, sports arena facility, associated hotel, or nearby retailer to determine the state sales tax revenue collected by retailers and operators doing business at such facilities on sales at such facilities, state sales tax revenue collected on primary and secondary box office sales of admissions to such facilities, and state sales tax revenue collected by associated hotels and nearby retailers; and

(b) Certify annually the amount of state sales tax revenue collected by retailers and operators doing business at such facilities on sales at such facilities, state sales tax revenue collected on primary and secondary box office sales of admissions to such facilities, and state sales tax revenue collected by associated hotels and nearby retailers, to the State Treasurer.

(2) State sales tax revenue collected by retailers and operators that are not eligible facilities but are doing business at eligible facilities shall be reported on informational returns developed by the Department of Revenue and provided to any such retailers and operators by the eligible facility. The informational returns shall be submitted to the department by the retailer or operator by the twentieth day of the month following the month the sales taxes are collected. The Tax Commissioner shall use the data from the informational returns and sales tax returns of eligible facilities, associated hotels, and nearby retailers to determine the appropriate amount of state sales tax revenue.

(3) Changes made to the Convention Center Facility Financing Assistance Act by Laws 2007, LB 551, shall apply to state sales tax revenue collected commencing on July 1, 2006.

Source: Laws 1999, LB 382, § 9; Laws 2007, LB551, § 5; Laws 2011, LB210, § 1; Laws 2023, LB727, § 20.

Cross References

Limitation on applications, see section 13-2612.

13-2610 Convention Center Support Fund; created; use; investment; distribution to certain areas; development fund; committee; duties; report; recipient; report.

(1) Upon the annual certification under section 13-2609, the State Treasurer shall transfer after the audit the amount certified to the Convention Center Support Fund. The Convention Center Support Fund is created. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Convention Center Support Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2)(a) It is the intent of the Legislature to appropriate from the fund to any political subdivision for which an application for state assistance under the Convention Center Facility Financing Assistance Act has been approved an amount not to exceed (i) seventy percent of the state sales tax revenue collected by retailers and operators doing business at such facilities on sales at such facilities, state sales tax revenue collected on primary and secondary box office sales of admissions to such facilities, and state sales tax revenue collected by associated hotels and nearby retailers, (ii) one hundred fifty million dollars for any one approved project, or (iii) the total cost of acquiring, constructing, improving, repairing, replacing, or equipping the eligible facilities of the political subdivision. State assistance shall not be used for an operating subsidy.

(b) It is further the intent of the Legislature to appropriate from the fund to any city of the metropolitan class for which an application for state assistance under the Convention Center Facility Financing Assistance Act has been approved an amount not to exceed the amount of money transferred to the fund pursuant to subdivision (9)(a) of section 13-3108.

(3)(a) Ten percent of the funds appropriated to a city of the metropolitan class under subdivision (2)(a) of this section and all of the funds appropriated to a city of the metropolitan class under subdivision (2)(b) of this section shall be equally distributed to areas with a high concentration of poverty. Fifty-five percent of such funds shall be used to showcase important historical aspects of such areas or areas within close geographic proximity of the area with a high concentration of poverty and to assist with the reduction of street and gang violence in such areas. Forty-five percent of such funds shall be used to assist with small business and entrepreneurship growth in such areas.

(b) Each area with a high concentration of poverty that has been distributed funds under subdivision (3)(a) of this section shall establish a development fund and form a committee which shall identify and research potential projects to be completed in the area with a high concentration of poverty or in an area within close geographic proximity of such area if the project would have a significant or demonstrable impact on such area and make final determinations on the use of the funds received for such projects.

(c) A committee formed under subdivision (3)(b) of this section shall include the following members:

(i) The member of the city council whose district includes a majority of the census tracts which each contain a percentage of persons below the poverty line of greater than thirty percent, as determined by the most recent federal decennial census, within the area with a high concentration of poverty;

(ii) The commissioner of the county whose district includes a majority of the census tracts which each contain a percentage of persons below the poverty line of greater than thirty percent, as determined by the most recent federal decennial census, within the area with a high concentration of poverty;

(iii) Two residents of the area with a high concentration of poverty, appointed by the two members of the committee described in subdivisions (3)(c)(i) and (ii) of this section. Such resident members shall be appointed for four-year terms. Each time a resident member is to be appointed pursuant to this subdivision, the committee shall solicit applications from interested individuals by posting notice of the open position on the city's website and on the city's official social media accounts, if any, and by publishing the notice in a legal newspaper in or of general circulation in the area with a high concentration of poverty. Applica-

tions may be submitted to either of the committee members described in subdivisions (3)(c)(i) and (ii) of this section. Prior to making any appointment, the committee shall hold a public hearing in the area with a high concentration of poverty. Notice of the hearing shall be provided, at least seven days prior to the hearing, by posting the notice on the city's website and on the city's official social media accounts, if any, and by publishing the notice in a legal newspaper in or of general circulation in the area with a high concentration of poverty; and

(iv) The member of the Legislature whose district includes a majority of the census tracts which each contain a percentage of persons below the poverty line of greater than thirty percent, as determined by the most recent federal decennial census, within the area with a high concentration of poverty. The member described in this subdivision shall be a nonvoting member of the committee.

(d) A committee formed under subdivision (3)(b) of this section shall solicit project ideas from the public and shall hold a public hearing in the area with a high concentration of poverty. Notice of a proposed hearing shall be provided in accordance with the procedures for notice of a public hearing pursuant to section 18-2115.01. The committee shall research potential projects and make the final determination regarding the annual distribution of funding to such projects.

(e) For any committee formed under subdivision (3)(b) of this section:

(i) The two committee members described in subdivisions (3)(c)(i) and (ii) of this section shall share joint responsibility of all committee operations and meetings. Applications for funding may be submitted to either of such members; and

(ii) All applications, reports, and other records of the committee shall be accessible to any member of the committee.

(f) Each recipient of funding from a committee formed under subdivision (3)(b) of this section shall submit an itemized report to such committee on the use of such funds. A recipient shall not be eligible to receive funding for more than three consecutive years unless such recipient is able to justify continued funding based on the following criteria:

(i) The number of people served by the project;

(ii) The relevance and scale of the project;

(iii) The desirability of the social or environmental outcomes of the project and how such outcomes will be achievable and measurable;

(iv) The economic impact on the area with a high concentration of poverty; and

(v) The recipient's sustainability plan.

(g) On or before July 1, 2022, and on or before July 1 of each year thereafter, a committee formed under subdivision (3)(b) of this section shall electronically submit a report to the Legislature which includes:

(i) A description of the projects that were funded during the most recently completed calendar year;

(ii) A description of where such projects were located;

(iii) A description of the outcomes of such projects; and

(iv) A ten-year strategic plan on how the committee plans to meet the goals described in subdivision (3)(a) of this section.

(h) For purposes of this subsection, an area with a high concentration of poverty means an area within the corporate limits of a city of the metropolitan class consisting of one or more contiguous census tracts, as determined by the most recent federal decennial census, which contain a percentage of persons below the poverty line of greater than thirty percent, and all census tracts contiguous to such tract or tracts, as determined by the most recent federal decennial census.

(4)(a) Ten percent of the funds appropriated to a city of the primary class under subdivision (2)(a) of this section may, if the city determines by consent of the city council that such funds are not currently needed for the purposes described in section 13-2604, be used as follows:

(i) For investment in the construction of qualified low-income housing projects as defined in 26 U.S.C. 42, including qualified projects receiving Nebraska affordable housing tax credits under the Affordable Housing Tax Credit Act; or

(ii) If there are no such qualified low-income housing projects as defined in 26 U.S.C. 42 being constructed or expected to be constructed within the political subdivision, for investment in areas with a high concentration of poverty to assist with low-income housing needs.

(b) For purposes of this subsection, an area with a high concentration of poverty means an area within the corporate limits of a city of the primary class consisting of one or more contiguous census tracts, as determined by the most recent American Community Survey 5-Year Estimate, which contain a percentage of persons below the poverty line of greater than thirty percent, and all census tracts contiguous to such tract or tracts, as determined by the most recent American Community Survey 5-Year Estimate.

(5) State assistance to the political subdivision shall no longer be available upon the retirement of the bonds issued to acquire, construct, improve, repair, replace, or equip all of the political subdivision's facilities or any subsequent bonds that refunded the original issue or when state assistance reaches the amount determined under subdivision (2)(a) of this section, whichever comes first.

(6) The remaining thirty percent of state sales tax revenue collected by retailers and operators doing business at such facilities on sales at such facilities, state sales tax revenue collected on primary and secondary box office sales of admissions to such facilities, and state sales tax revenue collected by associated hotels and nearby retailers, shall be appropriated by the Legislature to the Civic and Community Center Financing Fund. Upon the annual certification required pursuant to section 13-2609 and following the transfer to the Convention Center Support Fund required pursuant to subsection (1) of this section, the State Treasurer shall transfer an amount equal to the remaining thirty percent from the Convention Center Support Fund to the Civic and Community Center Financing Fund.

(7) Any municipality that has applied for and received a grant of assistance under the Civic and Community Center Financing Act may not receive state assistance under the Convention Center Facility Financing Assistance Act.

Source: Laws 1999, LB 382, § 10; Laws 2007, LB551, § 6; Laws 2008, LB754, § 1; Laws 2009, LB63, § 1; Laws 2010, LB975, § 1; Laws

2011, LB297, § 1; Laws 2015, LB661, § 28; Laws 2016, LB884, § 4; Laws 2018, LB874, § 1; Laws 2021, LB39, § 1; Laws 2021, LB479, § 1; Laws 2022, LB927, § 3; Laws 2023, LB727, § 21.

Cross References

Affordable Housing Tax Credit Act, see section 77-2501.
Civic and Community Center Financing Act, see section 13-2701.
Limitation on applications, see section 13-2612.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

13-2611 Bonds; issuance; election.

(1) The applicant political subdivision may issue from time to time its bonds and refunding bonds to finance and refinance the acquisition, construction, improving, repairing, replacing, and equipping of eligible facilities and appurtenant public facilities that are a part of the same project or projects. The bonds may be sold by the applicant in such manner and for such price as the applicant determines, at a discount, at par, or at a premium, at private negotiated sale or at public sale, after notice published prior to the sale in a legal newspaper having general circulation in the political subdivision or in such other medium of publication of notice of sale as the applicant deems appropriate. The bonds shall have a stated maturity of forty years or less and shall bear interest at such rate or rates and otherwise be issued in accordance with the respective procedures and with such other terms and provisions as are established, permitted, or authorized by applicable state laws and home rule charters for the type of bonds to be issued. Such bonds may be secured as to payment in whole or in part by a pledge, as shall be determined by the applicant, from the income, proceeds, and revenue of the eligible facilities financed with proceeds of such bonds, from the income, proceeds, and revenue of any of its eligible facilities, or from its revenue and income, including its sales, use, or occupation tax revenue, fees, appropriations, or receipts, as may be determined by the applicant. The applicant may further secure the bonds by a mortgage or deed of trust encumbering all or any portion of the eligible facilities and by a bond insurance policy or other credit support facility. No general obligation bonds, except refunding bonds, shall be issued until authorized by greater than fifty percent of the applicant's electors voting on the question as to their issuance at any election as defined in section 32-108. The face of the bonds shall plainly state that the bonds and the interest thereon shall not constitute nor give rise to an indebtedness, obligation, or pecuniary liability of the state nor a charge against the general credit, revenue, or taxing power of the state. Bonds of the applicant are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempt from all state income taxes.

(2) All payments to political subdivisions under the Convention Center Facility Financing Assistance Act are made subject to specific appropriation for such purpose. Nothing in the act precludes the Legislature from amending or repealing the act at any time.

Source: Laws 1999, LB 382, § 11; Laws 2009, LB402, § 1; Laws 2023, LB727, § 22.

Cross References

Limitation on applications, see section 13-2612.

13-2612 Act; applications; limitation.

The board shall not accept applications for assistance under the Convention Center Facility Financing Assistance Act after December 31, 2030.

Source: Laws 1999, LB 382, § 12; Laws 2007, LB551, § 7; Laws 2009, LB402, § 2; Laws 2023, LB727, § 23.

ARTICLE 27

CIVIC AND COMMUNITY CENTER FINANCING ACT

Section
13-2704. Civic and Community Center Financing Fund; created; use; investment.
13-2706. Eligibility for grant; grant application.

13-2704 Civic and Community Center Financing Fund; created; use; investment.

(1) The Civic and Community Center Financing Fund is created. The fund shall be administered by the department. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Beginning October 1, 2024, any investment earnings from investment of money in the fund shall be credited to the General Fund. Transfers may be made from the Civic and Community Center Financing Fund to the General Fund, the Department of Revenue Enforcement Fund, and the State Colleges Sport Facilities Cash Fund at the direction of the Legislature.

(2)(a) The department shall use the Civic and Community Center Financing Fund for the following purposes:

(i) For grants of assistance as described in section 13-2704.01;

(ii) For grants of assistance as described in section 13-2704.02; and

(iii) For reasonable and necessary costs of the department directly related to the administration of the fund.

(b) Grants of assistance shall not be used for programming, marketing, advertising, or facility-staffing activities.

(3) The State Treasurer shall transfer two hundred fifty thousand dollars from the Civic and Community Center Financing Fund to the State Colleges Sport Facilities Cash Fund on October 1 of 2012, 2013, and 2014. Commencing October 1, 2015, and every year thereafter, the State Treasurer shall transfer three hundred thousand dollars from the Civic and Community Center Financing Fund to the State Colleges Sport Facilities Cash Fund.

Source: Laws 1999, LB 382, § 16; Laws 2009, First Spec. Sess., LB3, § 8; Laws 2010, LB779, § 5; Laws 2011, LB297, § 5; Laws 2012, LB969, § 4; Laws 2013, LB153, § 4; Laws 2015, LB661, § 29; Laws 2019, LB564, § 3; Laws 2020, LB1009, § 3; Laws 2024, First Spec. Sess., LB3, § 5.
Effective date August 21, 2024.

Cross References

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

13-2706 Eligibility for grant; grant application.

(1) Except as provided in subsection (2) of this section for a city of the primary class, any municipality that has applied for and received a grant of assistance under the Sports Arena Facility Financing Assistance Act shall not receive state assistance under the Civic and Community Center Financing Act for the same project for which the grant was awarded under the Sports Arena Facility Financing Assistance Act.

(2) A city of the primary class shall not be eligible to receive a grant of assistance from the Civic and Community Center Financing Act if the city has applied for and received a grant of assistance under the Sports Arena Facility Financing Assistance Act.

(3) Any city that has received funding under the Convention Center Facility Financing Assistance Act shall not receive state assistance under the Civic and Community Center Financing Act.

(4) From July 1, 2023, to June 30, 2024, a municipality shall be eligible for a grant of assistance under the Civic and Community Center Financing Act only if such municipality (a) partners with a certified creative district and (b) is not prohibited from receiving a grant of assistance under subsection (1), (2), or (3) of this section. Notwithstanding the limitations on the amount of grants of assistance in section 13-2705, the department may award grants of assistance to qualifying municipalities in amounts set by the Nebraska Arts Council, which shall not be less than one hundred thousand dollars. The department shall coordinate with the Nebraska Arts Council for purposes of setting such amounts. For purposes of this subsection, certified creative district means a creative district certified pursuant to subdivision (5) of section 82-312. After June 30, 2024, this subsection no longer applies.

(5) Any municipality eligible for a grant of assistance as provided in this section may apply for a grant of assistance from the fund. Any tribal government may apply for a grant of assistance from the fund. Application shall be made on forms developed by the department.

Source: Laws 1999, LB 382, § 18; Laws 2003, LB 385, § 2; Laws 2007, LB551, § 8; Laws 2010, LB779, § 6; Laws 2012, LB426, § 1; Laws 2022, LB800, § 3; Laws 2022, LB927, § 5; Laws 2023, LB727, § 24.

Cross References

Convention Center Facility Financing Assistance Act, see section 13-2601.
Sports Arena Facility Financing Assistance Act, see section 13-3101.

ARTICLE 28
MUNICIPAL COUNTIES

Section
13-2817. Municipality; payments to municipal county; when; amount; how determined.

13-2817 Municipality; payments to municipal county; when; amount; how determined.

(1) Any municipality that is within the boundaries of a municipal county that is not merged into the municipal county shall be required to pay the municipal county for services that were previously provided by the county and are not ordinarily provided by a municipality. Except as provided in subsection (2) of

this section, the amount paid shall be equal to the attributable cost of county services times a ratio, the numerator of which is the total valuation of all municipalities that are within the boundaries of the municipal county and the denominator of which is the total valuation of the municipal county and all municipalities and unconsolidated sanitary and improvement districts that are within the boundaries of the municipal county that are not merged into the municipal county, times a ratio the numerator of which is the valuation of the particular municipality and the denominator of which is the total valuation of all municipalities that are within the boundaries of the municipal county, except that (a) the amount paid shall not exceed the total taxable valuation of the municipality times forty-five hundredths of one percent and (b) the municipality shall not be required to pay the municipal county for fire protection or ambulance services.

(2) The amount paid for law enforcement by a municipality that is within the boundaries of a municipal county but is not merged into the municipal county shall be as follows: (a) If the county did not provide law enforcement services prior to the formation of the municipal county or if the municipality continues its own law enforcement services after formation of the municipal county, the total cost of services budgeted by the municipal county for law enforcement shall be the net cost of services that are the express and exclusive duties and responsibilities of the county sheriff by law times the same ratios calculated in subsection (1) of this section; (b) if the municipality discontinues providing law enforcement services after the formation of the municipal county (i) the municipal county shall provide a level of service in such municipality that is equal to the level provided in the area or areas of the municipal county that were municipalities prior to the formation of the municipal county and (ii) the municipality shall pay the municipal county for the cost of county services for law enforcement as calculated in subsection (1) of this section, except that for the first five years, the amount shall be no more than the amount budgeted by the municipality for law enforcement services in the last year the municipality provided the services for itself; and (c) if the municipal county has deputized the police force of the municipality to perform the express and exclusive duties and responsibilities of the county sheriff by law, there shall be no amount paid to the municipal county for law enforcement services.

(3) Disputes regarding the amounts any municipality that is within the boundaries of a municipal county that is not merged into the municipal county must pay to the municipal county for services that were previously provided by the county and are not ordinarily provided by a municipality shall be heard in the district court of such municipal county.

(4) For purposes of this section and section 13-2818, attributable cost of county services means the total budgeted cost of services that were previously provided by the county for the immediately prior fiscal year times a ratio, the numerator of which is the property tax request of the municipal county or the county and all cities to be consolidated for the prior fiscal year, not including any tax for bonded indebtedness, and the denominator of which is the total revenue from all sources that was budgeted for the immediately prior fiscal year by the municipal county or the county and all cities to be consolidated.

Source: Laws 2001, LB 142, § 17; Laws 2024, First Spec. Sess., LB34, § 16.
Effective date August 21, 2024.

ARTICLE 31

SPORTS ARENA FACILITY FINANCING ASSISTANCE ACT

Section
13-3101. Act, how cited.
13-3102. Terms, defined.
13-3103. State assistance; applicant; conditions; limitation on use.
13-3104. Application; contents; board; duties.
13-3108. Sports Arena Facility Support Fund; created; investment; State Treasurer; duties; state assistance; amount; use; limitations.
13-3110. Privately owned sports complex; state assistance; conditions; voter approval; required; funds; use.

13-3101 Act, how cited.

Sections 13-3101 to 13-3110 shall be known and may be cited as the Sports Arena Facility Financing Assistance Act.

Source: Laws 2010, LB779, § 7; Laws 2024, LB1197, § 1.
Effective date July 19, 2024.

13-3102 Terms, defined.

For purposes of the Sports Arena Facility Financing Assistance Act:

(1) Applicant means:

(a) A political subdivision; or

(b) A political subdivision and nonprofit corporation that jointly submit an application under the act;

(2) Board means a board consisting of the Governor, the State Treasurer, the chairperson of the Nebraska Investment Council, the chairperson of the Nebraska State Board of Public Accountancy, and a professor of economics on the faculty of a state postsecondary educational institution appointed to a two-year term on the board by the Coordinating Commission for Postsecondary Education. For administrative and budget purposes only, the board shall be considered part of the Department of Revenue;

(3) Bond means a general obligation bond, redevelopment bond, lease-purchase bond, revenue bond, or combination of any such bonds;

(4) Concert venue means any enclosed, temperature-controlled building that is primarily used for live performances with an indoor capacity of at least two thousand two hundred fifty but no more than three thousand five hundred persons;

(5) Court means a rectangular hard surface primarily used indoors for competitive sports, including, but not limited to, basketball, volleyball, or tennis;

(6) Covered property means any real property that, as of the date an application for state assistance is submitted under the Sports Arena Facility Financing Assistance Act, is part of:

(a) A project previously approved under the Sports Arena Facility Financing Assistance Act, including the program area associated with such project; or

(b) A project previously approved under the Convention Center Facility Financing Assistance Act, including the area used in determining an associated hotel as defined in section 13-2603 for such project;

(7) Date that the project commenced means the date when a project starts as specified by a contract, resolution, or formal public announcement;

(8) Economic redevelopment area means an area in the State of Nebraska in which:

(a) The average rate of unemployment in the area during the period covered by the most recent federal decennial census or American Community Survey 5-Year Estimate by the United States Bureau of the Census is at least one hundred fifty percent of the average rate of unemployment in the state during the same period; and

(b) The average poverty rate in the area is twenty percent or more for the federal census tract in the area;

(9) Eligible sports arena facility means:

(a) Any publicly owned, enclosed, and temperature-controlled building primarily used for sports that has a permanent seating capacity of at least three thousand but no more than seven thousand seats and in which initial occupancy occurs on or after July 1, 2010, including stadiums, arenas, dressing and locker facilities, concession areas, parking facilities, nearby parking facilities for the use of the eligible sports arena facility, and onsite administrative offices connected with operating the facilities;

(b) Any racetrack enclosure licensed by the State Racing and Gaming Commission in which initial occupancy occurs on or after July 1, 2010, including concession areas, parking facilities, and onsite administrative offices connected with operating the racetrack;

(c) Any publicly owned sports complex, including concession areas, parking facilities, and onsite administrative offices connected with operating the sports complex;

(d) Any privately owned concert venue, including stages, dressing rooms, concession areas, parking facilities, lobby areas, and onsite administrative offices used in operating the concert venue;

(e) Any privately owned sports complex, including concession areas, parking facilities, and onsite administrative offices connected with operating the sports complex; and

(f) Any large public stadium in which initial occupancy occurs on or after March 1, 2025, including dressing and locker facilities, concession areas, parking facilities, nearby parking facilities for the use of the stadium, and onsite administrative offices connected with operating the stadium;

(10) General obligation bond means any bond or refunding bond issued by a political subdivision and which is payable from the proceeds of an ad valorem tax;

(11) Governmental use means operational control and use by the political subdivision for a statutorily permitted purpose of the political subdivision;

(12) Increase in state sales tax revenue means the amount of state sales tax revenue collected by a nearby retailer during the fiscal year for which state assistance is calculated minus the amount of state sales tax revenue collected by the nearby retailer in the fiscal year that ended immediately preceding the project completion date of the eligible sports arena facility, except that the amount of state sales tax revenue of a nearby retailer shall not be less than zero;

(13) Large public stadium means an open-air facility that:

(a) Is publicly owned or used for governmental purposes;

(b) Primarily includes an outdoor field, but may include some indoor areas;

(c) Is primarily used for competitive sports;

(d) Has at least five thousand five hundred but no more than seven thousand five hundred permanent seats with a capacity not to exceed ten thousand seats; and

(e) Is located in a city of the metropolitan class;

(14) Multipurpose field means a rectangular field of grass or synthetic turf which is primarily used for competitive field sports, including, but not limited to, soccer, football, flag football, lacrosse, or rugby;

(15) Nearby parking facility means any parking lot, parking garage, or other parking structure that is not directly connected to an eligible sports arena facility but which is located, in whole or in part, within seven hundred yards of an eligible sports arena facility, measured from any point of the exterior perimeter of such facility but not from any other parking facility or other structure;

(16) Nearby retailer means a retailer as defined in section 77-2701.32 that is located within the program area. The term includes a subsequent owner of a nearby retailer operating at the same location;

(17) New state sales tax revenue means:

(a) For any eligible sports arena facility that is not a sports complex or a large public stadium:

(i) One hundred percent of the state sales tax revenue that (A) is collected by a nearby retailer that commenced collecting state sales tax during the period of time beginning twenty-four months prior to the project completion date of the eligible sports arena facility and ending forty-eight months after the project completion date of the eligible sports arena facility or, for applications for state assistance approved prior to October 1, 2016, forty-eight months after October 1, 2016, and (B) is sourced under sections 77-2703.01 to 77-2703.04 to the program area; and

(ii) The increase in state sales tax revenue that (A) is collected by a nearby retailer that commenced collecting state sales tax prior to twenty-four months prior to the project completion date of the eligible sports arena facility and (B) is sourced under sections 77-2703.01 to 77-2703.04 to the program area;

(b) For any eligible sports arena facility that is a sports complex which is not located in a city of the second class or village or a large public stadium, one hundred percent of the state sales tax revenue that (i) is collected by a nearby retailer that commenced collecting state sales tax during the period of time beginning on the date that the project commenced and ending forty-eight months after the project completion date of the eligible sports arena facility and (ii) is sourced under sections 77-2703.01 to 77-2703.04 to the program area; or

(c) For any eligible sports arena facility that is a sports complex located in a city of the second class or village, one hundred percent of the state sales tax revenue that (i) is collected by a nearby retailer and (ii) is sourced under sections 77-2703.01 to 77-2703.04 to the program area;

(18) Political subdivision means (a) any city, village, county, school district, or community college area or (b) a joint entity formed under the Interlocal Cooperation Act which includes a city, village, or county as a member;

(19) Program area means:

(a) For any eligible sports arena facility that is not a sports complex or a large public stadium:

(i) For applications for state assistance submitted prior to October 1, 2016, the area that is located within six hundred yards of an eligible sports arena facility, measured from any point of the exterior perimeter of the facility but not from any parking facility or other structure; or

(ii) For applications for state assistance submitted on or after October 1, 2016, the area that is located within six hundred yards of an eligible sports arena facility, measured from any point of the exterior perimeter of the facility but not from any parking facility or other structure, except that if twenty-five percent or more of such area is unbuildable property, then the program area shall be adjusted so that:

(A) It avoids as much of the unbuildable property as is practical; and

(B) It contains contiguous property with the same total amount of square footage that the program area would have contained had no adjustment been necessary;

(b) For any eligible sports arena facility that is a sports complex which is not located in a city of the second class or village:

(i) For applications for state assistance submitted prior to July 19, 2024, the area that is located within six hundred yards of an eligible sports arena facility, measured from any point of the exterior boundary or property line of the facility; or

(ii) For applications for state assistance submitted on or after July 19, 2024, the area that is located within six hundred yards of an eligible sports arena facility, measured from any point of the exterior boundary or property line of the facility, except that if twenty-five percent or more of such area is unbuildable property, then the program area shall be adjusted so that:

(A) It avoids as much of the unbuildable property as is practical; and

(B) It contains contiguous property with the same total amount of square footage that the program area would have contained had no adjustment been necessary;

(c) For any eligible sports arena facility that is a sports complex located in a city of the second class or village, the corporate limits of the city of the second class or village in which the facility is located; or

(d) For any eligible sports arena facility that is a large public stadium, the area that is located within six hundred yards of an eligible sports arena facility, measured from any point of the exterior perimeter of the facility but not from any parking facility or other structure, except that if twenty-five percent or more of such area is covered property or unbuildable property, then the program area shall be adjusted so that:

(i) It avoids as much of the covered property and unbuildable property as is practical; and

(ii) It contains contiguous property with the same total amount of square footage that the program area would have contained had no adjustment been necessary.

Approval of an application for state assistance by the board pursuant to section 13-3106 shall establish the program area as that area depicted in the map accompanying the application for state assistance as submitted pursuant to subdivision (2)(c) of section 13-3104;

(20) Project completion date means:

(a) For projects involving the acquisition or construction of an eligible sports arena facility, the date of initial occupancy of the facility following the completion of such acquisition or construction; or

(b) For all other projects, the date of completion of the project for which state assistance is received;

(21) Revenue bond means any bond or refunding bond issued by a political subdivision which is limited or special rather than a general obligation bond of the political subdivision and which is not payable from the proceeds of an ad valorem tax;

(22) Sports complex means a facility that:

(a) Includes indoor areas, outdoor areas, or both;

(b) Is primarily used for competitive sports; and

(c) Contains at least:

(i) Twelve separate sports venues if such facility is located in a city of the metropolitan class;

(ii) Six separate sports venues if such facility is located in a city of the primary class;

(iii) Four separate sports venues if such facility is located (A) in a city of the first class, (B) within a county but outside the corporate limits of any city or village, (C) in an economic redevelopment area, or (D) in an opportunity zone designated pursuant to the federal Tax Cuts and Jobs Act, Public Law 115-97; or

(iv) Two separate sports venues if such facility is located in a city of the second class or village;

(23) Sports venue includes, but is not limited to:

(a) A baseball field;

(b) A softball field;

(c) A multipurpose field;

(d) An outdoor stadium primarily used for competitive sports;

(e) An outdoor arena primarily used for competitive sports; or

(f) An enclosed, temperature-controlled building primarily used for competitive sports. If any such building contains more than one multipurpose field, court, swimming pool, or other facility primarily used for competitive sports, then each such multipurpose field, court, swimming pool, or facility shall count as a separate sports venue; and

(24) Unbuildable property means any real property that is located in a floodway, an environmentally protected area, a right-of-way, or a brownfield site as defined in 42 U.S.C. 9601 that the political subdivision determines is not

suitable for the construction or location of residential, commercial, or other buildings or facilities.

Source: Laws 2010, LB779, § 8; Laws 2016, LB884, § 6; Laws 2021, LB39, § 2; Laws 2021, LB561, § 46; Laws 2022, LB927, § 6; Laws 2023, LB727, § 25; Laws 2024, LB1197, § 2; Laws 2024, LB1317, § 51.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB1197, section 2, with LB1317, section 51, to reflect all amendments.

Note: Changes made by LB1197 became effective July 19, 2024. Changes made by LB1317 became operative July 19, 2024.

Cross References

Interlocal Cooperation Act, see section 13-801.

13-3103 State assistance; applicant; conditions; limitation on use.

(1) Any applicant may apply to the board for state assistance if (a) the applicant has acquired, constructed, improved, or equipped an eligible sports arena facility, (b) the applicant has approved a revenue bond issue or a general obligation bond issue to acquire, construct, improve, or equip an eligible sports arena facility, (c) the applicant has adopted a resolution authorizing the applicant to pursue a general obligation bond issue to acquire, construct, improve, or equip an eligible sports arena facility, (d) a building permit has been issued within the applicant's jurisdiction for an eligible sports arena facility that is a privately owned concert venue, or (e) a building permit has been issued or construction has been completed within the applicant's jurisdiction for an eligible sports arena facility that is a privately owned sports complex.

(2) Except as provided in subsections (3) and (4) of this section, the state assistance shall only be used by the applicant to pay back amounts expended or borrowed through one or more issues of bonds to be expended by the applicant to acquire, construct, improve, or equip the publicly owned eligible sports arena facility and to acquire, construct, improve, or equip publicly owned nearby parking facilities.

(3) For an eligible sports arena facility that is a privately owned concert venue, the state assistance shall only be used by the applicant (a) to pay back amounts expended or borrowed through one or more issues of bonds to be expended by the applicant to acquire, construct, improve, or equip a nearby parking facility or (b) to promote arts and cultural events which are open to or made available to the general public.

(4) For an eligible sports arena facility that is a privately owned sports complex, the state assistance shall only be used by the applicant (a) to pay back amounts expended or borrowed through one or more issues of bonds to be expended by the applicant to acquire, construct, improve, or equip one or more public infrastructure projects, as defined in section 77-27,142, related to a privately owned sports complex, (b) to lease all or a portion of such privately owned sports complex for the governmental use of the political subdivision, (c) to promote sporting events which are open to or made available to the general public, or (d) to pay back amounts expended or borrowed through one or more debt issues to be expended by the nonprofit corporation coapplicant to acquire, construct, improve, or equip a privately owned sports complex, subject to voter approval as provided in section 13-3110.

(5)(a) No more than ten years of funding for promotion of the arts and cultural events shall be paid by state assistance received pursuant to section 13-3108.

(b) No more than ten years of funding for promotion of sporting events shall be paid by state assistance received pursuant to section 13-3108.

(c) No more than five years of funding for a sports complex located in a city of the second class or village shall be paid by state assistance received pursuant to section 13-3108.

(6) For any application for state assistance for a large public stadium approved on or after July 19, 2024, up to one hundred percent of the final cost of the project may be funded by state assistance received pursuant to section 13-3108.

Source: Laws 2010, LB779, § 9; Laws 2016, LB884, § 7; Laws 2021, LB39, § 3; Laws 2022, LB927, § 7; Laws 2023, LB727, § 26; Laws 2024, LB1197, § 3; Laws 2024, LB1317, § 52.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB1197, section 3, with LB1317, section 52, to reflect all amendments.

Note: Changes made by LB1197 became effective July 19, 2024. Changes made by LB1317 became operative July 19, 2024.

13-3104 Application; contents; board; duties.

(1) All applications for state assistance under the Sports Arena Facility Financing Assistance Act shall be in writing and shall include a certified copy of the approving action of the governing body of the applicant describing the proposed project for which state assistance is requested and the anticipated financing.

(2) Except as provided in subsection (3) of this section, the application shall contain:

(a) A description of the proposed financing of the project, including the estimated principal and interest requirements for the bonds proposed to be issued in connection with the project or the amounts necessary to repay the original investment by the applicant in the project;

(b) Documentation of local financial commitment to support the project, including all public and private resources pledged or committed to the project and including a copy of any operating agreement or lease with substantial users of the eligible sports arena facility;

(c) A map identifying the program area, including any covered property or unbuildable property within the program area or taken into account in adjusting the program area as described in subdivision (19) of section 13-3102;

(d) For applications for a privately owned sports complex subject to voter approval as provided in section 13-3110, a description of the proposed ballot language and anticipated election date for such voter approval if the application is approved; and

(e) Any other project information deemed appropriate by the board.

(3) If the state assistance will be used to provide funding for promotion of the arts and cultural events or for promotion of sporting events, the application shall contain:

(a) A detailed description of the programs contemplated and how such programs will be in furtherance of the applicant's public use or public purpose

if such funds are to be expended through one or more private organizations; and

(b) Any other program information deemed appropriate by the board.

(4) Upon receiving an application for state assistance, the board shall review the application and notify the applicant of any additional information needed for a proper evaluation of the application.

(5) Any state assistance received pursuant to the act shall be used only for public purposes, except as provided in section 13-3110 for a privately owned sports complex subject to voter approval.

Source: Laws 2010, LB779, § 10; Laws 2016, LB884, § 8; Laws 2021, LB39, § 4; Laws 2022, LB927, § 8; Laws 2023, LB727, § 27; Laws 2024, LB1197, § 4; Laws 2024, LB1317, § 53.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB1197, section 4, with LB1317, section 53, to reflect all amendments.

Note: Changes made by LB1197 became effective July 19, 2024. Changes made by LB1317 became operative July 19, 2024.

13-3108 Sports Arena Facility Support Fund; created; investment; State Treasurer; duties; state assistance; amount; use; limitations.

(1) The Sports Arena Facility Support Fund is created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2)(a) Upon receiving the certification described in subsection (3) of section 13-3107, the State Treasurer shall transfer the amount certified to the fund.

(b) Upon receiving the quarterly certification described in subsection (4) of section 13-3107, the State Treasurer shall transfer the amount certified to the fund.

(3)(a) It is the intent of the Legislature to appropriate from the fund money to be distributed as provided in subsections (4) and (5) of this section to any political subdivision for which an application for state assistance under the Sports Arena Facility Financing Assistance Act has been approved an amount not to exceed:

(i) For any eligible sports arena facility that is not a sports complex located in a city of the second class or village, seventy percent of the (A) state sales tax revenue collected by retailers doing business at eligible sports arena facilities on sales at such facilities, (B) state sales tax revenue collected on primary and secondary box office sales of admissions to such facilities, and (C) new state sales tax revenue collected by nearby retailers and sourced under sections 77-2703.01 to 77-2703.04 to the program area; or

(ii) For any eligible sports arena facility that is a sports complex located in a city of the second class or village, twenty-five percent of the (A) state sales tax revenue collected by retailers doing business at eligible sports arena facilities on sales at such facilities, (B) state sales tax revenue collected on primary and secondary box office sales of admissions to such facilities, and (C) new state sales tax revenue collected by nearby retailers and sourced under sections 77-2703.01 to 77-2703.04 to the program area.

(b) The amount to be appropriated for distribution as state assistance to a political subdivision under this subsection for any one year after the tenth year shall not exceed the highest such amount appropriated under subdivision (3)(a)

of this section during any one year of the first ten years of such appropriation. If seventy percent of the state sales tax revenue as described in subdivision (3)(a) of this section exceeds the amount to be appropriated under this subdivision, such excess funds shall be transferred to the General Fund. This subdivision does not apply to any eligible sports arena facility that is a sports complex located in a city of the second class or village.

(4) The amount certified under subsection (3) of section 13-3107 shall be distributed as state assistance on or before April 15, 2014.

(5) Beginning in 2014, quarterly distributions and associated transfers of state assistance shall be made. Such quarterly distributions and transfers shall be based on the certifications provided under subsection (4) of section 13-3107 and shall occur within fifteen days after receipt of such certification.

(6)(a) Except as provided in subdivision (6)(b) of this section, the total amount of state assistance approved for an eligible sports arena facility shall not exceed one hundred million dollars.

(b) For any eligible sports arena facility that is a large public stadium:

(i) The total amount of state assistance approved for such facility shall not exceed twenty-five million dollars;

(ii) The amount of state assistance approved for such facility for any year shall not exceed one million two hundred fifty thousand dollars; and

(iii) No state assistance for any large public stadium shall be paid until after July 1, 2027.

(7)(a) Except as provided in subdivisions (b), (c), and (d) of this subsection, state assistance to the political subdivision shall no longer be available upon the retirement of the bonds issued to acquire, construct, improve, or equip the facility or any subsequent bonds that refunded the original issue or when state assistance reaches the amount determined under subdivision (6)(a) of this section, whichever comes first.

(b) If the state assistance will be used to provide funding for promotion of the arts and cultural events or for promotion of sporting events, such state assistance to the political subdivision shall no longer be available after ten years of funding or when state assistance reaches the amount determined under subdivision (6)(a) of this section, whichever comes first.

(c) If the state assistance will be used to provide funding for a sports complex located in a city of the second class or village, such state assistance to the political subdivision shall no longer be available after five years of funding or when state assistance reaches the amount determined under subdivision (6)(a) of this section, whichever comes first.

(d) If the state assistance will be used to provide funding for a large public stadium, such state assistance to the political subdivision shall no longer be available after twenty years of funding or when state assistance reaches the amount determined under subdivision (6)(b)(i) of this section, whichever comes first.

(8) State assistance shall not be used for an operating subsidy for any publicly owned eligible sports arena facility or nearby parking facility.

(9) The thirty percent of state sales tax revenue remaining after the appropriation and transfer in subdivision (3)(a)(i) of this section shall be appropriated by the Legislature and transferred quarterly as follows:

(a) If the revenue relates to an eligible sports arena facility that is a sports complex and that is approved for state assistance under section 13-3106 on or after May 26, 2021, eighty-three percent of such revenue shall be transferred to the Support the Arts Cash Fund and seventeen percent of such revenue shall be transferred to the Convention Center Support Fund; and

(b) If the revenue relates to any other eligible sports arena facility, such revenue shall be transferred to the Civic and Community Center Financing Fund.

(10) The seventy-five percent of state sales tax revenue remaining after the appropriation and transfer in subdivision (3)(a)(ii) of this section shall be distributed in accordance with section 77-27,132.

(11) Except as provided in subsection (12) of this section for a city of the primary class, any municipality that has applied for and received a grant of assistance under the Civic and Community Center Financing Act shall not receive state assistance under the Sports Arena Facility Financing Assistance Act for the same project for which the grant was awarded under the Civic and Community Center Financing Act.

(12) A city of the primary class shall not be eligible to receive a grant of assistance from the Civic and Community Center Financing Act if the city has applied for and received a grant of assistance under the Sports Arena Facility Financing Assistance Act.

Source: Laws 2010, LB779, § 14; Laws 2011, LB297, § 9; Laws 2012, LB426, § 2; Laws 2014, LB867, § 3; Laws 2015, LB170, § 1; Laws 2016, LB884, § 10; Laws 2021, LB39, § 7; Laws 2022, LB927, § 9; Laws 2023, LB727, § 28; Laws 2024, LB1197, § 6; Laws 2024, LB1317, § 54.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB1197, section 6, with LB1317, section 54, to reflect all amendments.

Note: Changes made by LB1197 became effective July 19, 2024. Changes made by LB1317 became operative July 19, 2024.

Cross References

Civic and Community Center Financing Act, see section 13-2701.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

13-3110 Privately owned sports complex; state assistance; conditions; voter approval; required; funds; use.

(1) State assistance may be used to pay or reimburse amounts expended for a privately owned sports complex, or borrowed through one or more debt issues to be expended by the applicant to acquire, construct, improve, or equip a privately owned sports complex, upon satisfaction of the following conditions:

(a) A city or village shall propose such privately owned sports complex as a sports complex economic development project in a resolution which includes all of the provisions described in this section for establishing such project, except for the date of the proposed election described in this section;

(b) The application must be a joint application submitted by a city or village and a nonprofit corporation for a project to be owned by one or both of the coapplicants as a sports complex economic development project to be located within the corporate limits of such city or village. The application shall propose such project as an economic development project subject to the terms of this section;

(c) Approval of such application pursuant to section 13-3106 shall be conditional upon voter approval of the ballot question described in this section. If the ballot question is approved by the voters of such city or village, the approval of the board becomes permanent. If the ballot question is not approved by such voters, the approval shall become void; and

(d) Upon the conditional approval of such application, the city or village shall submit the question of approving the proposed sports complex economic development project to the registered voters at an election as follows:

(i) The governing body of the city or village shall order the submission of the question by filing a certified copy of the resolution proposing the sports complex economic development project with the election commissioner or county clerk not later than the eighth Friday prior to a special election or a municipal primary or general election which is not held at the statewide primary or general election, not later than March 1 prior to a statewide primary election, or not later than September 1 prior to a statewide general election;

(ii) The question on the ballot shall briefly set out the terms of the proposed sports complex economic development project, including that such project will be funded with state assistance received pursuant to the Sports Arena Facility Financing Assistance Act. In addition to all other information, the ballot question shall include the following language: ''Shall the city (or village) of (name of city or village) establish a sports complex economic development project as described here by appropriating annually from state assistance received by the city (or village) pursuant to the Sports Arena Facility Financing Assistance Act?''; and

(iii) If a majority of those voting on the issue vote in favor of the question, the governing body of the city or village shall implement the proposed sports complex economic development project upon the terms set out in the resolution calling for the election. If a majority of those voting on the issue vote against the question, the governing body shall not implement the sports complex economic development project.

(2) Funds received by the city or village for an approved sports complex economic development project shall be deposited to a separate fund established for such project to be used exclusively as described in this subsection and shall not be commingled with any other funds of the city or village. Such funds (a) shall first be used to pay or reimburse any preliminary or ongoing administrative costs of the city or village related to such project, (b) may be remitted to the nonprofit corporation coapplicant upon submission of proper evidence of expenditures related to such project, (c) may be pledged for and applied to payment of bonds issued by such city or village as provided in sections 13-1101 to 13-1110, or (d) may otherwise be expended for the cost of such project if owned by the city or village. Any amount received and held for such project which is not committed or expended within five years for the project may be transferred to the general fund of such city or village by action of the governing body of such city or village after a public hearing. Such public hearing shall be held after not less than thirty days' written notice to the nonprofit corporation coapplicant delivered to its last known registered address.

(3) The sports complex economic development project authorized by this section shall be separate and apart from any other economic development program of such city or village, including any economic development program

established under the Local Option Municipal Economic Development Act. The powers conferred by this section shall be in addition and supplemental to the powers conferred by any other law and shall be independent of and in addition to any other provisions of the law of Nebraska, including the Local Option Municipal Economic Development Act and the Community Development Law. This section and all grants of power, authority, rights, or discretion to a political subdivision under the Sports Arena Facility Financing Assistance Act shall be liberally construed, and all incidental powers necessary to carry the act into effect are hereby expressly granted to and conferred upon a political subdivision.

Source: Laws 2024, LB1197, § 5.
Effective date July 19, 2024.

Cross References

Community Development Law, see section 18-2101.
Local Option Municipal Economic Development Act, see section 18-2701.

ARTICLE 33

MUNICIPAL INLAND PORT AUTHORITY ACT

Section

13-3301 Act, how cited.

Sections 13-3301 to 13-3316 shall be known and may be cited as the Municipal Inland Port Authority Act.

Source: Laws 2021, LB156, § 1; Laws 2022, LB998, § 1; Laws 2024, LB164, § 1.
Operative date April 17, 2024.

13-3302 Legislative findings and declarations.

The Legislature finds and declares as follows:

(1) Nebraska is ideally situated as a potential industrial, innovation, and logistical hub for multiple industries across the rest of the country. The state is home to major railroads and trucking firms, and is within a two-day drive to major cities on the east coast, west coast, Mexico, and Canada;

(2) Increasingly, major companies looking to locate their headquarters or expand operations seek large shovel-ready commercial and industrial sites, commonly referred to as mega sites;

(3) Nebraska lacks sufficient economic development tools necessary to acquire and develop large shovel-ready commercial and industrial sites and innovation districts, and the creation of one or more inland port authorities in Nebraska will serve as a mechanism to develop such sites;

(4) In addition to the development of large shovel-ready commercial and industrial sites and innovation districts, the creation of inland port authorities will serve as a regional merging point for multi-modal transportation and distribution of goods to and from ports and other locations in other regions; and

(5) Inland port authorities will serve as a vital resource for stimulating and supporting tourism, entrepreneurship, and technology-based small businesses in this state.

Source: Laws 2021, LB156, § 2; Laws 2024, LB164, § 2.
Operative date April 17, 2024.

13-3303 Terms, defined.

For purposes of the Municipal Inland Port Authority Act:

(1) Board means the board of commissioners of an inland port authority;

(2) City means any city of the metropolitan class, city of the primary class, or city of the first class which contains an area eligible to be designated as an inland port district;

(3) Direct financial benefit means any form of financial benefit that accrues to an individual directly, including compensation, commission, or any other form of a payment or increase of money, or an increase in the value of a business or property. Direct financial benefit does not include a financial benefit that accrues to the public generally;

(4) Family member means a spouse, parent, sibling, child, or grandchild;

(5) Inland port authority means an authority created by a city, a county, or a city and one or more counties under the Municipal Inland Port Authority Act to manage an inland port district;

(6) Inland port district means an area within the corporate boundaries or extraterritorial zoning jurisdiction or both of a city, within the boundaries of one or more counties, or within both the corporate boundaries or extraterritorial zoning jurisdiction or both of a city and the boundaries of one or more counties, and which meets at least two of the following criteria:

(a) Is located within one mile of a navigable river or other navigable waterway;

(b) Is located within one mile of a major rail line;

(c) Is located within two miles of any portion of the federally designated National System of Interstate and Defense Highways or any other four-lane divided highway; or

(d) Is located within two miles of a major airport;

(7)(a) Innovation district means a geographic area where leading-edge institutions, companies, and industry clusters connect with startup businesses, business incubators, research institutions, and accelerators, and that is physically compact, transit-accessible, and technically wired with mixed-use housing, office, retail, and light industrial space.

(b) Innovation districts include, but are not limited to, the following:

(i) The anchor-plus model, primarily found in the downtowns and midtowns of central cities, where large-scale mixed-use development is centered around major anchor institutions and a rich base of related firms, entrepreneurs, and spin-off companies involved in the commercialization of innovation;

(ii) The re-imagined urban areas model, often found near or along historic waterfronts, where industrial or warehouse districts are undergoing a physical and economic transformation. Such change is powered in part by transit access, a historic building stock, and proximity to downtowns in high-rent cities which is supplemented with advanced research institutions and anchor companies; and

(iii) The urbanized science park model, commonly found in suburban and exurban areas, where traditionally isolated, sprawling areas of innovation are urbanizing through increased density and an infusion of new activities, including retail and restaurants, that are mixed as opposed to separated;

(8) Innovation hub has the same meaning as in section 81-12,108;

(9) Intermodal facility means a hub or other facility for trade combining any combination of rail, barge, trucking, air cargo, or other transportation services;

(10) Major airport means an airport with commercial service as defined by the Federal Aviation Administration;

(11) Major rail line means a rail line that is accessible to a Class I railroad as defined by the federal Surface Transportation Board; and

(12) Nonprofit economic development corporation means a chamber of commerce or other mutual benefit or public benefit corporation organized under the Nebraska Nonprofit Corporation Act to assist economic development.

Source: Laws 2021, LB156, § 3; Laws 2022, LB998, § 2; Laws 2024, LB164, § 3.
Operative date April 17, 2024.

Cross References

Nebraska Nonprofit Corporation Act, see section 21-1901.

13-3304 Inland port authority; creation; limitation; criteria; certification; procedure.

(1) Any city which encompasses an area greater than three hundred acres eligible to be designated as an inland port district may propose to create an inland port authority by ordinance, subject to the cap on the total number of inland port districts provided in subsection (4) of this section. In determining whether to propose the creation of an inland port authority, the city shall consider the following criteria:

(a) The desirability and economic feasibility of locating an inland port district within the corporate boundaries, extraterritorial zoning jurisdiction, or both of the city;

(b) The technical and economic capability of the city and any other public and private entities to plan and carry out development within the proposed inland port district;

(c) The strategic location of the proposed inland port district in proximity to existing and potential transportation infrastructure that is conducive to facili-

tating regional, national, and international trade and the businesses and facilities that promote and complement such trade;

(d) The potential impact that development of the proposed inland port district will have on the immediate area; and

(e) The regional and statewide economic impact of development of the proposed inland port district.

(2) Any city and one or more counties in which a city of the metropolitan class, city of the primary class, or city of the first class is located, or in which the extraterritorial zoning jurisdiction of such city is located, which encompass an area greater than three hundred acres eligible to be designated as an inland port district may enter into an agreement pursuant to the Interlocal Cooperation Act to propose joint creation of an inland port authority, subject to the cap on the total number of inland port districts provided in subsection (4) of this section. In determining whether to propose the creation of an inland port authority, the city and counties shall consider the following criteria:

(a) The desirability and economic feasibility of locating an inland port district within the corporate boundaries or extraterritorial zoning jurisdiction or both of the city, or within both the corporate boundaries or extraterritorial zoning jurisdiction or both of a city and the boundaries of one or more counties;

(b) The technical and economic capability of the city and county or counties and any other public and private entities to plan and carry out development within the proposed inland port district;

(c) The strategic location of the proposed inland port district in proximity to existing and potential transportation infrastructure that is conducive to facilitating regional, national, and international trade and the businesses and facilities that promote and complement such trade;

(d) The potential impact that development of the proposed inland port district will have on the immediate area; and

(e) The regional and statewide economic impact of development of the proposed inland port district.

(3) Any county with a population greater than twenty thousand inhabitants according to the most recent federal census or the most recent revised certified count by the United States Bureau of the Census which encompasses an area greater than three hundred acres eligible to be designated as an inland port district may propose to create an inland port authority by resolution, subject to the cap on the total number of inland port districts provided in subsection (4) of this section. In determining whether to propose the creation of an inland port authority, the county shall consider the following criteria:

(a) The desirability and economic feasibility of locating an inland port district within the county;

(b) The technical and economic capability of the county and any other public or private entities to plan and carry out development within the proposed inland port district;

(c) The strategic location of the proposed inland port district in proximity to existing and potential transportation infrastructure that is conducive to facilitating regional, national, and international trade and the businesses and facilities that promote and complement such trade;

(d) The potential impact that development of the proposed inland port district will have on the immediate area; and

(e) The regional and statewide economic impact of development of the proposed inland port district.

(4) No more than five inland port districts may be designated statewide. No more than one inland port district may be designated within the boundaries of a city of the metropolitan class. No inland port authority shall designate more than one inland port district, and no inland port authority may be created without also designating an inland port district.

(5) Following the adoption of an ordinance, resolution, or execution of an agreement pursuant to the Interlocal Cooperation Act proposing creation of an inland port authority, the city clerk or county clerk shall transmit a copy of such ordinance, resolution, or agreement to the Department of Economic Development along with an application for approval of the proposal. Upon receipt of such ordinance, resolution, or agreement and application, the department shall evaluate the proposed inland port authority to determine whether the proposal meets the criteria in subsection (1), (2), or (3) of this section, whichever is applicable, as well as any prioritization criteria developed by the department. Upon a determination that the proposed inland port authority sufficiently meets such criteria, the Director of Economic Development shall certify to the city clerk or county clerk whether the proposed creation of such inland port authority exceeds the cap on the total number of inland port districts pursuant to subsection (4) of this section. If the department determines that the proposed inland port authority sufficiently meets such criteria and does not exceed such cap, the inland port authority shall be deemed created. If the proposed inland port authority does not sufficiently meet such criteria or exceeds such cap, the city shall repeal such ordinance, the county shall repeal such resolution, or the city and county or counties shall rescind such agreement and the proposed inland port authority shall not be created.

Source: Laws 2021, LB156, § 4; Laws 2022, LB998, § 3; Laws 2024, LB164, § 4.
Operative date April 17, 2024.

Cross References

Interlocal Cooperation Act, see section 13-801.

13-3305 Designation of area; criteria; procedure.

(1) The city council of any city which has created an inland port authority pursuant to subsection (1) of section 13-3304 shall designate what areas within the corporate limits, extraterritorial zoning jurisdiction, or both of the city shall comprise the inland port district, subject to the limitations of the Municipal Inland Port Authority Act. The boundaries of any inland port district shall be filed with the city clerk and shall become effective upon approval of the city council. The city council may from time to time enlarge or reduce the area comprising any inland port district, except that such district shall not be reduced to an area less than three hundred acres. Any change of boundaries shall be filed with the city clerk and become effective upon such filing.

(2) The city council of any city and county board or boards of any county or counties which have created an inland port authority pursuant to subsection (2) of section 13-3304 shall designate what areas within the corporate limits, extraterritorial zoning jurisdiction, or both of the city or within the county or

counties shall comprise the inland port district, subject to the limitations of the Municipal Inland Port Authority Act. The boundaries of any inland port district shall be filed with the city clerk and the county clerk or clerks and shall become effective upon approval of the city council and the county board or boards. The city council and the county board or boards may from time to time enlarge or reduce the area comprising any inland port district, except that such district shall not be reduced to an area less than three hundred acres. Any change of boundaries shall be filed with the city clerk and the county clerk or clerks and become effective upon such filing.

(3) The county board of any county which has created an inland port authority pursuant to subsection (3) of section 13-3304 shall designate what areas within the county shall comprise the inland port district, subject to the limitations of the Municipal Inland Port Authority Act. The boundaries of any inland port district shall be filed with the county clerk and shall become effective upon approval of the county board. The county board may from time to time enlarge or reduce the area comprising any inland port district, except that such district shall not be reduced to an area less than three hundred acres. Any change of boundaries shall be filed with the county clerk and become effective upon such filing.

(4) Not more than twenty-five percent of the area within an inland port district designated pursuant to this section may be noncontiguous with the remaining portions of such inland port district. Such noncontiguous area shall be no more than one-quarter mile from the remaining portions of such inland port district for an inland port district located within a city of the metropolitan class and no more than fifteen miles from the remaining portions of such inland port district for any other inland port district.

(5) Nothing in this section shall require that any real property located within the boundaries of an inland port district be owned by an inland port authority or the city or county or counties in which such real property is located.

Source: Laws 2021, LB156, § 5; Laws 2022, LB998, § 5; Laws 2024, LB164, § 5.
Operative date April 17, 2024.

13-3306 Inland port authority; powers.

(1) An inland port authority shall have the power to:

(a) Plan, facilitate, and develop the inland port district in conjunction with the city, the county or counties, and other public and private entities, including the development of publicly owned infrastructure and improvements within the inland port district;

(b) Engage in marketing and business recruitment activities and efforts to encourage and facilitate development of the inland port district;

(c) Apply for and take all other necessary actions for the establishment of a foreign trade zone, as provided under federal law, within the inland port district;

(d) Issue and sell revenue bonds as provided in section 13-3308;

(e) Acquire, own, lease, sell, or otherwise dispose of interest in and to any real property and improvements located thereon, and in any personal property, and construct buildings and other structures necessary to fulfill the purposes of the inland port authority;

(f) Acquire rights-of-way and property of any kind or nature within the inland port district necessary for its purposes by purchase or negotiation;

(g) Enter into lease agreements for real or personal property, either as lessee or lessor;

(h) Sue and be sued in its own name;

(i) Enter into contracts and other instruments necessary, incidental, or convenient to the performance of its duties and the exercise of its powers, including, but not limited to, agreements under the Interlocal Cooperation Act with the city, the county or counties, or any other political subdivision of this or any other state;

(j) Borrow money from private lenders, from the state, or from the federal government as may be necessary for the operation and work of the inland port authority;

(k) Accept appropriations, including funds transferred by the Legislature pursuant to section 81-12,146, contributions, gifts, grants, or loans from the United States, the State of Nebraska, political subdivisions, or other public and private agencies, individuals, partnerships, or corporations;

(l) Employ such managerial, engineering, legal, technical, clerical, accounting, advertising, administrative, or other assistance as may be deemed advisable, or to contract with independent contractors for any such assistance;

(m) Adopt, alter, or repeal its own bylaws, rules, and regulations governing the manner in which its business may be transacted, except that such bylaws, rules, and regulations shall not exceed the powers granted to the inland port authority by the Municipal Inland Port Authority Act;

(n) Enter into agreements with private operators or public entities for the joint development, redevelopment, reclamation, and other uses of property within the inland port district;

(o) Own and operate an intermodal facility and other publicly owned infrastructure and improvements within the boundaries of the inland port district;

(p) Establish and charge fees to businesses and customers utilizing the services offered by the inland port authority within the inland port district as required for the proper maintenance, development, operation, and administration of the inland port authority; and

(q) Facilitate partnerships and programs between innovative startup businesses, research institutions, and venture capitalists or financial institutions.

(2) An inland port authority shall neither possess nor exercise the power of eminent domain.

(3) Any inland port authority located within the boundaries of a city of the metropolitan class shall not be eligible to receive any funds transferred by the Legislature pursuant to subsection (2) of section 81-12,146 until July 1, 2027.

Source: Laws 2021, LB156, § 6; Laws 2024, LB164, § 6.
Operative date April 17, 2024.

Cross References

Interlocal Cooperation Act, see section 13-801.

13-3306.01 Inland port authority; duties; applicability.

An inland port authority located within the boundaries of a city of the metropolitan class shall:

(1) Create and operate an innovation district;

(2) Organize and conduct quarterly public input meetings to receive public input regarding concerns, ideas, and priorities for economic development initiatives within the inland port district. The public input meetings shall provide a platform for dialogue and collaboration between residents, the inland port authority, local government officials, and other stakeholders;

(3) Within ninety days after the receipt of grant funds described in section 13-3314, and annually thereafter, conduct a community survey. Such surveys may be distributed online or through regular United States mail or may be conducted in person to ensure inclusivity and accessibility. The data collected shall help identify key areas for economic development focus within the inland port district and inform decisionmaking processes;

(4) Only use the grant funds described in section 13-3314 within the inland port district;

(5) Provide direct oversight of the operation of any innovation hub located within a city of the metropolitan class that is located within two miles of a major airport;

(6) Create and maintain a community advisory committee consisting of nine members that include (a) at least two owners of residential property located within the inland port district, (b) at least two owners of businesses located within the inland port district, (c) a member of the city council of such city of the metropolitan class whose city council district is located within the inland port district, (d) a member of the Legislature whose legislative district is located within the inland port district, and (e) a youth representative or someone closely involved with youth in the community. A single member may satisfy more than one qualification described in subdivisions (6)(a) through (e) of this section;

(7) Within one year after the receipt of grant funds described in section 13-3314, hire a consultant to create a financial pro forma and vision and provide recommendations relating to which innovation district model or blended models should be used by the inland port authority;

(8) Within three years after the receipt of grant funds described in section 13-3314, contract with or provide grants to developers or landowners to construct twenty single-family homes and a minimum of one hundred fifty new housing units within the inland port district; and

(9) On or before December 31 of each year, electronically submit a report to the Urban Affairs Committee of the Legislature and the Clerk of the Legislature regarding current, completed, and future projects, how such projects relate to the inland port authority's vision and financial pro forma, and other areas of opportunity.

Source: Laws 2024, LB164, § 7.
Operative date April 17, 2024.

13-3310 Board; members; appointment; term; vacancy, how filled.

(1) An inland port authority shall be administered by the board which shall consist of:

(a) If created by a city of the metropolitan class, nine members that include (i) the mayor or the mayor's designee, (ii) at least two members with experience in large-scale residential, commercial, industrial, or general real estate development, (iii) at least one member with experience in community organizing and development, advocating for inclusive economic development strategies, addressing systemic barriers, and promoting equitable opportunities for all community members, and (iv) at least one member with experience in financial services and budget oversight, financial planning, and ensuring accountability in resource allocation for economic development projects. A single member may satisfy more than one qualification described in subdivisions (1)(a)(i) through (iv) of this section;

(b) If created by a city of the primary class, seven members;

(c) If created by a city of the first class, five members;

(d) If jointly created by a city of the metropolitan class and one or more counties, eleven members;

(e) If jointly created by a city of the primary class and one or more counties, nine members;

(f) If jointly created by a city of the first class and one or more counties, seven members; or

(g) If created by a county, nine members.

(2) Upon the creation of an inland port authority under subsection (1) or (2) of section 13-3304, the mayor of the city that created the authority, with the approval of the city council, and, if the authority is created under subsection (2) of section 13-3304, with the approval of the county board or boards, shall appoint a board to govern the authority. Members of the board shall be residents of the city or of the county in which such city that created the authority under subsection (1) of section 13-3304 is located, or, if the authority is created under subsection (2) of section 13-3304, members of the board shall be residents of the county or counties jointly creating such authority or of any county located adjacent to any such county.

(3) Upon the creation of an inland port authority under subsection (3) of section 13-3304, the chairperson of the county board, with the approval of the county board, shall appoint a board to govern the authority. Members of the board shall be residents of the county or of any county located adjacent to such county.

(4) The members of the board of any inland port authority created under section 13-3304 shall be appointed to staggered terms of four years in such a manner to ensure that the terms of no more than three members expire in any one year.

(5) Any vacancy on the board of an inland port authority shall be filled in the same manner as the vacating board member was appointed to serve the unexpired portion of the board member's term.

Source: Laws 2021, LB156, § 10; Laws 2024, LB164, § 8.
Operative date April 17, 2024.

13-3311 Commissioner; employee; eligibility to serve; acts prohibited.

(1) A public official may serve as a commissioner of an inland port authority.

(2) No individual may serve as a commissioner or an employee of an inland port authority if:

(a) The individual or a family member of the individual owns an interest in any real property located within the boundaries of the inland port district;

(b) The individual or a family member of the individual owns an interest in, is directly affiliated with, or is an employee or officer of a private firm, company, or other entity, other than a political subdivision, that received any financial benefit through any funding provided from a grant awarded pursuant to subdivision (4)(a) of section 81-12,241. For purposes of this subdivision, financial benefit includes any income from a contract for goods or services; or

(c) The individual or a family member of the individual owns an interest in, is directly affiliated with, or is an employee or officer of a private firm, company, or other entity, other than a political subdivision, that the individual reasonably believes is likely to:

(i) Participate in or receive a direct or indirect financial benefit from the development of the inland port district; or

(ii) Acquire an interest in any facility located within the inland port district.

(3) Before taking office as a commissioner or accepting employment with an inland port authority, an individual shall submit to the authority a statement verifying that the individual's service as a commissioner or an employee will not violate subsection (2) of this section.

(4) An individual shall not, at any time during the individual's service as a commissioner or an employee of an inland port authority, acquire or take any action to initiate, negotiate, or otherwise arrange for the acquisition of an interest in any real property located within the boundaries of the inland port district.

(5) A commissioner or an employee of an inland port authority shall not receive a direct financial benefit from the development of any real property located within the boundaries of the inland port district.

Source: Laws 2021, LB156, § 11; Laws 2024, LB164, § 9.
Operative date April 17, 2024.

13-3314 Grants; application; award.

An inland port authority located within the boundaries of a city of the metropolitan class may apply to the State Treasurer for grants to carry out the functions of such inland port authority as authorized under the Municipal Inland Port Authority Act. The application for such grants shall be submitted on a form prescribed by the State Treasurer. The application shall only include the amount of grant funds requested for each grant and a certified copy of the approved city ordinance creating such inland port authority. The State Treasurer shall not be required to verify the information submitted in the application. If adequate funds are available in the Inland Port Authority Fund, the State Treasurer shall award the grants.

Source: Laws 2024, LB164, § 11.
Operative date April 17, 2024.

13-3315 Inland Port Authority Fund; created; use; investment.

The Inland Port Authority Fund is created. The fund shall be used by the State Treasurer to carry out section 13-3314. The fund shall consist of transfers by the Legislature and any federal funds which may become available for the purposes of the Municipal Inland Port Authority 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. Any investment earnings from investment of money in the fund shall be credited to the fund.

Source: Laws 2024, LB164, § 10.
Operative date April 17, 2024.

Cross References

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

13-3316 Changes made by Laws 2024, LB164; applicability.

The changes made by Laws 2024, LB164, apply to any inland port authority existing prior to, on, or after April 17, 2024.

Source: Laws 2024, LB164, § 12.
Operative date April 17, 2024.

ARTICLE 34

PROPERTY TAX GROWTH LIMITATION ACT

Section
13-3401. Act, how cited.
13-3402. Terms, defined.
13-3403. Property tax request authority; calculation.
13-3404. Property tax request authority; increases; authorized.
13-3405. Property tax request authority; election to exceed; procedure.
13-3406. Unused property tax request authority; carry forward.
13-3407. Property tax request authority; unused property tax request authority; requirements; political subdivision; failure to comply; withhold state aid.
13-3408. Rules and regulations.

13-3401 Act, how cited.

Sections 13-3401 to 13-3408 shall be known and may be cited as the Property Tax Growth Limitation Act.

Source: Laws 2024, First Spec. Sess., LB34, § 1.
Effective date August 21, 2024.

13-3402 Terms, defined.

For purposes of the Property Tax Growth Limitation Act:

(1) Approved bonds means bonds as defined in subdivision (1) of section 10-134 that are approved according to law, excluding any bonds issued to finance a project or projects if the issuance of bonds for such project or projects was the subject of a general obligation bond election held at the most recent regularly scheduled election and was not approved at such election;

(2) Auditor means the Auditor of Public Accounts;

(3) Emergency means an emergency, as defined in section 81-829.39, for which a state of emergency proclamation or local state of emergency proclamation has been issued under the Emergency Management Act;

(4) Growth percentage means the percentage obtained by dividing (a) the political subdivision's growth value by (b) the political subdivision's total property valuation from the prior year;

(5) Growth value means the increase in a political subdivision's total property valuation from the prior year to the current year due to (a) improvements to real property as a result of new construction and additions to existing buildings, (b) any other improvements to real property which increase the value of such property, (c) annexation of real property by the political subdivision, (d) a change in the use of real property, (e) any increase in personal property valuation over the prior year, and (f) the increase in excess valuation over the redevelopment project valuation described in section 18-2147 for redevelopment projects within the political subdivision, provided the accumulated excess valuation which exists as of July 1, 2025, shall be included in the calculation of the increase in excess valuation for the political subdivision's first fiscal year beginning on or after July 1, 2025;

(6) Inflation percentage means the annual percentage change in the State and Local Consumption Expenditures and Gross Investment, as reported for December of the prior calendar year for the preceding twelve-month period;

(7) Political subdivision means any county, city, or village;

(8) Property tax request means the total amount of property taxes requested to be raised for a political subdivision through the levy imposed pursuant to section 77-1601;

(9) Property tax request authority means the amount that may be included in a political subdivision's property tax request as determined pursuant to the Property Tax Growth Limitation Act; and

(10) State aid means:

(a) For all political subdivisions, state aid paid pursuant to sections 60-3,202 and 77-3523 and reimbursement provided pursuant to section 77-1239;

(b) For cities and villages, state aid to cities and villages paid pursuant to sections 39-2501 to 39-2520, 60-3,190, and 77-27,139.04 and insurance premium tax paid to cities and villages; and

(c) For counties, state aid to counties paid pursuant to sections 60-3,184 to 60-3,190, insurance premium tax paid to counties, and reimbursements to counties from funds appropriated pursuant to section 29-3933.

Source: Laws 2024, First Spec. Sess., LB34, § 2.
Effective date August 21, 2024.

Cross References

Emergency Management Act, see section 81-829.36.

13-3403 Property tax request authority; calculation.

(1) Except as otherwise provided in the Property Tax Growth Limitation Act, for fiscal years beginning on or after July 1, 2025, a political subdivision's property tax request for any year shall not exceed its property tax request authority as determined under this section. The preliminary property tax request authority for each political subdivision shall be the amount of property taxes levied by the county board of equalization pursuant to section 77-1601 for such political subdivision in the prior fiscal year, less the sum of exceptions utilized in the prior year pursuant to section 13-3404.

(2) In addition to the preliminary property tax request authority, the political subdivision's property tax request authority may be increased by the product of:

(a) The amount of property taxes levied in the prior year increased by the political subdivision's growth percentage, less the sum of exceptions utilized in the prior year pursuant to subdivisions (1) and (2) of section 13-3404; and

(b) The greater of zero or the inflation percentage.

Source: Laws 2024, First Spec. Sess., LB34, § 3.
Effective date August 21, 2024.

13-3404 Property tax request authority; increases; authorized.

A political subdivision may increase its property tax request authority over the amount determined under section 13-3403 by:

(1) The amount of property taxes budgeted for approved bonds;

(2) The amount of property taxes needed to respond to an emergency declared in the preceding year, as certified to the auditor;

(3) The amount of unused property tax request authority determined in accordance with section 13-3406;

(4) The amount of property taxes budgeted in support of (a) a service relating to an imminent and significant threat to public safety that (i) was not previously provided by the political subdivision and (ii) is the subject of an agreement or a modification of an existing agreement executed after August 21, 2024, whether provided by one of the parties to the agreement or by an independent joint entity or joint public agency or (b) an interlocal agreement relating to public safety;

(5) The increase in property tax request authority approved by the legal voters as provided in section 13-3405;

(6) The amount of property taxes budgeted for public safety services as defined in section 13-320; and

(7) The amount of property taxes budgeted for county attorneys and public defenders.

Source: Laws 2024, First Spec. Sess., LB34, § 4.
Effective date August 21, 2024.

13-3405 Property tax request authority; election to exceed; procedure.

(1) A political subdivision may increase its property tax request authority over the amount determined under section 13-3403 if such increase is approved by a majority of legal voters voting on the issue at an election described in subsection (2) of this section. Such issue shall be placed on the ballot (a) upon the recommendation of the governing body of such political subdivision or (b) upon the receipt by the county clerk or election commissioner of a petition requesting such issue to be placed on the ballot which is signed by at least five percent of the legal voters of the political subdivision. The recommendation of the governing body or the petition of the legal voters shall include the amount by which the political subdivision would increase its property tax request authority over and above the amount determined under section 13-3403.

(2) Upon receipt of such recommendation or legal voter petition, the county clerk or election commissioner shall place such issue on the ballot at the next regularly scheduled election or a special election called for such purpose and

held on the first Tuesday after the second Monday in May of an odd-numbered year. The election shall be held pursuant to the Election Act, and all costs shall be paid by the political subdivision. The issue may be approved on the same question as a vote to exceed the levy limits provided in section 77-3444. If a majority of the votes cast on the issue are in favor of increasing the political subdivision's property tax request authority, the political subdivision shall be empowered to do so.

Source: Laws 2024, First Spec. Sess., LB34, § 5.
Effective date August 21, 2024.

Cross References

Election Act, see section 32-101.

13-3406 Unused property tax request authority; carry forward.

A political subdivision may choose not to increase its total property taxes levied by the full amount of the property tax request authority allowed in a particular year. In such cases, the political subdivision may carry forward to future budget years the amount of unused property tax request authority, but accumulation of unused property tax request authority shall not exceed an aggregate of five percent of the total property tax request authority from the prior year.

Source: Laws 2024, First Spec. Sess., LB34, § 6.
Effective date August 21, 2024.

13-3407 Property tax request authority; unused property tax request authority; requirements; political subdivision; failure to comply; withhold state aid.

The auditor shall prepare forms to be used by political subdivisions for the purpose of calculating property tax request authority and unused property tax request authority. Each political subdivision shall calculate such amounts and submit the forms to the auditor on or before September 30, 2025, and on or before September 30 of each year thereafter. If a political subdivision fails to submit such forms to the auditor or if the auditor determines from such forms that a political subdivision is not complying with the limits provided in the Property Tax Growth Limitation Act, the auditor shall notify the political subdivision and the State Treasurer of the noncompliance. The State Treasurer shall then suspend distribution of state aid allocated to the political subdivision until the political subdivision complies. The funds shall be held for six months. If the political subdivision complies within the six-month period, it shall receive the suspended funds. If the political subdivision fails to comply within the six-month period, the suspended funds shall be forfeited and shall be redistributed to other recipients of the state aid or, in the case of homestead exemption reimbursement, returned to the General Fund.

Source: Laws 2024, First Spec. Sess., LB34, § 7.
Effective date August 21, 2024.

13-3408 Rules and regulations.

The auditor may adopt and promulgate rules and regulations to carry out the Property Tax Growth Limitation Act.

Source: Laws 2024, First Spec. Sess., LB34, § 8.
Effective date August 21, 2024.

CHAPTER 14
CITIES OF THE METROPOLITAN CLASS

Article.
1. General Powers. 14-102, 14-137.
2. Officers, Elections, Bonds, Salaries, Recall of Officers, Initiative, Referendum. 14-211, 14-217.02.
21. Public Utilities. 14-2104.

ARTICLE 1
GENERAL POWERS

Section
14-102. Additional powers.
14-137. Ordinances; how enacted.

14-102 Additional powers.

In addition to the powers granted in section 14-101, cities of the metropolitan class shall have power by ordinance:

(1) To levy any tax or special assessment authorized by law;

(2) To provide a corporate seal for the use of the city, and also any official seal for the use of any officer, board, or agent of the city, whose duties require an official seal to be used. Such corporate seal shall be used in the execution of municipal bonds, warrants, conveyances, and other instruments and proceedings as required by law;

(3) To provide all needful rules and regulations for the protection and preservation of health within the city, including providing for the enforcement of the use of water from public water supplies when the use of water from other sources shall be deemed unsafe;

(4) To appropriate money and provide for the payment of debts and expenses of the city;

(5) To adopt all such measures as may be deemed necessary for the accommodation and protection of strangers and the traveling public in person and property;

(6) To punish and prevent the discharge of firearms, fireworks, or explosives of any description within the city, other than the discharge of firearms at a shooting range pursuant to the Nebraska Shooting Range Protection Act;

(7) To regulate the inspection and sale of meats, flour, poultry, fish, milk, vegetables, and all other provisions or articles of food exposed or offered for sale in the city;

(8) To require all elected or appointed officers to give bond and security for the faithful performance of their duties, except that no officer shall become bonded and secured upon the official bond of another or upon any bond executed to the city;

(9) To require from any officer of the city at any time a report, in detail, of the transactions of his or her office or any matter connected with such office;

(10) To provide for the prevention of cruelty to children and animals;

(11) To regulate, license, or prohibit the running at large of dogs and other animals within the city as well as in areas within the extraterritorial zoning jurisdiction of the city; to guard against injuries or annoyance from such dogs and other animals; and to authorize the destruction of such dogs and other animals when running at large contrary to the provisions of any ordinance. Any licensing provision shall comply with subsection (2) of section 54-603 for service animals;

(12) To provide for keeping sidewalks clean and free from obstructions and accumulations; to provide for the assessment and collection of taxes on real estate and for the sale and conveyance thereof; and to pay the expenses of keeping the sidewalk adjacent to such real estate clean and free from obstructions and accumulations as provided by law;

(13) To provide for the planting and protection of shade or ornamental and useful trees upon streets or boulevards; to assess the cost of such trees to the extent of benefits upon the abutting property as a special assessment; to provide for the protection of birds and animals and their nests; to provide for the trimming of trees located upon streets and boulevards or when the branches of trees overhang streets and boulevards when in the judgment of the mayor and city council such trimming is made necessary to properly light such street or boulevard or to furnish proper police protection; and to assess the cost of such trimming upon the abutting property as a special assessment;

(14) To provide for, regulate, and require the numbering or renumbering of houses along public streets or avenues; and to care for and control and to name and rename streets, avenues, parks, and squares within the city;

(15) To require weeds and worthless vegetation growing upon any lot or piece of ground within the city or its extraterritorial zoning jurisdiction to be cut and destroyed so as to abate any nuisance occasioned by such vegetation; to prohibit and control the throwing, depositing, or accumulation of litter on any lot or piece of ground within the city or its extraterritorial zoning jurisdiction; to require the removal of such litter so as to abate any nuisance occasioned thereby. If the owner fails to cut and destroy weeds and worthless vegetation or remove litter, or both, after notice as required by ordinance, the city may assess the cost of such destruction or removal upon the lots or lands as a special assessment. The required notice may be by publication in the official newspaper of the city and may be directed in general terms to the owners of lots and lands affected without naming such owners;

(16) To prohibit and regulate the running at large or the herding or driving of domestic animals, such as hogs, cattle, horses, sheep, goats, fowls, or animals of any kind or description within the corporate limits; to provide for the impounding of all animals running at large, herded, or driven contrary to such prohibition and regulations; and to provide for the forfeiture and sale of animals impounded to pay the expense of taking up, caring for, and selling such impounded animals, including the cost of advertising and fees of officers;

(17) To regulate the transportation of articles through the streets and to prevent injuries to the streets from overloaded vehicles;

(18) To prevent or regulate any amusement or practice having a tendency to annoy persons passing in the streets or on the sidewalks; and to regulate the use of vehicles propelled by steam, gas, electricity, or other motive power, operated on the streets of the city;

(19) To regulate or prohibit the transportation and keeping of gunpowder, oils, and other combustible and explosive articles;

(20) To regulate, license, or prohibit the sale of domestic animals or of goods, wares, and merchandise at public auction on the streets, alleys, highways, or any public ground within the city;

(21) To regulate and prevent the use of streets, sidewalks, and public grounds for signs, posts, awnings, awning posts, scales, or other like purposes; and to regulate and prohibit the exhibition or carrying or conveying of banners, placards, advertisements, or the distribution or posting of advertisements or handbills in the streets or public grounds or upon the sidewalks;

(22) To provide for the punishment of persons disturbing the peace by noise, intoxication, drunkenness, or fighting, or otherwise violating the public peace by indecent or disorderly conduct or by lewd and lascivious behavior;

(23) To provide for the punishment of vagrants, tramps, street beggars, prostitutes, disturbers of the peace, pickpockets, gamblers, burglars, thieves, persons who practice any game, trick, or device with intent to swindle, and trespassers upon private property;

(24) To prohibit, restrain, and suppress houses of prostitution, opium joints, gambling houses, prize fighting, dog fighting, cock fighting, and other disorderly houses and practices, all games and gambling, and all kinds of indecencies; to regulate and license or prohibit the keeping and use of billiard tables, bowling alleys, shooting galleries except as provided in the Nebraska Shooting Range Protection Act, and other similar places of amusement; and to prohibit and suppress all lotteries and gift enterprises of all kinds under whatsoever name carried on, except that nothing in this subdivision shall be construed to apply to bingo, lotteries, lotteries by the sale of pickle cards, or raffles conducted in accordance with the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, or the State Lottery Act;

(25) To make and enforce all police regulations for the good government, general welfare, health, safety, and security of the city and the citizens of the city in addition to the police powers expressly granted by law; in the exercise of the police power, to pass all needful and proper ordinances and impose fines, forfeitures, and penalties for the violation of any ordinance; to provide for the recovery, collection, and enforcement of such fines; and in default of payment to provide for confinement in the city or county prison or other place of confinement as may be provided by ordinance;

(26) To prevent immoderate driving on the street;

(27) To establish and maintain public libraries, art galleries, and museums and to provide the necessary grounds or buildings for such libraries, galleries, and museums; to purchase books, papers, maps, manuscripts, works of art, and objects of natural or of scientific curiosity and instruction for such libraries, galleries, and museums; to receive donations and bequests of money or property for such libraries, galleries, and museums in trust or otherwise; and to pass necessary bylaws and regulations for the protection and government of such libraries, art galleries, and museums;

(28) To erect, designate, establish, maintain, and regulate hospitals, houses of correction, jails, station houses, fire engine houses, asphalt repair plants, and other necessary buildings; to erect, designate, establish, maintain, and regulate

plants for the removal, disposal, or recycling of garbage and refuse or to make contracts for garbage and refuse removal, disposal, or recycling, or all of the same; and to charge equitable fees for such removal, disposal, or recycling, or all of the same, except as provided by law. The fees collected pursuant to this subdivision shall be credited to a single fund to be used exclusively by the city for the removal, disposal, or recycling of garbage and refuse, or all of the same, including any costs incurred for collecting the fee. Before any contract for such removal, disposal, or recycling is let, the city council shall make specifications for such contract, bids shall be advertised for as now provided by law, and the contract shall be let to the lowest and best bidder, who shall furnish bond to the city conditioned upon his or her carrying out the terms of the contract, the bond to be approved by the city council. Nothing in this section, and no contract or regulation made by the city council, shall be so construed as to prohibit any person, firm, or corporation engaged in any business in which garbage or refuse accumulates as a byproduct from selling, recycling, or otherwise disposing of his, her, or its garbage or refuse or hauling such garbage or refuse through the streets and alleys under such uniform and reasonable regulations as the city council may by ordinance prescribe for the removal and hauling of garbage or refuse;

(29) To erect and establish market houses and market places and to provide for the erection of all other useful and necessary buildings for the use of the city and for the protection and safety of all property owned by the city. Such market houses, market places, and buildings may be located on any street, alley, or public ground or on land purchased for such purpose;

(30) To prohibit the establishment of additional cemeteries within the limits of the city; to regulate the registration of births and deaths; to direct the keeping and returning of bills of mortality; and to impose penalties on physicians, sextons, and others for any default in the premises;

(31) To provide for the inspection of steam boilers, electric light appliances, pipefittings, and plumbings; to regulate their erection and construction; to appoint inspectors; and to declare their powers and duties, except as otherwise provided by law;

(32) To enact a fire code and regulate the erection of all buildings and other structures within the corporate limits; to provide for the removal of any buildings or structures or additions to buildings or structures erected contrary to such code or regulations and to provide for the removal of dangerous buildings; but no such code or regulation shall be suspended or modified by resolution, nor shall exceptions be made by ordinance or resolution in favor of any person, firm, or corporation or concerning any particular lot or building; to direct that when any building has been damaged by fire, decay, or otherwise, to the extent of fifty percent of the value of a similar new building above the foundation, shall be torn down or removed; to prescribe the manner of ascertaining such damages and to assess the cost of removal of any building erected or existing contrary to such code or regulations against the lot or real estate upon which such building or structure is located or shall be erected or to collect such costs from the owner of any such building or structure; and to enforce the collection of such costs by civil action in any court of competent jurisdiction;

(33) To regulate the construction, use, and maintenance of party walls, to prescribe and regulate the thickness, strength, and manner of constructing

stone, brick, wood, or other buildings and the size and shape of brick and other material placed in such buildings; to prescribe and regulate the construction and arrangement of fire escapes and the placing of iron and metallic shutters and doors in or on such fire escapes; to provide for the inspection of elevators; to prescribe, regulate, and provide for the inspection of all plumbing, pipefitting, or sewer connections in all houses or buildings now or hereafter erected; to regulate the size, number, and manner of construction of halls, doors, stairways, seats, aisles, and passageways of theaters and buildings of a public character, whether now built or hereafter to be built, so that there may be convenient, safe, and speedy exit in case of fire; to prevent the dangerous construction and condition of chimneys, fireplaces, hearths, stoves, stovepipes, ovens, boilers, and heating appliances used in or about any building and to cause such appliances to be removed or placed in safe condition when they are considered dangerous; to prevent the deposit of ashes in unsafe places and to cause such buildings and enclosures as may be in a dangerous state to be put in a safe condition; to prevent the disposing of and delivery or use in any building or other structure of unsuitable building material within the city limits and provide for the inspection of building materials; to provide for the abatement of dense volumes of smoke; to regulate the construction of areaways, stairways, and vaults and to regulate partition fences; and to enforce proper heating and ventilation of buildings used for schools or other buildings where large numbers of persons are liable to congregate;

(34) To regulate levees, depots and depot grounds, and places for storing freight and goods and to provide for and regulate the laying of tracks and the passage of railways through the streets, alleys, and public grounds of the city;

(35) To require the lighting of any railway within the city and to fix and determine the number, size, and style of all fixtures and apparatus necessary for such lighting and the points of location for such lampposts. If any company owning or operating such railways shall fail to comply with such requirements, the city council may cause such lighting to be done and may assess the expense of such lighting against such company. Such expense shall constitute a lien upon any real estate belonging to such company and lying within such city and may be collected in the same manner as taxes for general purposes;

(36) To provide for necessary publicity and to appropriate money for the purpose of advertising the resources and advantages of the city;

(37) To erect, establish, and maintain offstreet parking areas on publicly owned property located beneath any elevated segment of the National System of Interstate and Defense Highways or portion thereof, or public property title to which is in the city on May 12, 1971, or property owned by the city and used in conjunction with and incidental to city-operated facilities; and to regulate parking on such property by time limitation devices or by lease;

(38) To acquire, by the exercise of the power of eminent domain or otherwise, lease, purchase, construct, own, maintain, operate, or contract for the operation of public passenger transportation systems, excluding taxicabs, transportation network companies and railroad systems, including all property and facilities required for such public passenger transportation systems, within and without the limits of the city; to redeem such property from prior encumbrance in order to protect or preserve the interest of the city in such property; to exercise all powers granted by the Constitution of Nebraska and laws of the State of Nebraska or exercised by or pursuant to a home rule charter adopted

pursuant thereto, including, but not limited to, receiving and accepting from the government of the United States or any agency thereof, from the State of Nebraska or any subdivision thereof, and from any person or corporation donations, devises, gifts, bequests, loans, or grants for or in aid of the acquisition, operation, and maintenance of such public passenger transportation systems; to administer, hold, use, and apply such donations, devises, gifts, bequests, loans, or grants for the purposes for which such donations, devises, gifts, bequests, loans, or grants may have been made; to negotiate with employees and enter into contracts of employment; to employ by contract or otherwise individuals singularly or collectively; to enter into agreements authorized under the Interlocal Cooperation Act or the Joint Public Agency Act; to contract with an operating and management company for the purpose of operating, servicing, and maintaining any public passenger transportation systems the city shall acquire; and to exercise such other and further powers as may be necessary, incident, or appropriate to the powers of the city; and

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

Source: Laws 1921, c. 116, art. I, § 2, p. 398; C.S.1922, § 3489; C.S.1929, § 14-102; R.S.1943, § 14-102; Laws 1963, c. 314, § 1, p. 945; Laws 1971, LB 237, § 1; Laws 1972, LB 1274, § 1; Laws 1974, LB 768, § 1; Laws 1981, LB 501, § 1; Laws 1986, LB 1027, § 186; Laws 1991, LB 356, § 1; Laws 1991, LB 849, § 59; Laws 1992, LB 1257, § 63; Laws 1993, LB 138, § 61; Laws 1993, LB 623, § 1; Laws 1997, LB 814, § 2; Laws 1999, LB 87, § 59; Laws 2008, LB806, § 1; Laws 2009, LB430, § 1; Laws 2009, LB503, § 11; Laws 2015, LB266, § 1; Laws 2022, LB800, § 9; Laws 2023, LB77, § 2.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.
Nebraska Bingo Act, see section 9-201.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Shooting Range Protection Act, see section 37-1301.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

14-137 Ordinances; how enacted.

The style of ordinances of a city of the metropolitan class shall be as follows: Be it ordained by the city council of the city of . . . . All ordinances of the city shall be passed pursuant to such rules and regulations as the city council may prescribe. Upon the passage of all ordinances the yeas and nays shall be recorded in the minutes of the city council, and a majority of the votes of all the members of the city council shall be necessary for passage. No ordinance shall be passed within a week after its introduction, except the general appropriation ordinances for salaries and wages other than salaries of

the mayor and city council members. Ordinances of a general or permanent nature shall be read by title on three different days unless three-fourths of the city council vote to suspend this requirement, except that such requirement shall not be suspended (1) for any ordinance for the annexation of territory or the redrawing of boundaries for city council election districts or wards or (2) as otherwise provided by law.

Source: Laws 1921, c. 116, art. I, § 36, p. 418; C.S.1922, § 3524; C.S. 1929, § 14-137; R.S.1943, § 14-137; Laws 2018, LB865, § 1; Laws 2021, LB131, § 9; Laws 2022, LB800, § 34; Laws 2024, LB1300, § 35.
Operative date July 19, 2024.

ARTICLE 2

OFFICERS, ELECTIONS, BONDS, SALARIES, RECALL OF OFFICERS, INITIATIVE, REFERENDUM

Section

14-211 Ordinances; when effective; repeal by referendum; procedure.

(1)(a) No ordinance passed by the city council of a city of the metropolitan class, except when otherwise required by the general laws of the state, by other provisions of sections 14-201 to 14-229, or as provided in subdivision (1)(b) of this section, shall go into effect before fifteen days from the time of its final passage.

(b) An ordinance passed by the city council of a city of the metropolitan class may take effect sooner than fifteen days from the time of its final passage if the ordinance is:

(i) For the appropriation of money to pay the salary of officers or employees of the city other than salaries of the mayor and city council members; or

(ii) An emergency ordinance that is for the preservation of the public peace, health, or safety and that contains a statement of such emergency.

(2)(a) If during such fifteen days a petition, signed and verified as provided in this section by electors of the city equal in number to at least fifteen percent of the highest number of votes cast for any city council member at the last preceding general city election, protesting against the passage of such ordinance, shall be presented to the city council, then such ordinance shall be suspended from going into operation, and it shall be the duty of the city council to reconsider such ordinance.

(b) If such ordinance is not repealed by the city council, then the city council shall proceed to submit to the voters such ordinance at a special election to be called for such purpose or at a general city election, and such ordinance shall not go into effect or become operative unless a majority of the qualified electors voting on such ordinance shall vote in favor of the question.

(3) Such petition shall be in all respects in accordance with the provisions of section 14-212 relating to signatures, verification, inspection, and certification.

Source: Laws 1921, c. 116, art. II, § 11, p. 426; C.S.1922, § 3536; C.S.1929, § 14-211; R.S.1943, § 14-211; Laws 2022, LB800, § 43; Laws 2024, LB1300, § 36.
Operative date July 19, 2024.

14-217.02 Mayor or city council members; vacancy; how filled; salaries; procedure.

(1) Vacancies in the office of mayor or city council in a city of the metropolitan class shall be filled as provided in section 32-568.

(2)(a) Salaries of the mayor and members of the city council shall be determined by ordinance subject to the requirements in this section. Except as provided in subdivision (b) of this subsection, no such salary shall be increased by more than the average percentage change in the unadjusted Consumer Price Index for All Urban Consumers published by the Federal Bureau for Labor Statistics for the period since the last salary increase plus one percent. No such salary shall be increased more than once every two fiscal years. The ordinance may establish the salary for the mayor or the city council members or both. The salary change for the mayor shall not take effect until the end of the term of the mayor in office at the time of the adoption of the ordinance. The salary change for the city council members shall take effect as soon as permitted under Article III, section 19, of the Constitution of Nebraska.

(b) The city council may place the issue on the ballot of whether to increase the salary of the mayor or the city council members or both by more than the amount permitted in subdivision (a) of this subsection for approval by the registered voters of the city. The city council shall determine the percentage of increase and hold a public hearing regarding the increase. If the city council approves the percentage by a vote of at least two-thirds of the members of the city council, the city clerk shall transmit the issue to the election commissioner or county clerk for placement on the ballot at the next statewide general election subject to section 32-559. If the salary change for the mayor is approved by a majority of the voters voting on the issue, the salary change shall take effect at the end of the term of the mayor in office at the time of the election. If the salary change for the city council members is approved by a majority of the voters voting on the issue, the salary change shall take effect as soon as permitted under Article III, section 19, of the Constitution of Nebraska.

Source: Laws 1979, LB 329, § 11; Laws 1994, LB 76, § 476; Laws 2022, LB800, § 49; Laws 2024, LB1300, § 37.
Operative date July 19, 2024.

ARTICLE 21

PUBLIC UTILITIES

Section
14-2104. Board of directors; vacancy; compensation; benefits; expenses; salary increase; procedure.

14-2104 Board of directors; vacancy; compensation; benefits; expenses; salary increase; procedure.

(1) Any vacancy occurring in the board of directors shall be filled for the unexpired term by the remaining members thereof within thirty days after the vacancy occurs. It is the intent and purpose to render the board of directors nonpartisan in character.

(2)(a) The board of directors shall set the salaries of the chairperson and other members of the board of directors as provided in this subsection. The chairperson of the board of directors of a metropolitan utilities district shall be

paid, as compensation for his or her services, the sum of one thousand two hundred sixty dollars per month as of July 19, 2024. Each of the other members of the board of directors shall be paid, as compensation for his or her services, the sum of one thousand one hundred twenty dollars per month as of July 19, 2024.

(b) Subject to subdivision (c) of this subsection, adjustments in compensation shall be made only at regular meetings of the board of directors. Except as provided in subdivision (c) of this subsection, no salary shall be increased by more than the average percentage change in the unadjusted Consumer Price Index for All Urban Consumers published by the Federal Bureau for Labor Statistics for the period since the last salary increase plus one percent. The salaries of the chairperson and other members of such board shall not be increased more often than once every two calendar years.

(c) The board of directors may place the issue on the ballot of whether to increase the salary of the chairperson and other members of such board by more than the percentage amount permitted in subdivision (b) of this subsection at the next statewide general election for approval by the registered voters of the metropolitan utilities district. The board of directors shall determine the percentage of increase and hold a public hearing regarding the increase. If the board of directors approves the percentage by a vote of at least two-thirds of the members of the board of directors, the board of directors shall transmit the issue to the election commissioner or county clerk for placement on the ballot at the next statewide general election subject to section 32-559.

(3) Members of the board of directors may be considered employees of the district for purposes of participation in medical and dental plans of insurance offered to regular employees. The dollar amount of any health insurance premiums paid from the funds of the district for the benefit of a member of the board of directors may be in addition to the amount of compensation authorized to be paid to such director pursuant to this section.

(4) The chairperson and other members of such board of directors shall also be reimbursed for actual and necessary expenses incurred in the performance of their official duties.

Source: Laws 1913, c. 143, § 4, p. 351; R.S.1913, § 4246; Laws 1919, c. 33, § 1, p. 107; C.S.1922, § 3749; C.S.1929, § 14-1005; R.S.1943, § 14-1005; Laws 1947, c. 20, § 2, p. 108; Laws 1953, c. 22, § 2, p. 94; Laws 1967, c. 45, § 1, p. 176; Laws 1981, LB 311, § 1; Laws 1985, LB 2, § 1; Laws 1990, LB 730, § 1; R.S.1943, (1991), § 14-1005; Laws 1992, LB 746, § 4; Laws 2001, LB 101, § 1; Laws 2024, LB1300, § 38.
Operative date July 19, 2024.

CHAPTER 15
CITIES OF THE PRIMARY CLASS

Article.
1. Incorporation, Extensions, Additions, Wards, Consolidation. 15-106.
2. General Powers. 15-255.
3. Elections; Officers and Employees. 15-309.

ARTICLE 1
INCORPORATION, EXTENSIONS, ADDITIONS, WARDS, CONSOLIDATION

Section
15-106. Additions; how platted; approval; filed and recorded; effect; powers of mayor, city planning commission, and city planning director; appeal.

15-106 Additions; how platted; approval; filed and recorded; effect; powers of mayor, city planning commission, and city planning director; appeal.

(1) The owner of any land within the corporate limits of a city of the primary class or contiguous thereto may lay out such land into lots, blocks, public ways, and other grounds under the name of . . . . . addition to the city of . . . . . and shall cause an accurate plat thereof to be made, designating explicitly the land so laid out and particularly describing the lots, blocks, public ways, and grounds belonging to such addition. The lots shall be designated by number and by street. Public ways and other grounds shall be designated by name and by number. Such plat shall be acknowledged before some officer authorized to take acknowledgment of deeds and shall have appended to it a certificate made by a professional land surveyor that he or she has accurately surveyed such addition and that the lots, blocks, public ways, and other grounds are staked and marked as required by such city.

(2) When such plat is made, acknowledged, and certified, complies with the requirements of section 15-901, and is approved by the city planning commission, such plat shall be filed and recorded in the office of the register of deeds and county assessor of the county in which the land is located. In lieu of approval by the city planning commission, the city council may designate specific types of plats which may be approved by the city planning director. No plat shall be recorded in the office of the register of deeds or have any force or effect unless such plat is approved by the city planning commission or the city planning director. The plat shall, after being filed with the register of deeds, be equivalent to a deed in fee simple absolute to the city, from the owner, of all streets, all public ways, squares, parks, and commons, and such portion of the land as is therein set apart for public use or dedicated to charitable, religious, or educational purposes.

(3) All additions thus laid out shall remain a part of the city, and all additions, except those additions as set forth in sections 15-106.01 and 15-106.02, laid out adjoining or contiguous to the corporate limits of a city of the primary class shall be included therein and become a part of the city for all purposes. The inhabitants of such addition shall be entitled to all the rights and privileges and subject to all the laws, ordinances, rules, and regulations of the city. The mayor

and city council shall have power by ordinance to compel owners of any such addition to lay out streets and public ways to correspond in width and direction and to be continuous with the streets and public ways in the city or additions contiguous to or near the proposed addition.

(4) No addition shall have any validity, right, or privilege as an addition unless the terms and conditions of such ordinance and of this section are complied with, the plats thereof are submitted to and approved by the city planning commission or the city planning director, and the approval of the city planning commission or the city planning director is endorsed thereon. The city council may provide procedures in land subdivision regulations for appeal by any person aggrieved by any action of the city planning commission or city planning director on any plat.

Source: Laws 1901, c. 16, § 6, p. 72; R.S.1913, § 4409; C.S.1922, § 3785; C.S.1929, § 15-106; R.S.1943, § 15-106; Laws 1959, c. 40, § 1, p. 217; Laws 1974, LB 757, § 2; Laws 1975, LB 410, § 1; Laws 1982, LB 909, § 1; Laws 1987, LB 715, § 1; Laws 1993, LB 39, § 1; Laws 2020, LB1003, § 9; Laws 2024, LB102, § 1.
Operative date September 1, 2024.

ARTICLE 2
GENERAL POWERS

Section
15-255. Public safety; measures to protect.

15-255 Public safety; measures to protect.

A city of the primary class may (1) prohibit riots, routs, noise, or disorderly assemblies, (2) prevent the discharge of firearms, rockets, powder, fireworks, or other dangerous and combustible material, (3) regulate and prevent the transportation of gunpowder or combustible articles, tar, pitch, resin, coal oil, benzine, turpentine, hemp, cotton, nitroglycerine, dynamite, petroleum or its products, or other explosives or inflammables, (4) regulate use of lights in stables, shops, or other places and building of bonfires, and (5) regulate and prohibit the piling of building material or any excavation or obstruction of the streets.

Source: Laws 1901, c. 16, § 129, LV, p. 141; R.S.1913, § 4465; C.S.1922, § 3850; C.S.1929, § 15-253; R.S.1943, § 15-255; Laws 2009, LB430, § 2; Laws 2020, LB1003, § 66; Laws 2023, LB77, § 3.

ARTICLE 3
ELECTIONS; OFFICERS AND EMPLOYEES

Section
15-309. Officers, employees; compensation; mayor and members of the city council; salaries; procedure.

15-309 Officers, employees; compensation; mayor and members of the city council; salaries; procedure.

(1) Subject to subsection (2) of this section, the city council of a city of the primary class shall have the power by ordinance to fix the salaries of the officers and employees of the city and provide by ordinance for the forfeiting of the salary of any officer or employee.

(2)(a) Salaries of the mayor and members of the city council shall be determined by ordinance subject to the requirements in this section. Except as provided in subdivision (b) of this subsection, no such salary shall be increased by more than the average percentage change in the unadjusted Consumer Price Index for All Urban Consumers published by the Federal Bureau for Labor Statistics for the period since the last salary increase plus one percent. No such salary shall be increased more than once every two fiscal years. The ordinance may establish the salary for the mayor or the city council members or both. The salary change for the mayor shall not take effect until the end of the term of the mayor in office at the time of the adoption of the ordinance. The salary change for the city council members shall take effect as soon as permitted under Article III, section 19, of the Constitution of Nebraska.

(b) The city council may place the issue on the ballot of whether to increase the salary of the mayor or the city council members or both by more than the amount permitted in subdivision (a) of this subsection for approval by the registered voters of the city. The city council shall determine the percentage of increase and hold a public hearing regarding the increase. If the city council approves the percentage by a vote of at least two-thirds of the members of the city council, the city clerk shall transmit the issue to the election commissioner or county clerk for placement on the ballot at the next statewide general election subject to section 32-559. If the salary change for the mayor is approved by a majority of the voters voting on the issue, the salary change shall take effect at the end of the term of the mayor in office at the time of the election. If the salary change for the city council members is approved by a majority of the voters voting on the issue, the salary change shall take effect as soon as permitted under Article III, section 19, of the Constitution of Nebraska.

Source: Laws 1901, c. 16, § 21, p. 77; Laws 1905, c. 16, § 4, p. 202; Laws 1907, c. 9, § 3, p. 76; Laws 1913, c. 5, § 1, p. 58; R.S.1913, § 4486; C.S.1922, § 3872; C.S.1929, § 15-309; R.S.1943, § 15-309; Laws 2020, LB1003, § 87; Laws 2024, LB1300, § 39. Operative date July 19, 2024.

CHAPTER 16
CITIES OF THE FIRST CLASS

Article.
2. General Powers. 16-202, 16-227.
3. Officers, Elections, Employees. 16-312, 16-321.01.
4. Council and Proceedings. 16-404.
5. Contracts and Franchises. 16-503.
10. Retirement Systems.
(b) Cities of the First Class Firefighters Retirement Act. 16-1020 to 16-1041.

ARTICLE 2
GENERAL POWERS

Section
16-202. Real estate; conveyance; how effected; remonstrance; procedure; hearing; exceptions.
16-227. Riots; disorderly conduct; use of explosives; vagabonds; lights; bonfires; regulation.

16-202 Real estate; conveyance; how effected; remonstrance; procedure; hearing; exceptions.

(1) Except as otherwise provided in subsection (4) of this section, the power to sell and convey any real estate owned by a city of the first class, including park land, shall be exercised by ordinance directing the conveyance of such real estate and the manner and terms thereof. Notice of such sale and the terms thereof shall be published for three consecutive weeks in a legal newspaper in or of general circulation in such city immediately after the passage and publication of such ordinance.

(2) If within thirty days after the passage and publication of such ordinance a remonstrance petition against such sale, that conforms to section 32-628, is signed by registered voters of the city equal in number to thirty percent of the registered voters of the city voting at the last regular city election held therein and is filed with the city council, the property shall not then, nor within one year thereafter, be sold. If the date for filing the petition falls upon a Saturday, Sunday, or legal holiday, the signatures shall be collected within the thirty-day period, but the filing shall be considered timely if filed or postmarked on or before the next business day. Upon the receipt of the petition, the city council, with the aid and assistance of the election commissioner or county clerk, shall determine the validity and sufficiency of signatures on the petition. The city council shall deliver the petition to the election commissioner or county clerk by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. Upon receipt of the petition, the election commissioner or county clerk shall issue to the city council a written receipt that the petition is in the custody of the election commissioner or county clerk. The election commissioner or county clerk shall compare the signature of each person signing the petition with the voter registration records to determine if each signer was a registered voter on or before the date on which the petition was filed with the city council. The election commissioner or county clerk shall also compare the signer's printed name, street and number or voting precinct, and

city, village, or post office address with the voter registration records to determine whether the signer was a registered voter. The signature and address shall be presumed to be valid only if the election commissioner or county clerk determines that the printed name, street and number or voting precinct, and city, village, or post office address matches the registration records and that the registration was received on or before the date on which the petition was filed with the city council. The determinations of the election commissioner or county clerk may be rebutted by any credible evidence which the city council finds sufficient. The express purpose of the comparison of names and addresses with the voter registration records, in addition to helping to determine the validity of the petition, the sufficiency of the petition, and the qualifications of the signer, shall be to prevent fraud, deception, and misrepresentation in the petition process. Upon completion of the comparison of names and addresses with the voter registration records, the election commissioner or county clerk shall prepare in writing a certification under seal setting forth the name and address of each signer found not to be a registered voter and the signature page number and line number where the name is found, and if the reason for the invalidity of the signature or address is other than the nonregistration of the signer, the election commissioner or county clerk shall set forth the reason for the invalidity of the signature. If the election commissioner or county clerk determines that a signer has affixed his or her signature more than once to the petition and that only one person is registered by that name, the election commissioner or county clerk shall prepare in writing a certification under seal setting forth the name of the duplicate signature and shall count only the earliest dated signature. The election commissioner or county clerk shall certify to the city council the number of valid signatures necessary to constitute a valid petition. The election commissioner or county clerk shall deliver the petition and the certifications to the city council within forty days after the receipt of the petition from the city council. The delivery shall be by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. Not more than twenty signatures on one signature page shall be counted.

(3) The city council shall, within thirty days after the receipt of the petition and certifications from the election commissioner or county clerk, hold a public hearing to review the petition and certifications and receive testimony regarding them. The city council shall, following the hearing, vote on whether or not the petition is valid and shall uphold the petition if sufficient valid signatures have been received.

(4) This section does not apply to (a) real estate used in the operation of public utilities, (b) real estate for state armory sites for the use of the State of Nebraska as expressly provided in section 16-201, or (c) real estate for state veterans' cemetery sites for the use of the State of Nebraska as expressly provided in section 12-1301.

Source: Laws 1901, c. 18, § 8, p. 230; R.S.1913, § 4817; C.S.1922, § 3985; C.S.1929, § 16-202; Laws 1935, Spec. Sess., c. 10, § 7, p. 75; Laws 1937, c. 27, § 1, p. 148; Laws 1941, c. 130, § 13, p. 497; C.S.Supp.,1941, § 16-202; R.S.1943, § 16-202; Laws 1963, c. 60, § 2, p. 252; Laws 1988, LB 793, § 4; Laws 1993, LB 59, § 1; Laws 1997, LB 230, § 1; Laws 2016, LB704, § 17; Laws 2020, LB911, § 3; Laws 2024, LB287, § 3.
Operative date July 19, 2024.

16-227 Riots; disorderly conduct; use of explosives; vagabonds; lights; bonfires; regulation.

A city of the first class may (1) prevent and restrain riots, routs, noises, disturbances, breaches of the peace, or disorderly assemblies in any street, house, or place in the city, (2) regulate, punish, and prevent the discharge of firearms, rockets, powder, fireworks, or any other dangerous combustible material in the streets, lots, grounds, and alleys or about or in the vicinity of any buildings, (3) arrest, regulate, punish, or fine vagabonds, (4) regulate and prevent the transportation or storage of gunpowder or other explosive or combustible articles, tar, pitch, resin, coal oil, benzine, turpentine, hemp, cotton, nitroglycerine, dynamite, petroleum or any other productions thereof, and other materials of like nature, the use of lights in stables, shops, or other places, and the building of bonfires, and (5) regulate and prohibit the piling of building material or any excavation or obstruction in the street.

Source: Laws 1901, c. 18, § 48, XXXIV, p. 255; R.S.1913, § 4843; C.S. 1922, § 4011; C.S.1929, § 16-228; R.S.1943, § 16-227; Laws 2009, LB430, § 3; Laws 2016, LB704, § 31; Laws 2023, LB77, § 4.

ARTICLE 3

OFFICERS, ELECTIONS, EMPLOYEES

Section
16-312. Mayor; powers and duties.
16-321.01. Municipal bidding procedure; waiver; when.

16-312 Mayor; powers and duties.

(1) The mayor of a city of the first class shall preside at all the meetings of the city council. The mayor may vote on any matter that requires either a majority vote of the city council members or a majority vote of all the elected members of the city council if (a) the mayor's vote is required due to the city council members being equally divided or (b) a majority of the city council members or majority vote of all the elected members cannot be reached due to absence, vacancy, or abstention of one or more city council members. For purposes of such vote, the mayor is deemed to be a member of the city council.

(2) The mayor shall have the superintending control of all the officers and affairs of the city and shall take care that the ordinances of the city and the provisions of law relating to cities of the first class are complied with. The mayor may administer oaths and shall sign the commissions and appointments of all the officers appointed in the city.

Source: Laws 1901, c. 18, § 19, p. 234; R.S.1913, § 4878; C.S.1922, § 4046; C.S.1929, § 16-308; R.S.1943, § 16-312; Laws 1957, c. 55, § 2, p. 266; Laws 1980, LB 662, § 1; Laws 1989, LB 790, § 1; Laws 2016, LB704, § 56; Laws 2019, LB194, § 7; Laws 2023, LB531, § 5.

16-321.01 Municipal bidding procedure; waiver; when.

Any municipal bidding procedure may be waived by the city council or board of public works of a city of the first class (1) when materials or equipment are purchased at the same price and from the same seller as materials or equipment which have formerly been obtained pursuant to the state bidding proce-

dure in the State Procurement Act, (2) when the contract is negotiated directly with a sheltered workshop pursuant to section 48-1503, or (3) when required to comply with any federal grant, loan, or program.

Source: Laws 1997, LB 238, § 2; Laws 2011, LB335, § 3; Laws 2019, LB194, § 16; Laws 2024, LB461, § 20.
Effective date July 19, 2024.

Cross References

State Procurement Act, see section 73-801.

ARTICLE 4
COUNCIL AND PROCEEDINGS

Section
16-404. City council; ordinances, resolutions, or orders; procedure for passage; vote of mayor, when; amendments; revision ordinances.

16-404 City council; ordinances, resolutions, or orders; procedure for passage; vote of mayor, when; amendments; revision ordinances.

(1) All ordinances and resolutions or orders for the appropriation or payment of money in a city of the first class shall require for their passage or adoption the concurrence of a majority of all elected members of the city council. The mayor may vote on any such matter if (a) the mayor's vote is required due to the city council members being equally divided or (b) a majority vote of all the elected members cannot be reached due to absence, vacancy, or abstention of one or more city council members. For purposes of such vote, the mayor is deemed to be a member of the city council.

(2)(a) Ordinances of a general or permanent nature in a city of the first class shall be read by title on three different days unless three-fourths of the city council members vote to suspend this requirement, except that in a city having a commission plan of government such requirement may be suspended by a three-fifths majority vote.

(b) Regardless of the form of government, such requirement shall not be suspended (i) for any ordinance for the annexation of territory or the redrawing of boundaries for city council election districts or wards or (ii) as otherwise provided by law.

(c) In case such requirement is suspended, the ordinances shall be read by title or number and then moved for final passage.

(d) Three-fourths of the city council members may require a reading of any such ordinance in full before enactment under either procedure set out in this section, except that in a city having a commission plan of government, such reading may be required by a three-fifths majority vote.

(3) Ordinances in a city of the first class shall contain no subject which is not clearly expressed in the title, and, except as provided in section 19-915, no ordinance or section thereof shall be revised or amended unless the new ordinance contains the entire ordinance or section as revised or amended and the ordinance or section so amended is repealed, except that:

(a) For an ordinance revising all the ordinances of a city of the first class, the only title necessary shall be An ordinance of the city of . . . . . , revising all the ordinances of the city. Under such title all the ordinances may be revised in

sections and chapters or otherwise, may be corrected, added to, and any part suppressed, and may be repealed with or without a saving clause as to the whole or any part without other title; and

(b) For an ordinance used solely to revise ordinances or code sections or to enact new ordinances or code sections in order to adopt statutory changes made by the Legislature which are specific and mandatory and bring the ordinances or code sections into conformance with state law, the title need only state that the ordinance revises those ordinances or code sections affected by or enacts ordinances or code sections generated by legislative changes. Under such title, all such ordinances or code sections may be revised, repealed, or enacted in sections and chapters or otherwise by a single ordinance without other title.

Source: Laws 1901, c. 18, § 37, p. 240; Laws 1903, c. 19, § 5, p. 235; R.S.1913, § 4897; C.S.1922, § 4065; C.S.1929, § 16-404; R.S. 1943, § 16-404; Laws 1961, c. 43, § 1, p. 174; Laws 1969, c. 108, § 2, p. 510; Laws 1972, LB 1235, § 1; Laws 1975, LB 172, § 1; Laws 1980, LB 662, § 2; Laws 1989, LB 790, § 2; Laws 1990, LB 966, § 1; Laws 1994, LB 630, § 2; Laws 2003, LB 365, § 1; Laws 2016, LB704, § 73; Laws 2018, LB865, § 3; Laws 2019, LB193, § 5; Laws 2019, LB194, § 25; Laws 2021, LB131, § 11; Laws 2021, LB285, § 3; Laws 2023, LB531, § 6.

Cross References

For other provisions for revision of ordinances, see section 16-247.

ARTICLE 5
CONTRACTS AND FRANCHISES

Section
16-503. Contracts; concurrence of majority of city council required; vote of mayor, when; record.

16-503 Contracts; concurrence of majority of city council required; vote of mayor, when; record.

On the passage or adoption of every resolution or order to enter into a contract, or accepting of work done under contract, by the mayor or city council of a city of the first class, the yeas and nays shall be called and entered upon the record. To pass or adopt any bylaw or ordinance or any such resolution or order, a concurrence of a majority of all elected members of the city council shall be required. The mayor may vote on any such matter if (1) the mayor's vote is required due to the city council members being equally divided or (2) a majority vote of all the elected members of the city council cannot be reached due to absence, vacancy, or abstention of one or more city council members. For purposes of such vote, the mayor is deemed to be a member of the city council. The requirements of a roll call or viva voce vote shall be satisfied by a city which utilizes an electronic voting device which allows the yeas and nays of each city council member to be readily seen by the public.

Source: Laws 1901, c. 18, § 34, p. 239; R.S.1913, § 4903; C.S.1922, § 4071; C.S.1929, § 16-503; R.S.1943, § 16-503; Laws 1961, c. 43, § 2, p. 174; Laws 1975, LB 172, § 2; Laws 1978, LB 609, § 1; Laws 1980, LB 662, § 3; Laws 1988, LB 625, § 1; Laws 2016, LB704, § 78; Laws 2019, LB194, § 30; Laws 2023, LB531, § 7.

ARTICLE 10
RETIREMENT SYSTEMS

(b) CITIES OF THE FIRST CLASS FIREFIGHTERS RETIREMENT ACT

(b) CITIES OF THE FIRST CLASS FIREFIGHTERS RETIREMENT ACT

16-1020 Cities of the First Class Firefighters Retirement Act, how cited; applicability.

(1) Sections 16-1020 to 16-1042 shall be known and may be cited as the Cities of the First Class Firefighters Retirement Act.

(2) Except as provided in section 16-1039, sections 16-1020 to 16-1038 shall apply to all firefighters of a city of the first class.

Source: Laws 1983, LB 531, § 1; Laws 2024, LB686, § 1.
Effective date July 19, 2024.

16-1021 Terms, defined.

For the purposes of the Cities of the First Class Firefighters Retirement Act, unless the context otherwise requires:

(1) Absolute coverage group means an absolute coverage group as described in 20 C.F.R. 404.1205 as such regulation existed on January 1, 2024;

(2) Actuarial equivalent means equality in value of the aggregate amount of benefit expected to be received under different forms or at different times determined as of a given date as adopted by the city or the retirement committee for use by the retirement system. Actuarial equivalencies shall be specified in the funding medium established for the retirement system, except that if benefits under the retirement system are obtained through the purchase of an annuity contract, the actuarial equivalency of any such form of benefit shall be the amount of pension benefit which can be purchased or otherwise provided by such contract. All actuarial and mortality assumptions adopted by the city or retirement committee shall be on a sex-neutral basis;

(3) Annuity contract means the contract or contracts issued by one or more life insurance companies or designated trusts and purchased by the retirement

system in order to provide any of the benefits described in the Cities of the First Class Firefighters Retirement Act. Annuity conversion rates contained in any such contract shall be specified on a sex-neutral basis;

(4) Beneficiary means the person or persons designated by a firefighter, pursuant to a written instrument filed with the retirement committee before the firefighter's death, to receive death benefits which may be payable under the retirement system;

(5) Funding agent means any bank, trust company, life insurance company, thrift institution, credit union, or investment management firm selected by the retirement committee, subject to the approval of the city, to hold or invest the funds of the retirement system;

(6) Regular interest means the rate of interest earned each calendar year commencing January 1, 1984, equal to the rate of net earnings realized for the calendar year from investments of the retirement fund. Net earnings means the amount by which income or gain realized from investments of the retirement fund exceeds the amount of any realized losses from such investments during the calendar year. The retirement committee shall annually report the amount of regular interest earned for such year;

(7) Regular pay means the salary of a firefighter at the date such firefighter elects to retire or terminate employment with the city;

(8) Retirement committee means the retirement committee created pursuant to section 16-1034;

(9) Retirement system means a retirement system established pursuant to the Cities of the First Class Firefighters Retirement Act;

(10) Retirement value means the accumulated value of the firefighter's employee account and employer account. The retirement value at any time shall consist of the sum of the contributions made or transferred to such accounts by the firefighter and by the city on the firefighter's behalf and the regular interest credited to the accounts through such date, reduced by any realized losses which were not taken into account in determining regular interest in any year, and as further adjusted each year to reflect the accounts' pro rata share of the appreciation or depreciation of the assets of the retirement system as determined by the retirement committee at their fair market values, including any account under subsection (2) of section 16-1036. Such valuation shall be undertaken at least annually as of December 31 of each year and at such other times as may be directed by the retirement committee. The value of each account shall be reduced each year by the appropriate share of the investment costs as provided in section 16-1036.01. The retirement value shall be further reduced by the amount of all distributions made to or on the behalf of the firefighter from the retirement system;

(11)(a) Salary means all amounts paid to a participating firefighter by the employing city for personal services as reported on the participant's federal income tax withholding statement, including overtime, call-in, and call-back pay and the firefighter's contributions picked up by the city as provided in subsection (2) of section 16-1024 and any salary reduction contributions that are excludable from income for federal income tax purposes pursuant to section 125 or 457 of the Internal Revenue Code; and

(b) Salary does not include clothing allowances;

(12) Sex-neutral basis means the benefit calculation provided to the city of the first class by a licensed domestic or foreign insurance or annuity company with a product available for purchase in Nebraska that utilizes a blended, non-gender-specific rate for actuarial assumptions, mortality assumptions, and annuity conversion rates for a particular participant, except that if a blended, non-gender-specific rate is not available for purchase in Nebraska, the benefit calculation shall be performed using the arithmetic mean of the male-specific actuarial assumptions, mortality assumptions, or annuity conversion rates and the female-specific actuarial assumptions, mortality assumptions, or annuity conversion rates, as applicable, for a particular participant, and the arithmetic mean shall be determined by adding the male-specific actuarial assumptions, mortality assumptions, or annuity conversion rates to the female-specific actuarial assumptions, mortality assumptions, or annuity conversion rates applicable to a particular participant and dividing the sum by two; and

(13) Straight life annuity means an ordinary annuity payable for the life of the primary annuitant only, and terminating at his or her death without refund or death benefit of any kind.

Source: Laws 1983, LB 531, § 2; Laws 1993, LB 724, § 1; Laws 1995, LB 574, § 21; Laws 2014, LB759, § 11; Laws 2024, LB686, § 2. Effective date July 19, 2024.

16-1023 Firefighters Retirement System Fund; city maintain; transfer of contributions; funding of system.

(1) Commencing on January 1, 1984, each city of the first class having a paid fire department shall keep and maintain a Firefighters Retirement System Fund for the purpose of investing payroll deductions and city contributions to the retirement system. The fund shall be maintained separate and apart from all city money and funds. The fund shall be administered exclusively for the purposes of the retirement system and for the benefit of participating firefighters and their beneficiaries and so as to establish the fund as a trust under the law of this state for all purposes of section 401(a) of the Internal Revenue Code. Upon the passage of sections 16-1020 to 16-1038 all of the contributions made by a firefighter under section 35-203.01 as it formerly existed and interest accrued at five percent per annum on such contributions prior to January 1, 1984, shall be transferred to the firefighter's employee account. Regular interest shall begin to accrue on the contributions transferred into the fund. Such funds shall be invested in the manner prescribed in section 16-1036.

(2) The city shall establish a medium for funding the retirement system which, with the approval of the retirement committee, may be a pension trust fund, custodial account, group annuity contract, or combination thereof, for the purpose of investing money for the retirement system in the manner prescribed by section 16-1036 and to provide the retirement, death, and disability benefits for firefighters granted by the Cities of the First Class Firefighters Retirement Act. The trustee or custodian of any trust fund shall be a designated funding agent which is qualified to act as a fiduciary or custodian in this state, the city treasurer, an appropriate city officer authorized to administer funds of the city, or a combination thereof.

Source: Laws 1983, LB 531, § 4; Laws 1993, LB 724, § 2; Laws 1995, LB 574, § 22; Laws 2024, LB686, § 3.
Effective date July 19, 2024.

16-1024 Contribution by firefighter; amount; interest; city; pick up firefighters' contributions; voluntary contribution.

(1)(a) Each firefighter participating in the retirement system shall contribute to the retirement system a sum equal to:

(i) Until September 30, 2024, six and one-half percent of his or her salary;

(ii) Beginning October 1, 2024, and until September 30, 2025, eight and seven-tenths percent of his or her salary;

(iii) Beginning October 1, 2025, and until September 30, 2026, ten and seven-tenths percent of his or her salary; and

(iv) Beginning October 1, 2026, twelve and seven-tenths percent of his or her salary.

(b) Such payment shall be made by regular payroll deductions from his or her periodic salary and shall be credited to his or her employee account on a monthly basis. Each such account shall also be credited with regular interest.

(c) Beginning July 20, 2024, each firefighter covered by an absolute coverage group and participating in the retirement system shall receive an offset from his or her retirement system contribution equal to six and two-tenths percent of his or her salary. This subdivision (1)(c) shall not apply to any firefighter, covered by an absolute coverage group, employed as a firefighter by a city with a population of more than sixty thousand inhabitants located in a county with a population of more than one hundred thousand inhabitants.

(2) Each city of the first class with firefighters participating in a retirement system shall pick up the firefighters' contributions required by subsection (1) of this section for all compensation paid on or after January 1, 1984, and the contributions so picked up shall be treated as employer contributions in determining federal income tax treatment under the Internal Revenue Code, except that the city shall continue to withhold federal income taxes based upon such contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the Internal Revenue Code, such contributions shall not be included as gross income of the employee until such time as they are distributed from the retirement system. The city shall pay the employee contributions from the same source of funds which is used in paying compensation to the employee. The city shall pick up the employee contributions by a salary deduction either through a reduction in the cash salary of the employee or a combination of a reduction in salary and offset against a future salary increase. In no event shall a firefighter be given an option to choose to receive the amount of the required contribution in lieu of having such contribution paid directly to the retirement system.

(3) Each firefighter participating in the retirement system shall be entitled to make voluntary cash contributions to the retirement system in an amount not to exceed the contribution limitations established by the Internal Revenue Code. Voluntary contributions shall be credited to the employee account and shall thereafter be credited with regular interest. A voluntary contribution shall become a part of the Firefighters Retirement System Fund and shall be held, administered, invested, and distributed in the same manner as any other employee contribution to the retirement system.

Source: Laws 1983, LB 531, § 5; Laws 1993, LB 724, § 3; Laws 1995, LB 574, § 23; Laws 2024, LB686, § 4.
Effective date July 19, 2024.

16-1025 Contributions by city; amount; how credited; interest.

(1)(a) Beginning January 1, 1984, each city of the first class with firefighters participating in a retirement system shall contribute to the retirement system a sum equal to:

(i) Until September 30, 2025, thirteen percent of each such participating firefighter's periodic salary;

(ii) Beginning October 1, 2025, and until September 30, 2026, fourteen percent of each such participating firefighter's periodic salary; and

(iii) Beginning October 1, 2026, fifteen percent of each such participating firefighter's periodic salary.

(b) Such payment shall be credited to his or her employer account on a monthly basis. Each such account shall also be credited with regular interest. The city shall also contribute to the employer account of any firefighter employed by the city on January 1, 1984, an amount equal to the employee's contributions, without interest, that were made to the city prior to January 1, 1984, with such contribution to be made at the time the firefighter retires or terminates employment with the city. The city may contribute such amount before the firefighter's retirement or termination of employment or credit interest on such contribution.

(c) Beginning July 20, 2024, each city of the first class with firefighters covered by an absolute coverage group and participating in a retirement system shall receive an offset from the retirement system contribution equal to six and two-tenths of each such participating firefighter's periodic salary. This subdivision (1)(c) shall not apply to any city with a population of sixty thousand or more inhabitants located in a county with a population of one hundred thousand or more inhabitants with firefighters covered by an absolute coverage group.

(2) Each such city shall contribute any additional amounts necessary to fund retirement or other retirement plan benefits not provided by employee contributions or city contributions to the employer account required by subsection (1) of this section. Such additional contributions shall be accumulated in an unallocated employer account of the Firefighters Retirement System Fund and used to provide the benefits, if any, specified in sections 16-1027 and 16-1029 to 16-1031 which are not otherwise funded by the firefighter's retirement value. Funds needed to provide for a firefighter's benefits shall be transferred from the unallocated employer account when and as such funds are needed. All funds committed by the city to the funding of a firefighter pension system on January 1, 1984, that are not transferred to the firefighters employee accounts shall be transferred to the unallocated employer account.

Source: Laws 1983, LB 531, § 6; Laws 1993, LB 724, § 4; Laws 2024, LB686, § 5.
Effective date July 19, 2024.

16-1030 Firefighter; death in the line of duty; retirement benefits.

(1) When prior to commencement of retirement benefits any firefighter participating in the retirement system dies in the line of duty or in case death is caused by or is the result of injuries received while in the line of duty and such firefighter is not survived by a spouse or minor children, the entire retirement value shall be payable to the beneficiary or beneficiaries specified by the

deceased firefighter prior to his or her death or to the deceased firefighter's estate in the event that no beneficiary was specified. The retirement value or portion thereof may be paid in the form of a single lump-sum payment, a straight life annuity, or any other optional form of benefit specified in the retirement system's funding medium. For a firefighter who is survived by a spouse or minor children, a retirement pension of fifty percent of regular pay shall be paid to the surviving spouse or, upon his or her remarriage or death, to the minor child or children during such child's or children's minority subject to deduction of the amounts paid as workers' compensation benefits on account of death as provided in section 16-1032. Each such child shall share equally in the total pension benefit to the age of majority, except that as soon as a child attains the age of majority, such pension benefit to such child shall cease and be reallocated among the remaining minor children until the last remaining child dies or reaches the age of majority.

(2) Any payments for the benefit of a minor child shall be made on behalf of such child to the surviving spouse or, if there is none, to the legal guardian of the child.

(3) In the event the surviving spouse or minor children of such deceased firefighter die before the aggregate amount of pension payments received by the firefighter and his or her survivor beneficiaries, if any, equals the total amount in the firefighter's employee account at the time of the first benefit payment, the difference between the total amount in the employee account and the aggregate amount of pension payments received by the retired firefighter and his or her surviving beneficiaries, if any, shall be paid in a single sum to the firefighter's beneficiary or, in the absence of a surviving beneficiary, his or her estate.

(4) In the event the surviving spouse remarries and there are no minor children at the time of remarriage, and the aggregate amount of pension payments received by the firefighter and his or her survivor beneficiaries, if any, is less than the total amount in the firefighter's employee account at the time of remarriage, the difference between the total amount in the employee account and the aggregate amount of pension payments received by the retired firefighter and his or her surviving beneficiaries, if any, shall be paid in a single sum to the surviving spouse who remarried.

(5) To the extent that the retirement value at the date of death exceeds the amount required to purchase the specified retirement pension, reduced by any amounts paid as workers' compensation benefits, the excess shall be paid in the manner provided in subsection (1) of section 16-1029.

Source: Laws 1983, LB 531, § 11; Laws 1986, LB 811, § 6; Laws 1992, LB 672, § 24; Laws 1993, LB 724, § 8; Laws 2024, LB686, § 6. Effective date July 19, 2024.

16-1033 Firefighter; termination of employment; benefits; how treated; vesting schedule.

(1) In the event a firefighter quits or is discharged before his or her retirement date as defined in subsection (3) of section 16-1028, the firefighter may request and receive, as a lump-sum payment, an amount equal to the value of his or her employee account as determined at the valuation date preceding his or her termination of employment pursuant to subdivision (10) of section 16-1021. Such firefighter, if vested, may, in lieu thereof, receive a deferred pension benefit or lump-sum benefit in an amount purchased or provided by

the vested retirement value at the date of retirement. The retirement value at such retirement date shall consist of the then accumulated value of the firefighter's employee account at the date of the retirement as reduced by any lump-sum distributions received prior to retirement, together with a vested percentage of the accumulated value of the firefighter's employer account at the date of retirement. The vesting schedule shall be as follows:

(a) If the terminating firefighter has been a member of the system for less than four years, the vesting percentage shall be zero; and

(b) If the terminating firefighter has been a member of the paid department of the city for at least four years, the vesting percentage shall be forty percent. The vesting percentage shall be sixty percent after five years, eighty percent after six years, and one hundred percent after seven years.

(2) The deferred pension benefit shall be payable on the first of the month immediately following the terminating firefighter's fifty-fifth birthday. At the option of the firefighter, such pension benefit may be paid as of the first of the month after he or she attains the age of fifty. Such election may be made by the firefighter any time prior to the payment of the pension benefits.

(3) The deferred pension benefit shall be paid in the optional benefit forms specified at subsection (1) of section 16-1027 as elected by the firefighter. Notwithstanding anything to the contrary under the Cities of the First Class Firefighters Retirement Act, if the firefighter's vested retirement value at the date of his or her termination of employment is less than three thousand five hundred dollars, such firefighter shall, upon request within one year of such termination, be paid his or her vested retirement value in the form of a single lump-sum payment.

(4) Effective January 1, 1997, a firefighter may elect, upon his or her termination of employment, to receive his or her vested retirement value in the form of a single lump-sum payment. For a firefighter whose termination of employment is prior to January 1, 1997, this election shall be available only if the city has adopted a lump-sum distribution option for terminating firefighters in the funding medium established for the retirement system.

(5) Upon any lump-sum payment of a terminating firefighter's retirement value under this section, such firefighter will not be entitled to any deferred pension benefit and the city and the retirement system shall have no further obligation to pay such firefighter or his or her beneficiaries any benefits under the Cities of the First Class Firefighters Retirement Act.

(6) In the event that the terminating firefighter is not credited with one hundred percent of his or her employer account, the remaining nonvested portion of the account shall be forfeited and shall be deposited in the unallocated employer account. If the actuarial analysis required by section 16-1037 shows that the assets of the unallocated employer account are sufficient to provide for the projected plan liabilities, such forfeitures shall instead be used to meet the expenses incurred by the city in connection with administering the retirement system, and the remainder shall then be used to reduce the city contribution which would otherwise be required to fund pension benefits.

Source: Laws 1983, LB 531, § 14; Laws 1993, LB 724, § 10; Laws 1994, LB 1068, § 3; Laws 1998, LB 1191, § 19; Laws 2024, LB686, § 7.
Effective date July 19, 2024.

16-1034 Retirement committee; established; city council; responsibilities; powers and duties; allocation.

(1) A retirement committee shall be established to supervise the general operation of the retirement system. The city council shall be responsible for the general administration of such retirement system unless specific functions or all functions with regard to the administration of the retirement system are delegated, by ordinance, to the retirement committee. All costs incurred with regard to the administration of the retirement system shall be paid by the city from the unallocated employer account as provided in section 16-1036.01.

(2) The city and retirement committee shall have all powers which are necessary for or appropriate to establishing, maintaining, managing, and administering the retirement system. Whenever the Cities of the First Class Firefighters Retirement Act fails to address the allocation of duties or powers in the administration of the retirement system, such powers or duties shall be vested in the city unless such powers or duties have been delegated by ordinance to the retirement committee.

Source: Laws 1983, LB 531, § 15; Laws 1992, LB 672, § 25; Laws 1993, LB 724, § 11; Laws 2016, LB704, § 207; Laws 2024, LB686, § 8. Effective date July 19, 2024.

16-1036 Firefighters Retirement System Fund; authorized investments; retirement committee; powers and duties.

(1) The funds in the Firefighters Retirement System Fund shall be invested by the retirement committee. The city, subject to the approval of the retirement committee, shall contract with a funding agent or agents to hold or invest the assets of the retirement system and to provide for the benefits provided by the Cities of the First Class Firefighters Retirement Act. The retirement committee, subject to the approval of the city, may also select an investment manager. The city, subject to approval of the retirement committee, may contract with investment managers registered under the federal Investment Advisers Act of 1940 to invest, reinvest, and otherwise manage such portion of the assets of the retirement system as may be assigned by the city or retirement committee.

(2) The retirement committee shall establish an investment plan which allows each member of the retirement system to allocate all contributions to his or her employee account and, if he or she commenced his or her employment after January 1, 1984, his or her employer account to the various investment options or combinations of investment options described in such plan. Each firefighter shall have the option of investing his or her employee account and, if he or she commenced his or her employment after January 1, 1984, his or her employer account in any proportion, including full allocation, in any investment option offered by the plan. Upon the direction of the city, firefighters employed on January 1, 1984, may have the option to allocate their employer account to various investment options or combinations of investment options in any proportion, including full allocation, in any investment option offered by the plan. Each firefighter shall be given a summary of the investment plan and a detailed current description of each investment option prior to making or revising his or her allocation.

(3) The funds in the Firefighters Retirement System Fund shall be invested pursuant to the policies established by the Nebraska Investment Council.

(4) The retirement committees of two or more cities of the first class may, by written agreement and approval by the retirement committee of each such city of the first class, agree to pool investments and administration of plan benefits with a single administrative and investment agent. Such agreement shall be made using an interlocal agreement that expressly states that the city shall not be liable for ongoing management of pooled investments or any liability relating to such management. City general funds, forfeiture funds held by the city, and funds held for an account of any firefighter employed by the city on January 1, 1984, shall not be eligible for use for such pooling agreement or the operation of such pooling agreement.

Source: Laws 1983, LB 531, § 17; Laws 1991, LB 2, § 3; Laws 1992, LB 672, § 27; Laws 1993, LB 724, § 12; Laws 2004, LB 1097, § 1; Laws 2024, LB686, § 9.
Effective date July 19, 2024.

16-1037 Retirement committee; duties.

(1) It shall be the duty of the retirement committee to:

(a) Elect a chairperson, a vice-chairperson, and such other officers as the committee deems appropriate;

(b) Hold regular quarterly meetings and special meetings upon the call of the chairperson;

(c) Conduct meetings pursuant to the Open Meetings Act;

(d) Provide each employee a summary of plan eligibility requirements, benefit provisions, and investment options available to such employee;

(e) Provide, within thirty days after a request is made by a participant, a statement describing the amount of benefits such participant is eligible to receive; and

(f) Make available for review an annual report of the system's operations describing both (i) the amount of contributions to the system from both employee and employer sources and (ii) an identification of the total assets of the retirement system.

(2)(a) For any defined benefit plan, by December 31 each year the chairperson of the retirement committee or his or her designee shall prepare and electronically file an annual report with the Auditor of Public Accounts and the Nebraska Retirement Systems Committee of the Legislature. If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, the report shall be in addition to the reports required by section 13-2402. The report shall be on a form prescribed by the Auditor of Public Accounts and shall include, but not be limited to, the following information:

(i) The levels of benefits of participants in the plan, the number of members who are eligible for a benefit, the total present value of such members' benefits, and the funding sources which will pay for such benefits; and

(ii) A copy of a full actuarial analysis of each such defined benefit plan. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization which offers investment advice or provides investment management services to the retirement plan.

(b) The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the retirement committee does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the retirement committee. All costs of the audit shall be paid by the retirement committee.

Source: Laws 1983, LB 531, § 18; Laws 1992, LB 672, § 28; Laws 1998, LB 1191, § 20; Laws 1999, LB 795, § 8; Laws 2004, LB 821, § 8; Laws 2011, LB474, § 8; Laws 2014, LB759, § 13; Laws 2017, LB415, § 8; Laws 2024, LB686, § 10.
Effective date July 19, 2024.

Cross References

Open Meetings Act, see section 84-1407.

16-1038 Retirement benefits; exemption from legal process; exception; tax-qualification requirements; benefit error; correction; appeal; tax levy authorized.

(1) The right to any benefits under the retirement system and the assets of any fund of the retirement system shall not be assignable or subject to execution, garnishment, attachment, or the operation of any bankruptcy or insolvency laws, except that the retirement system may comply with the directions set forth in a qualified domestic relations order meeting the requirements of section 414(p) of the Internal Revenue Code. The city or retirement committee may require appropriate releases from any person as a condition to complying with any such order. The retirement system shall not recognize any domestic relations order which alters or changes benefits, provides for a form of benefit not otherwise provided for by the retirement system, increases benefits not otherwise provided by the retirement system, or accelerates or defers the time of payment of benefits. No participant or beneficiary shall have any right to any specific portion of the assets of the retirement system.

(2) The retirement system shall be administered in a manner necessary to comply with the tax-qualification requirements applicable to government retirement plans under section 401(a) of the Internal Revenue Code, including section 401(a)(9) relating to the time and manner in which benefits are required to be distributed and section 401(a)(9)(G) relating to incidental death benefit requirements, section 401(a)(16) relating to compliance with the maximum limitation on the plan benefits or contributions under section 415, section 401(a)(17) which limits the amount of compensation which can be taken into account under a retirement plan, section 401(a)(25) relating to the specification of actuarial assumptions, section 401(a)(31) relating to direct rollover distribution from eligible retirement plans, and section 401(a)(37) relating to the death benefit of a firefighter who dies while performing qualified military service. Any requirements for compliance with section 401(a) of the Internal Revenue Code may be set forth in any trust or funding medium for the retirement system. This subsection shall be in full force and effect only so long as conformity with section 401(a) of the Internal Revenue Code is required for public retirement systems in order to secure the favorable income tax treatment extended to sponsors and beneficiaries of tax-qualified retirement plans.

(3) If the retirement committee determines that the retirement system has previously overpaid or underpaid a benefit payable under the Cities of the First

Class Firefighters Retirement Act, it shall have the power to correct such error. In the event of an overpayment, the retirement system may, in addition to any other remedy that the retirement system may possess, offset future benefit payments by the amount of the prior overpayment, together with regular interest thereon.

(4) A firefighter whose benefit payment is adjusted by the retirement committee pursuant to subsection (3) of this section may request a review by the city council of the adjustment made by the retirement committee.

(5) In order to provide the necessary amounts to pay for or fund a pension plan established under the Cities of the First Class Firefighters Retirement Act, the mayor and council may make a levy which is within the levy restrictions of section 77-3442.

Source: Laws 1983, LB 531, § 19; Laws 1993, LB 724, § 13; Laws 1995, LB 574, § 24; Laws 1996, LB 1114, § 30; Laws 2012, LB916, § 3; Laws 2012, LB1082, § 16; Laws 2015, LB40, § 3; Laws 2024, LB686, § 11.
Effective date July 19, 2024.

16-1041 Benefits under prior law, how construed.

Nothing in the Cities of the First Class Firefighters Retirement Act shall in any manner affect the right of any person now receiving or entitled to receive, now or in the future, pension or other benefits provided for in sections 35-201 to 35-216, as they exist immediately prior to January 1, 1984, to receive such pension or other benefits in all respects the same as if such sections remained in full force and effect.

Source: Laws 1983, LB 531, § 22; Laws 1985, LB 6, § 1; Laws 2024, LB686, § 12.
Effective date July 19, 2024.

CHAPTER 17
CITIES OF THE SECOND CLASS AND VILLAGES

Article.
1. Laws Applicable Only to Cities of the Second Class. 17-107, 17-110.
5. General Grant of Power. 17-556, 17-568.02.
6. Elections, Officers, Ordinances.
   (c) Ordinances. 17-614.
9. Particular Municipal Enterprises.
   (c) Cemeteries. 17-938.

ARTICLE 1
LAWS APPLICABLE ONLY TO CITIES OF THE SECOND CLASS

Section
17-107. Mayor; qualifications; election; officers; appointment; removal; terms of office; police officers; appointment; removal, demotion, or suspension; procedure.
17-110. Mayor; general duties and powers.

17-107 Mayor; qualifications; election; officers; appointment; removal; terms of office; police officers; appointment; removal, demotion, or suspension; procedure.

(1) A mayor of a city of the second class shall be elected in the manner provided in the Election Act. The mayor shall take office on the date of the first regular meeting of the city council held in December following the statewide general election. The mayor shall be a resident and registered voter of the city. If the president of the city council assumes the office of mayor for the unexpired term, there shall be a vacancy on the city council which vacancy shall be filled as provided in section 32-568.

(2) The mayor, with the consent of the city council, may appoint such officers as shall be required by ordinance or otherwise required by law. Such officers may be removed from office by the mayor, with the consent of the city council. The terms of office for all officers, except regular police officers, appointed by the mayor and confirmed by the city council shall be established by the city council by ordinance. The ordinance shall provide that either (a) the officers hold the office to which they have been appointed until the end of the mayor's term of office and until their successors are appointed and qualified unless sooner removed or (b) the officers hold office for one year unless sooner removed.

(3)(a) The mayor, by and with the consent of the city council, shall appoint such a number of regular police officers as may be necessary. All police officers appointed by the mayor and city council may be removed, demoted, or suspended at any time by the mayor as provided in subdivision (b) of this subsection. A police officer, including the chief of police, may appeal to the city council such removal, demotion, or suspension with or without pay. After a hearing, the city council may uphold, reverse, or modify the action.

(b) The city council shall by ordinance adopt rules and regulations governing the removal, demotion, or suspension with or without pay of any police officer, including the chief of police. The ordinance shall include a procedure for such

removal, demotion, or suspension with or without pay of any police officer, including the chief of police, upon the written accusation of the police chief, the mayor, or any citizen or taxpayer. The city council shall establish by ordinance procedures for acting upon such written accusation, including: (i) Provisions for giving notice and a copy of the written accusation to the police officer; (ii) the police officer's right to have an attorney or representative retained by the police officer present with him or her at all hearings or proceedings regarding the written accusation; (iii) the right of the police officer or his or her attorney or representative retained by the police officer to be heard and present evidence; and (iv) the right of the police officer as well as the individual imposing the action or their respective attorneys or representatives to record all hearings or proceedings regarding the written accusation. The ordinance shall also include a procedure for making application for an appeal, specifications on the period of time within which such application shall be made, and provisions on the manner in which the appeals hearing shall be conducted. Both the police officer and the individual imposing the action or their respective attorneys or representatives shall have the right at the hearing to be heard and to present evidence to the city council for its consideration. Not later than thirty days following the adjournment of the meeting at which the hearing was held, the city council shall vote to uphold, reverse, or modify the action. The failure of the city council to act within thirty days or the failure of a majority of the elected city council members to vote to reverse or modify the action shall be construed as a vote to uphold the action. The decision of the city council shall be based upon its determination that, under the facts and evidence presented at the hearing, the action was necessary for the proper management and the effective operation of the police department in the performance of its duties under the statutes of the State of Nebraska. Nothing in this section shall be construed to prevent the preemptory suspension or immediate removal from duty of an officer by the appropriate authority, pending the hearing authorized by this section, in cases of gross misconduct, neglect of duty, or disobedience of orders.

(c) This subsection does not apply to a police officer during his or her probationary period.

Source: Laws 1879, § 6, p. 194; Laws 1881, c. 23, § 1, p. 168; R.S.1913, § 4999; Laws 1921, c. 155, § 1, p. 637; C.S.1922, § 4168; Laws 1923, c. 67, § 3, p. 203; Laws 1925, c. 36, § 1, p. 143; C.S.1929, § 17-107; R.S.1943, § 17-107; Laws 1955, c. 38, § 1, p. 151; Laws 1969, c. 257, § 7, p. 935; Laws 1972, LB 1032, § 104; Laws 1973, LB 559, § 2; Laws 1974, LB 1025, § 1; Laws 1976, LB 441, § 1; Laws 1976, LB 782, § 13; Laws 1994, LB 76, § 491; Laws 1995, LB 346, § 1; Laws 2009, LB158, § 1; Laws 2011, LB308, § 1; Laws 2017, LB133, § 5; Laws 2024, LB1118, § 1.
Effective date July 19, 2024.

Cross References

Election Act, see section 32-101.

17-110 Mayor; general duties and powers.

(1) The mayor shall preside at all meetings of the city council of a city of the second class. The mayor may vote on any matter that requires either a majority vote of the city council or a majority vote of all the elected members of the city

council if (a) the mayor's vote is required due to the city council members being equally divided or (b) a majority of the city council members or majority vote of all the elected members cannot be reached due to absence, vacancy, or abstention of one or more city council members. For purposes of such vote, the mayor is deemed to be a member of the city council.

(2) The mayor shall have superintendence and control of all the officers and affairs of the city and shall take care that the ordinances of the city and all laws governing cities of the second class are complied with.

Source: Laws 1879, § 10, p. 195; R.S.1913, § 5002; C.S.1922, § 4171; C.S.1929, § 17-110; R.S.1943, § 17-110; Laws 1957, c. 55, § 3, p. 266; Laws 1975, LB 172, § 3; Laws 1980, LB 662, § 4; Laws 2013, LB113, § 1; Laws 2017, LB133, § 8; Laws 2023, LB531, § 8.

ARTICLE 5
GENERAL GRANT OF POWER

Section
17-556. Public safety; firearms; explosives; riots; regulation.
17-568.02. Municipal bidding procedure; waiver; when.

17-556 Public safety; firearms; explosives; riots; regulation.

Cities of the second class and villages shall have the power to (1) prevent and restrain riots, routs, noises, disturbances, or disorderly assemblages, (2) regulate, prevent, restrain, or remove nuisances and to designate what shall be considered a nuisance, (3) regulate, punish, and prevent the discharge of firearms, rockets, powder, fireworks, or any other dangerous combustible material in the streets, lots, grounds, alleys, or about or in the vicinity of any buildings, and (4) arrest, regulate, punish, or fine all vagrants.

Source: Laws 1879, § 69, XXV, p. 216; Laws 1881, c. 23, § 8, XXV, p. 184; Laws 1885, c. 20, § 1, XXV, p. 175; Laws 1887, c. 12, § 1, XXV, p. 303; R.S.1913, § 5130; C.S.1922, § 4305; C.S.1929, § 17-454; R.S.1943, § 17-556; Laws 2009, LB430, § 4; Laws 2017, LB133, § 180; Laws 2023, LB77, § 5.

17-568.02 Municipal bidding procedure; waiver; when.

Any municipal bidding procedure may be waived by the city council, village board of trustees, or board of public works (1) when materials or equipment are purchased at the same price and from the same seller as materials or equipment which have formerly been obtained pursuant to the state bidding procedure in the State Procurement Act, (2) when the contract is negotiated directly with a sheltered workshop pursuant to section 48-1503, or (3) when required to comply with any federal grant, loan, or program.

Source: Laws 1997, LB 238, § 4; Laws 2011, LB335, § 4; Laws 2017, LB133, § 194; Laws 2024, LB461, § 21.
Effective date July 19, 2024.

Cross References

State Procurement Act, see section 73-801.

ARTICLE 6
ELECTIONS, OFFICERS, ORDINANCES

(c) ORDINANCES

Section
17-614. Ordinances; how enacted; title.

(c) ORDINANCES

17-614 Ordinances; how enacted; title.

(1)(a) All ordinances and resolutions or orders for the appropriation or payment of money shall require for their passage or adoption the concurrence of a majority of all elected members of the city council in a city of the second class or village board of trustees. The mayor of a city of the second class may vote on any such matter if (i) the mayor's vote is required due to the city council members being equally divided or (ii) a majority vote of all the elected members of the city council cannot be reached due to absence, vacancy, or abstention of one or more city council members. For purposes of such vote, the mayor is deemed to be a member of the city council.

(b) Ordinances of a general or permanent nature shall be read by title on three different days unless three-fourths of the city council or village board of trustees vote to suspend this requirement. Such requirement shall not be suspended (i) for any ordinance for the annexation of territory or the redrawing of boundaries for city council or village board of trustees election districts or wards or (ii) as otherwise provided by law.

(c) In case such requirement is suspended, the ordinances shall be read by title and then moved for final passage.

(d) Three-fourths of the city council or village board of trustees may require a reading of any such ordinance in full before enactment under either procedure set out in this section.

(2) Ordinances shall contain no subject which is not clearly expressed in the title, and, except as provided in section 19-915, no ordinance or section of such ordinance shall be revised or amended unless the new ordinance contains the entire ordinance or section as revised or amended and the ordinance or section so amended is repealed, except that:

(a) For an ordinance revising all the ordinances of the city of the second class or village, the title need only state that the ordinance revises all the ordinances of the city or village. Under such title all the ordinances may be revised in sections and chapters or otherwise, may be corrected, added to, and any part suppressed, and may be repealed with or without a saving clause as to the whole or any part without other title; and

(b) For an ordinance used solely to revise ordinances or code sections or to enact new ordinances or code sections in order to adopt statutory changes made by the Legislature which are specific and mandatory and bring the ordinances or code sections into conformance with state law, the title need only state that the ordinance revises those ordinances or code sections affected by or enacts ordinances or code sections generated by legislative changes. Under such title, all such ordinances or code sections may be revised, repealed, or

enacted in sections and chapters or otherwise by a single ordinance without other title.

Source: Laws 1879, § 79, p. 223; R.S.1913, § 5154; C.S.1922, § 4329; Laws 1929, c. 47, § 1, p. 202; C.S.1929, § 17-520; R.S.1943, § 17-614; Laws 1969, c. 108, § 3, p. 510; Laws 1972, LB 1235, § 2; Laws 1994, LB 630, § 3; Laws 2001, LB 484, § 2; Laws 2003, LB 365, § 2; Laws 2013, LB113, § 2; Laws 2017, LB133, § 213; Laws 2018, LB865, § 4; Laws 2021, LB131, § 14; Laws 2021, LB285, § 4; Laws 2023, LB531, § 9.

ARTICLE 9

PARTICULAR MUNICIPAL ENTERPRISES

(c) CEMETERIES

Section

(c) CEMETERIES

17-938 Cemetery; maintenance; tax; forfeiture of lot; resale; reclamation of lot; procedure.

(1) The mayor and city council or the village board of trustees of a city of the second class or village are hereby empowered to levy a tax not to exceed five and two-tenths cents on each one hundred dollars upon the taxable value of all taxable property in such city or village for any one year for improving, adorning, protecting, and caring for a cemetery as provided in section 17-926.

(2) Except as provided in subsection (3) of this section, all certificates to any lot or lots upon which no interments have been made and which have been sold for burial purposes under the provisions of section 17-941 may be declared forfeited and subject to resale if, for more than three consecutive years, all charges and liens as provided under sections 17-926 to 17-947 or by any of the rules, regulations, or bylaws of the association are not promptly paid by the holders of such certificates. All certificates to any lot or lots sold shall contain a forfeiture clause to the effect that if no interment has been made on the lot or lots and all liens and charges have not been paid as provided in this subsection, by ordinance, or in the bylaws of the association, such certificate and the rights under the same may, at the option of the cemetery board, with the approval of the mayor and city council or of the chairperson and village board of trustees, be declared null and void and the lot or lots shall be subject to resale as in the first instance.

(3)(a) Except as provided in subdivision (b) of this subsection, when any lot has been transferred by warranty deed or by a deed conveying a fee simple title, but there has been no burial in any such lot or subdivision thereof and no payment of annual assessments for a period of three years, the cemetery board, with the approval of the mayor and city council or of the chairperson and village board of trustees, may reclaim the unused portion of such lot or subdivision after notifying the record owner or his or her heirs or assigns, if known, by certified mail and publishing notice of its intention to do so. Such notice shall be published once each week for four weeks in a legal newspaper in or of general circulation throughout the county in which the cemetery is located, shall describe the lot or subdivision proposed to be reclaimed, and

shall be addressed to the person in whose name such portion stands of record or, if there is no owner of record, to all persons claiming any interest in such lot or subdivision. If no person appears to claim such lot or subdivision and pay all delinquent assessments with interest within fifteen days after the last date of such publication, the cemetery board may by resolution reclaim such lot or subdivision. Such reclamation shall be complete upon a filing of a verified copy of such resolution, together with proof of publication, in the office of the register of deeds.

(b) A city of the second class or village that has not levied a tax pursuant to subsection (1) of this section within the preceding five calendar years of a proposed forfeiture, shall, for purposes of forfeiture, reclamation, or reinvestment of a cemetery lot, be governed by section 12-701.

Source: Laws 1929, c. 46, § 9, p. 200; C.S.1929, § 17-549; R.S.1943, § 17-938; Laws 1953, c. 287, § 23, p. 944; Laws 1955, c. 43, § 1, p. 158; Laws 1971, LB 38, § 1; Laws 1979, LB 249, § 1; Laws 1979, LB 187, § 60; Laws 1980, LB 599, § 7; Laws 1986, LB 808, § 1; Laws 1992, LB 719A, § 62; Laws 2017, LB133, § 271; Laws 2024, LB257, § 3.
Effective date July 19, 2024.

CHAPTER 18
CITIES AND VILLAGES; LAWS APPLICABLE TO ALL

ARTICLE 4
PUBLIC UTILITIES

18-419 Sale, lease, or license of dark fiber; authorized.

In addition to the powers authorized by sections 18-401 to 18-418 and any ordinances or resolutions relating to the provision of electric service, any city or village owning or operating electric generation or transmission facilities may sell, lease, or license its dark fiber pursuant to sections 86-574 to 86-578.

Source: Laws 2001, LB 827, § 8; Laws 2002, LB 1105, § 419; Laws 2024, LB61, § 1.
Effective date July 19, 2024.

ARTICLE 12
MISCELLANEOUS TAXES

18-1208 Occupation tax; imposition or increase; election; procedure; annual report; contents.

(1) Except as otherwise provided in this section, after July 19, 2012, a municipality may impose a new occupation tax or increase the rate of an existing occupation tax, which new occupation tax or increased rate of an existing occupation tax is projected to generate annual occupation tax revenue in excess of the applicable amount listed in subsection (2) of this section, pursuant to section 14-109, 15-202, 15-203, 16-205, or 17-525 if the question of whether to impose the tax or increase the rate of an existing occupation tax has been submitted at an election held within the municipality and in which all registered voters shall be entitled to vote on the question. The officials of the municipality shall order the submission of the question by submitting a certified copy of the resolution proposing the tax or tax 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 the question are in favor of the new tax or increased rate of an existing occupation tax, then the governing body of such municipality shall be empowered to impose the new tax or to impose the increased tax rate. If a majority of those voting on the question are opposed to the new tax or increased rate, then the governing body of the municipality shall not impose the new tax or increased rate but shall maintain any existing occupation tax at its current rate.

(2) The applicable amount of annual revenue for each new occupation tax or annual revenue raised by the increased rate for an existing occupation tax for purposes of subsection (1) of this section is:

(a) For cities of the metropolitan class, six million dollars;

(b) For cities of the primary class, three million dollars;

(c) For cities of the first class, seven hundred thousand dollars; and

(d) For cities of the second class and villages, three hundred thousand dollars.

(3) After July 19, 2012, a municipality shall not be required to submit the following questions to the registered voters:

(a) Whether to change the rate of an occupation tax imposed for a specific project which does not provide for deposit of the tax proceeds in the municipality's general fund; or

(b) Whether to terminate an occupation tax earlier than the determinable termination date under the original question submitted to the registered voters.

This subsection applies to occupation taxes imposed prior to, on, or after July 19, 2012.

(4) This section shall not apply to (a) an occupation tax subject to section 86-704 or (b) a municipality imposing an occupation tax within that portion of a good life district established pursuant to the Good Life Transformational Projects Act which is located within the corporate limits of such municipality if the good life district applicant has approved of the occupation tax. The changes made in this subdivision by Laws 2024, LB1317, shall not be construed to invalidate an occupation tax imposed prior to April 24, 2024.

(5) No later than ninety days after the end of the fiscal year, each municipality that imposes or increases any occupation tax as provided under this section shall provide an annual report on the collection and use of such occupation tax. The report shall be posted on the municipality's public website or made available for public inspection at a location designated by the municipality. The report shall include, but not be limited to:

(a) A list of all such occupation taxes collected by the municipality;

(b) The amount generated annually by each such occupation tax;

(c) Whether funds generated by each such occupation tax are deposited in the general fund, cash funds, or other funds of the municipality;

(d) Whether any such occupation tax is dedicated for a specific purpose, and if so, the amount dedicated for such purpose; and

(e) The scheduled or projected termination date, if any, of each such occupation tax.

Source: Laws 2012, LB745, § 1; Laws 2019, LB445, § 1; Laws 2024, LB1317, § 55.
Operative date April 24, 2024.

Cross References

Election Act, see section 32-101.
Good Life Transformational Projects Act, see section 77-4401.

ARTICLE 17
MISCELLANEOUS

Section
18-1703. Transferred to section 13-330.
18-1723. Firefighter; police officer; presumption of death or disability; rebuttable.
18-1737. Handicapped or disabled persons; offstreet parking facility; onstreet parking; designation; removal of unauthorized vehicle; penalty; state agency, defined.

18-1703 Transferred to section 13-330.

18-1723 Firefighter; police officer; presumption of death or disability; rebuttable.

Whenever any firefighter who has served a total of five years as a member of a paid fire department of any city in this state or any police officer of any city or village, including any city having a home rule charter, shall suffer death or disability as a result of hypertension or heart or respiratory defect or disease, there shall be a rebuttable presumption that such death or disability resulted from accident or other cause while in the line of duty for all purposes of the Police Officers Retirement Act, sections 15-1012 to 15-1027, and the Cities of the First Class Firefighters Retirement Act, and any firefighter's or police officer's pension plan established pursuant to any home rule charter, the Legislature specifically finding the subject of this section to be a matter of general statewide concern. The rebuttable presumption shall apply to death or disability as a result of hypertension or heart or respiratory defect or disease after the firefighter or police officer separates from his or her applicable employment if the death or disability occurs within three months after such separation. Such rebuttable presumption shall apply in any action or proceeding arising out of death or disability incurred prior to December 25, 1969, and which has not been processed to final administrative or judicial conclusion prior to such date.

Source: Laws 1969, c. 281, § 1, p. 1048; Laws 1985, LB 3, § 3; Laws 2010, LB373, § 1; Laws 2012, LB1082, § 17; Laws 2021, LB163, § 106; Laws 2024, LB686, § 13.
Effective date July 19, 2024.

Cross References

Police Officers Retirement Act, see section 16-1001.

18-1737 Handicapped or disabled persons; offstreet parking facility; onstreet parking; designation; removal of unauthorized vehicle; penalty; state agency, defined.

(1) Any city or village, any state agency, and any person in lawful possession of any offstreet parking facility may designate stalls or spaces, including access aisles, in such facility owned or operated by the city, village, state agency, or person for the exclusive use of handicapped or disabled persons whose motor vehicles display the distinguishing license plates issued to such individuals pursuant to section 60-3,113, such other handicapped or disabled persons or temporarily handicapped or disabled persons whose motor vehicles display a handicapped or disabled parking permit, and such other motor vehicles which display a handicapped or disabled parking permit. Such designation shall be made by posting aboveground and immediately adjacent to and visible from each stall or space, including access aisles, a sign which is in conformance with the Manual on Uniform Traffic Control Devices adopted pursuant to section 60-6,118 and the federal Americans with Disabilities Act of 1990 and the federal regulations adopted in response to the act, as the act and the regulations existed on January 1, 2024.

(2) The owner or person in lawful possession of an offstreet parking facility, after notifying the police or sheriff's department, as the case may be, and any city, village, or state agency providing onstreet parking or owning, operating, or providing an offstreet parking facility may cause the removal, from a stall or space, including access aisles, designated exclusively for handicapped or disabled persons or temporarily handicapped or disabled persons or motor vehicles for the transportation of handicapped or disabled persons or temporarily handicapped or disabled persons, of any vehicle not displaying the proper handicapped or disabled parking permit or the distinguishing license plates specified in this section if there is posted aboveground and immediately adjacent to and visible from such stall or space, including access aisles, a sign which clearly and conspicuously states the area so designated as a tow-in zone.

(3) A person who parks a vehicle in any onstreet parking space or access aisle which has been designated exclusively for handicapped or disabled persons or temporarily handicapped or disabled persons or motor vehicles for the transportation of handicapped or disabled persons or temporarily handicapped or disabled persons, or in any so exclusively designated parking space or access aisle in any offstreet parking facility, without properly displaying the proper license plates or handicapped or disabled parking permit or when the handicapped or disabled person to whom or for whom, as the case may be, the license plate or permit is issued will not enter or exit the vehicle while it is parked in the designated space or access aisle shall be guilty of a handicapped parking infraction as defined in section 18-1741.01 and shall be subject to the penalties and procedures set forth in sections 18-1741.01 to 18-1741.07. The display on a motor vehicle of a distinguishing license plate or permit issued to a handicapped or disabled person by and under the duly constituted authority of another state shall constitute a full and complete defense in any action for a handicapped parking infraction as defined in section 18-1741.01. If the identity of the person who parked the vehicle in violation of this section cannot be readily determined, the owner or person in whose name the vehicle is registered shall be held prima facie responsible for such violation and shall be guilty and subject to the penalties and procedures described in this section. In the case of a privately owned offstreet parking facility, a city or village shall not require the owner or person in lawful possession of such facility to inform the city or village of a violation of this section prior to the city or village issuing the violator a handicapped parking infraction citation.

(4) For purposes of this section and section 18-1741.01, state agency means any division, department, board, bureau, commission, or agency of the State of Nebraska created by the Constitution of Nebraska or established by act of the Legislature, including the University of Nebraska and the Nebraska state colleges, when the entity owns, leases, controls, or manages property which includes offstreet parking facilities.

Source: Laws 1977, LB 13, § 2; Laws 1979, LB 146, § 2; Laws 1980, LB 717, § 3; Laws 1987, LB 598, § 2; Laws 1991, LB 113, § 1; Laws 1992, LB 933, § 1; Laws 1993, LB 370, § 4; Laws 1993, LB 632, § 8; Laws 1995, LB 593, § 2; Laws 1996, LB 1211, § 2; Laws 1998, LB 299, § 2; Laws 2001, LB 809, § 2; Laws 2005, LB 274, § 226; Laws 2011, LB163, § 2; Laws 2024, LB1200, § 1. Operative date April 16, 2024.

ARTICLE 21

COMMUNITY DEVELOPMENT

Section

18-2101 Act, how cited.

Sections 18-2101 to 18-2157 shall be known and may be cited as the Community Development Law.

Source: Laws 1951, c. 224, § 1, p. 797; R.R.S.1943, § 14-1601; Laws 1957, c. 52, § 1, p. 247; R.R.S.1943, § 19-2601; Laws 1973, LB 299, § 1; Laws 1997, LB 875, § 2; Laws 2007, LB562, § 1; Laws 2013, LB66, § 1; Laws 2018, LB496, § 1; Laws 2018, LB874, § 4; Laws 2019, LB86, § 1; Laws 2020, LB1021, § 1; Laws 2023, LB531, § 10.

18-2101.02 Extremely blighted area; governing body; duties; review; public hearing; period of validity.

(1) For any city that (a) intends to carry out a redevelopment project which will involve the construction of workforce housing in an extremely blighted area as authorized under subdivision (28)(g) of section 18-2103, (b) intends to prepare a redevelopment plan that will divide ad valorem taxes for a period of

more than fifteen years but not more than twenty years as provided in subdivision (4)(a) of section 18-2147, (c) intends to declare an area as an extremely blighted area for purposes of funding decisions under subdivision (1)(b) of section 58-708, or (d) intends to declare an area as an extremely blighted area in order for individuals purchasing residences in such area to qualify for the income tax credit authorized in subsection (7) of section 77-2715.07, the governing body of such city shall first declare, by resolution adopted after the public hearings required under this section, such area to be an extremely blighted area.

(2) Prior to making such declaration, the governing body of the city shall conduct or cause to be conducted a study or an analysis on whether the area is extremely blighted and shall submit the question of whether such area is extremely blighted to the planning commission or board of the city for its review and recommendation. The planning commission or board shall hold a public hearing on the question after giving notice of the hearing as provided in section 18-2115.01. The planning commission or board shall submit its written recommendations to the governing body of the city within thirty days after the public hearing.

(3) Upon receipt of the recommendations of the planning commission or board, or if no recommendations are received within thirty days after the public hearing required under subsection (2) of this section, the governing body shall hold a public hearing on the question of whether the area is extremely blighted after giving notice of the hearing as provided in section 18-2115.01. At the public hearing, all interested parties shall be afforded a reasonable opportunity to express their views respecting the proposed declaration. After such hearing, the governing body of the city may make its declaration.

(4) Copies of each study or analysis conducted pursuant to subsection (2) of this section shall be posted on the city's public website or made available for public inspection at a location designated by the city.

(5) The study or analysis required under subsection (2) of this section may be conducted in conjunction with the study or analysis required under section 18-2109. The hearings required under this section may be held in conjunction with the hearings required under section 18-2109.

(6) Notwithstanding any other provisions of the Community Development Law, the designation of an area as an extremely blighted area pursuant to this section shall be valid for a period of no less than twenty-five years from the effective date of the resolution declaring such area to be an extremely blighted area, except that such designation may be removed prior to the end of such period pursuant to section 18-2156.

Source: Laws 2019, LB86, § 2; Laws 2020, LB1003, § 172; Laws 2021, LB25, § 1; Laws 2022, LB1065, § 1; Laws 2023, LB531, § 11.

18-2103 Terms, defined.

For purposes of the Community Development Law, unless the context otherwise requires:

(1) Area of operation means and includes the area within the corporate limits of the city and such land outside the city as may come within the purview of sections 18-2123 and 18-2123.01;

(2) Authority means any community redevelopment authority created pursuant to section 18-2102.01 and any community development agency created pursuant to section 18-2101.01 and does not include a limited community redevelopment authority;

(3) Blighted area means an area (a) which, by reason of the presence of a substantial number of deteriorated or deteriorating structures, existence of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of the community, retards the provision of housing accommodations, or constitutes an economic or social liability and is detrimental to the public health, safety, morals, or welfare in its present condition and use and (b) in which there is at least one of the following conditions: (i) Unemployment in the designated area is at least one hundred twenty percent of the state or national average; (ii) the average age of the residential or commercial units in the area is at least forty years; (iii) more than half of the plotted and subdivided property in an area is unimproved land that has been within the city for forty years and has remained unimproved during that time; (iv) the per capita income of the area is lower than the average per capita income of the city or village in which the area is designated; or (v) the area has had either stable or decreasing population based on the last two decennial censuses. In no event shall a city of the metropolitan, primary, or first class designate more than thirty-five percent of the city as blighted, a city of the second class shall not designate an area larger than fifty percent of the city as blighted, and a village shall not designate an area larger than one hundred percent of the village as blighted. A redevelopment project involving a formerly used defense site as authorized under section 18-2123.01, any area which is located within a good life district established under the Good Life Transformational Projects Act, and any area declared to be an extremely blighted area under section 18-2101.02 shall not count towards the percentage limitations contained in this subdivision;

(4) Bonds means any bonds, including refunding bonds, notes, interim certificates, debentures, or other obligations issued pursuant to the Community Development Law except for bonds issued pursuant to section 18-2142.04;

(5) Business means any private business located in an enhanced employment area;

(6) City means any city or incorporated village in the state;

(7) Clerk means the clerk of the city or village;

(8) Community redevelopment area means a substandard and blighted area which the community redevelopment authority designates as appropriate for a redevelopment project;

(9) Employee means a person employed at a business as a result of a redevelopment project;

(10) Employer-provided health benefit means any item paid for by the employer in total or in part that aids in the cost of health care services,

including, but not limited to, health insurance, health savings accounts, and employer reimbursement of health care costs;

(11) Enhanced employment area means an area not exceeding six hundred acres (a) within a community redevelopment area which is designated by an authority as eligible for the imposition of an occupation tax or (b) not within a community redevelopment area as may be designated under section 18-2142.04;

(12) Equivalent employees means the number of employees computed by (a) dividing the total hours to be paid in a year by (b) the product of forty times the number of weeks in a year;

(13) Extremely blighted area means a substandard and blighted area in which: (a) The average rate of unemployment in the area during the period covered by the most recent federal decennial census or American Community Survey 5-Year Estimate is at least two hundred percent of the average rate of unemployment in the state during the same period; and (b) the average poverty rate in the area exceeds twenty percent for the total federal census tract or tracts or federal census block group or block groups in the area;

(14) Federal government means the United States of America, or any agency or instrumentality, corporate or otherwise, of the United States of America;

(15) Governing body or local governing body means the city council, board of trustees, or other legislative body charged with governing the municipality;

(16) Limited community redevelopment authority means a community redevelopment authority created pursuant to section 18-2102.01 having only one single specific limited pilot project authorized;

(17) Mayor means the mayor of the city or chairperson of the board of trustees of the village;

(18) New investment means the value of improvements to real estate made in an enhanced employment area by a developer or a business;

(19) Number of new employees means the number of equivalent employees that are employed at a business as a result of the redevelopment project during a year that are in excess of the number of equivalent employees during the year immediately prior to the year that a redevelopment plan is adopted;

(20) Obligee means any bondholder, agent, or trustee for any bondholder, or lessor demising to any authority, established pursuant to section 18-2102.01, property used in connection with a redevelopment project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with such authority;

(21) Occupation tax means a tax imposed under section 18-2142.02;

(22) Person means any individual, firm, partnership, limited liability company, corporation, company, association, joint-stock association, or body politic and includes any trustee, receiver, assignee, or other similar representative thereof;

(23) Public body means the state or any municipality, county, township, board, commission, authority, district, or other political subdivision or public body of the state;

(24) Real property means all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein,

including terms for years and liens by way of judgment, mortgage, or otherwise, and the indebtedness secured by such liens;

(25) Redeveloper means any person, partnership, or public or private corporation or agency which enters or proposes to enter into a redevelopment contract;

(26) Redevelopment contract means a contract entered into between an authority and a redeveloper for the redevelopment of an area in conformity with a redevelopment plan;

(27) Redevelopment plan means a plan, as it exists from time to time for one or more community redevelopment areas, or for a redevelopment project, which (a) conforms to the general plan for the municipality as a whole and (b) is sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the community redevelopment area, zoning and planning changes, if any, land uses, maximum densities, and building requirements;

(28) Redevelopment project means any work or undertaking in one or more community redevelopment areas: (a) To acquire substandard and blighted areas or portions thereof, including lands, structures, or improvements the acquisition of which is necessary or incidental to the proper clearance, development, or redevelopment of such substandard and blighted areas; (b) to clear any such areas by demolition or removal of existing buildings, structures, streets, utilities, or other improvements thereon and to install, construct, or reconstruct streets, utilities, parks, playgrounds, public spaces, public parking facilities, sidewalks or moving sidewalks, convention and civic centers, bus stop shelters, lighting, benches or other similar furniture, trash receptacles, shelters, skywalks and pedestrian and vehicular overpasses and underpasses, enhancements to structures in the redevelopment plan area which exceed minimum building and design standards in the community and prevent the recurrence of substandard and blighted conditions, and any other necessary public improvements essential to the preparation of sites for uses in accordance with a redevelopment plan; (c) to sell, lease, or otherwise make available land in such areas for residential, recreational, commercial, industrial, or other uses, including parking or other facilities functionally related or subordinate to such uses, or for public use or to retain such land for public use, in accordance with a redevelopment plan; and may also include the preparation of the redevelopment plan, the planning, survey, and other work incident to a redevelopment project and the preparation of all plans and arrangements for carrying out a redevelopment project; (d) to dispose of all real and personal property or any interest in such property, or assets, cash, or other funds held or used in connection with residential, recreational, commercial, industrial, or other uses, including parking or other facilities functionally related or subordinate to such uses, or any public use specified in a redevelopment plan or project, except that such disposition shall be at its fair value for uses in accordance with the redevelopment plan; (e) to acquire real property in a community redevelopment area which, under the redevelopment plan, is to be repaired or rehabilitated for dwelling use or related facilities, repair or rehabilitate the structures, and resell the property; (f) to carry out plans for a program of voluntary or compulsory repair, rehabilitation, or demolition of buildings in accordance with the redevelopment plan; and (g) in a rural community or in an extremely blighted area

within a municipality that is not a rural community, to carry out construction of workforce housing;

(29) Redevelopment project valuation means the valuation for assessment of the taxable real property in a redevelopment project last certified for the year prior to the effective date of the provision authorized in section 18-2147;

(30) Rural community means any municipality in a county with a population of fewer than one hundred thousand inhabitants as determined by the most recent federal decennial census;

(31) Substandard area means an area in which there is a predominance of buildings or improvements, whether nonresidential or residential in character, which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime, (which cannot be remedied through construction of prisons), and is detrimental to the public health, safety, morals, or welfare; and

(32) Workforce housing means:

(a) Housing that meets the needs of today's working families;

(b) Housing that is attractive to new residents considering relocation to a rural community;

(c) Owner-occupied housing units that cost not more than two hundred seventy-five thousand dollars to construct or rental housing units that cost not more than two hundred thousand dollars per unit to construct. For purposes of this subdivision (c), housing unit costs shall be updated annually by the Department of Economic Development based upon the most recent increase or decrease in the Producer Price Index for all commodities, published by the United States Department of Labor, Bureau of Labor Statistics;

(d) Owner-occupied and rental housing units for which the cost to substantially rehabilitate exceeds fifty percent of a unit's assessed value; and

(e) Upper-story housing.

Source: Laws 1951, c. 224, § 3, p. 797; R.R.S.1943, § 14-1603; Laws 1957, c. 52, § 4, p. 249; Laws 1961, c. 61, § 3, p. 227; R.R.S. 1943, § 19-2603; Laws 1965, c. 74, § 3, p. 303; Laws 1969, c. 106, § 2, p. 488; Laws 1973, LB 299, § 3; Laws 1979, LB 158, § 2; Laws 1980, LB 986, § 2; Laws 1984, LB 1084, § 2; Laws 1993, LB 121, § 143; Laws 1997, LB 875, § 5; Laws 2007, LB562, § 2; Laws 2012, LB729, § 1; Laws 2013, LB66, § 2; Laws 2014, LB1012, § 1; Laws 2018, LB496, § 2; Laws 2018, LB874, § 7; Laws 2019, LB86, § 3; Laws 2020, LB1003, § 173; Laws 2021, LB131, § 18; Laws 2024, LB1317, § 56.
Operative date April 24, 2024.

Cross References

Good Life Transformational Projects Act, see section 77-4401.

18-2105 Formulation of workable program; disaster assistance; effect.

(1) The governing body of a city or an authority at its direction for the purposes of the Community Development Law may formulate for the city a

workable program for utilizing appropriate private and public resources to eliminate or prevent the development or spread of urban blight, to encourage needed urban rehabilitation, to provide for the redevelopment of substandard and blighted areas, or to undertake any or all of such activities or other feasible activities as may be suitably employed to achieve the objectives of such workable program. Such workable program may include, without limitation, provision for (a) the prevention of the spread of blight into areas of the city which are free from blight through diligent enforcement of housing, zoning, and occupancy controls and standards; (b) the rehabilitation or conservation of substandard and blighted areas or portions of such areas by replanning, removing congestion, and providing parks, playgrounds, and other public improvements by encouraging voluntary rehabilitation and by compelling the repair and rehabilitation of deteriorated or deteriorating structures; and (c) the clearance and redevelopment of substandard and blighted areas or portions of such areas.

(2) As part of a workable program formulated under subsection (1) of this section, the governing body of a city or an authority may develop guidelines for the consideration or approval of redevelopment projects that are financed in whole or in part through the division of taxes as provided in section 18-2147. Such guidelines may establish general goals and priorities for the use of funds from such division of taxes or limitations or restrictions on the use of funds from such division of taxes within such city.

(3) Notwithstanding any other provisions of the Community Development Law, where the local governing body certifies that an area is in need of redevelopment or rehabilitation as a result of flood, fire, hurricane, earthquake, storm, or other catastrophe respecting which the Governor of the state has certified the need for disaster assistance under federal law, the local governing body may approve a redevelopment plan and a redevelopment project with respect to such area without regard to the provisions of the Community Development Law requiring a general plan for the city and notice and public hearing or findings other than as provided in this section.

Source: Laws 1951, c. 224, § 4(2), p. 800; R.R.S.1943, § 14-1605; Laws 1957, c. 52, § 6, p. 253; Laws 1961, c. 61, § 5, p. 231; R.R.S. 1943, § 19-2605; Laws 1997, LB 875, § 6; Laws 2023, LB531, § 12.

18-2109 Redevelopment plan; preparation; requirements; planning commission or board; public hearing; notice; governing body; public hearing; notice; resolution.

(1) A redevelopment plan for a redevelopment project area shall not be prepared and the governing body of the city in which such area is located shall not approve a redevelopment plan unless the governing body has, by resolution adopted after the public hearings required under this section, declared such area to be a substandard and blighted area in need of redevelopment.

(2) Prior to making such declaration, the governing body of the city shall conduct or cause to be conducted a study or an analysis on whether the area is substandard and blighted and shall submit the question of whether such area is substandard and blighted to the planning commission or board of the city for its review and recommendation. The planning commission or board shall hold a public hearing on the question after giving notice of the hearing as provided

in section 18-2115.01. The planning commission or board shall submit its written recommendations to the governing body of the city within thirty days after the public hearing.

(3) Upon receipt of the recommendations of the planning commission or board, or if no recommendations are received within thirty days after the public hearing required under subsection (2) of this section, the governing body shall hold a public hearing on the question of whether the area is substandard and blighted after giving notice of the hearing as provided in section 18-2115.01. At the public hearing, all interested parties shall be afforded a reasonable opportunity to express their views respecting the proposed declaration. After such hearing, the governing body of the city may adopt a resolution declaring that substandard and blighted conditions exist in the area under study. After the governing body has declared that substandard and blighted conditions exist in the area under study, the governing body may, by one or more resolutions, declare such area or any portion of such area to be a substandard and blighted area without further public hearing.

(4) Copies of each substandard and blighted study or analysis conducted pursuant to subsection (2) of this section shall be posted on the city's public website or made available for public inspection at a location designated by the city.

Source: Laws 1951, c. 224, § 6(2), p. 805; R.R.S.1943, § 14-1609; Laws 1957, c. 52, § 8, p. 257; Laws 1961, c. 61, § 7, p. 236; R.R.S. 1943, § 19-2609; Laws 1997, LB 875, § 8; Laws 2018, LB874, § 10; Laws 2020, LB1003, § 174; Laws 2020, LB1021, § 3; Laws 2022, LB1065, § 2; Laws 2023, LB531, § 13.

18-2117.01 Plan; report to Property Tax Administrator; contents; compilation of data.

(1)(a) On or before December 1 each year, each city which has approved one or more redevelopment plans which are financed in whole or in part through the division of taxes as provided in section 18-2147 shall provide a report to the Property Tax Administrator on each such redevelopment plan which includes the following information:

(i) A copy of the redevelopment plan and any amendments thereto, including the date upon which the redevelopment plan was approved, the effective date for dividing the ad valorem tax as provided to the county assessor pursuant to subsection (6) of section 18-2147, and the location and boundaries of the property in the redevelopment project; and

(ii) A short narrative description of the type of development undertaken by the city or village with the financing and the type of business or commercial activity locating within the redevelopment project area as a result of the redevelopment project.

(b) If a city has approved one or more redevelopment plans using an expedited review under section 18-2155, the city may file a single report under this subsection for all such redevelopment plans.

(2) The report required under subsection (1) of this section must be filed each year, regardless of whether the information in the report has changed, except that a city is not required to refile a copy of the redevelopment plan or an amendment thereto if such copy or amendment has previously been filed.

(3) The Property Tax Administrator shall compile a report for each active redevelopment project, based upon information provided by the cities pursuant to subsection (1) of this section and information reported by the county assessor or county clerk on the certificate of taxes levied pursuant to section 77-1613.01. Each report shall be electronically transmitted to the Clerk of the Legislature not later than March 1 each year. The report may include any recommendations of the Property Tax Administrator as to what other information should be included in the report from the cities so as to facilitate analysis of the uses, purposes, and effectiveness of tax-increment financing and the process for its implementation or to streamline the reporting process provided for in this section to eliminate unnecessary paperwork.

Source: Laws 1997, LB 875, § 12; Laws 1999, LB 774, § 2; Laws 2006, LB 808, § 1; Laws 2012, LB782, § 19; Laws 2018, LB874, § 15; Laws 2020, LB1021, § 13; Laws 2023, LB531, § 14.

18-2117.02 Redevelopment projects; annual report; contents.

On or before May 1 of each year, each authority, or such other division or department of the city as designated by the governing body, shall compile information regarding the approval and progress of redevelopment projects that are financed in whole or in part through the division of taxes as provided in section 18-2147 and report such information to the governing body of the city and to the governing body of each county, school district, community college area, educational service unit, and natural resources district whose property taxes are affected by such division of taxes. The report shall include, but not be limited to, the following information:

(1) The total number of active redevelopment projects within the city that have been financed in whole or in part through the division of taxes as provided in section 18-2147;

(2) The total estimated project costs for all such redevelopment projects;

(3) The estimated amount of outstanding indebtedness related to each such redevelopment project and an estimated date by which such indebtedness is expected to be paid in full;

(4) A comparison between the initial projected valuation of property included in each such redevelopment project as described in the redevelopment contract or, for redevelopment projects approved using an expedited review under section 18-2155, in the redevelopment plan and the assessed value of the property included in each such redevelopment project as of January 1 of the year of the report;

(5) The number of such redevelopment projects approved by the governing body in the previous calendar year;

(6) Information specific to each such redevelopment project approved by the governing body in the previous calendar year, including the project area, project type, amount of financing approved, and total estimated project costs;

(7) The number of redevelopment projects for which financing has been paid in full during the previous calendar year and for which taxes are no longer being divided pursuant to section 18-2147; and

(8) The percentage of the city that has been designated as blighted.

Source: Laws 2018, LB874, § 16; Laws 2020, LB1003, § 177; Laws 2020, LB1021, § 14; Laws 2023, LB531, § 15.

18-2142.05 Construction of workforce housing; governing body; duties.

Prior to approving a redevelopment project that expressly carries out the construction of workforce housing, a governing body shall (1) receive a housing study which is current within twenty-four months for any city of the metropolitan class or current within sixty months for any other city or village, (2) prepare an incentive plan for construction of housing in the municipality targeted to house existing or new workers, (3) hold a public hearing on such incentive plan with notice which complies with the conditions set forth in section 18-2115.01, and (4) after the public hearing find that such incentive plan is necessary to prevent the spread of blight and substandard conditions within the municipality, will promote additional safe and suitable housing for individuals and families employed in the municipality, and will not result in the unjust enrichment of any individual or company. A public hearing held under this section shall be separate from any public hearing held under section 18-2115.

Source: Laws 2018, LB496, § 3; Laws 2020, LB1003, § 179; Laws 2023, LB531, § 16.

18-2147 Ad valorem tax; division authorized; limitations; qualified allocation plan.

(1) Any redevelopment plan as originally approved or as later modified pursuant to section 18-2117 may contain a provision that any ad valorem tax levied upon real property, or any portion thereof, in a redevelopment project for the benefit of any public body shall be divided, for the applicable period described in subsection (4) of this section, as follows:

(a) That portion of the ad valorem tax which is produced by the levy at the rate fixed each year by or for each such public body upon the redevelopment project valuation shall be paid into the funds of each such public body in the same proportion as are all other taxes collected by or for the body. When there is not a redevelopment project valuation on a parcel or parcels, the county assessor shall determine the redevelopment project valuation based upon the fair market valuation of the parcel or parcels as of January 1 of the year prior to the year that the ad valorem taxes are to be divided. The county assessor shall provide written notice of the redevelopment project valuation to the authority as defined in section 18-2103 and the owner. The authority or owner may protest the valuation to the county board of equalization within thirty days after the date of the valuation notice. All provisions of section 77-1502 except dates for filing of a protest, the period for hearing protests, and the date for mailing notice of the county board of equalization's decision are applicable to any protest filed pursuant to this section. The county board of equalization shall decide any protest filed pursuant to this section within thirty days after the filing of the protest. The county clerk shall mail a copy of the decision made by the county board of equalization on protests pursuant to this section to the authority or owner within seven days after the board's decision. Any decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission, in accordance with section 77-5013, within thirty days after the date of the decision;

(b) That portion of the ad valorem tax on real property, as provided in the redevelopment contract, bond resolution, or redevelopment plan, as applicable, in the redevelopment project in excess of such amount, if any, shall be allocated to and, when collected, paid into a special fund of the authority to be used

solely to pay the principal of, the interest on, and any premiums due in connection with the bonds of, loans, notes, or advances of money to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, such authority for financing or refinancing, in whole or in part, the redevelopment project. When such bonds, loans, notes, advances of money, or indebtedness, including interest and premiums due, have been paid, the authority shall so notify the county assessor and county treasurer and all ad valorem taxes upon taxable real property in such a redevelopment project shall be paid into the funds of the respective public bodies. An authority may use a single fund for purposes of this subdivision for all redevelopment projects or may use a separate fund for each redevelopment project; and

(c) Any interest and penalties due for delinquent taxes shall be paid into the funds of each public body in the same proportion as are all other taxes collected by or for the public body.

(2) To the extent that a redevelopment plan authorizes the division of ad valorem taxes levied upon only a portion of the real property included in such redevelopment plan, any improvements funded by such division of taxes shall be related to the redevelopment plan that authorized such division of taxes.

(3)(a) For any redevelopment plan located in a city of the metropolitan class that includes a division of taxes, as provided in this section, that produces, in whole or in part, funds to be used directly or indirectly for (i) new construction, rehabilitation, or acquisition of housing for households with annual incomes below the area median income for households and located within six hundred yards of a public passenger streetcar or (ii) new construction, rehabilitation, or acquisition of single-family housing or condominium housing used as primary residences for individuals with annual incomes below the area median income for individuals, such housing shall be deemed related to the redevelopment plan that authorized such division of taxes regardless of whether such housing is or will be located on real property within such redevelopment plan, as long as such housing supports activities occurring on or identified in such redevelopment plan.

(b) During each fiscal year in which the funds described in subdivision (a) of this subsection are available, the authority and city shall make best efforts to allocate not less than thirty percent of such funds to single-family housing deemed related to the redevelopment plan described under such subdivision.

(c) In selecting projects to receive funding, the authority and city shall develop a qualified allocation plan and give first priority to financially viable projects that serve the lowest income occupants for the longest period of time.

(4)(a) For any redevelopment plan for which more than fifty percent of the property in the redevelopment project area has been declared an extremely blighted area in accordance with section 18-2101.02, ad valorem taxes shall be divided for a period not to exceed twenty years after the effective date as identified in the project redevelopment contract or in the resolution of the authority authorizing the issuance of bonds pursuant to section 18-2124.

(b) For all other redevelopment plans, ad valorem taxes shall be divided for a period not to exceed fifteen years after the effective date as identified in the project redevelopment contract, in the resolution of the authority authorizing the issuance of bonds pursuant to section 18-2124, or in the redevelopment plan, whichever is applicable.

(5) The effective date of a provision dividing ad valorem taxes as provided in subsection (4) of this section shall not occur until such time as the real property in the redevelopment project is within the corporate boundaries of the city. This subsection shall not apply to a redevelopment project involving a formerly used defense site as authorized in section 18-2123.01.

(6) Beginning August 1, 2006, all notices of the provision for dividing ad valorem taxes shall be sent by the authority to the county assessor on forms prescribed by the Property Tax Administrator. The notice shall be sent to the county assessor on or before August 1 of the year of the effective date of the provision. Failure to satisfy the notice requirement of this section shall result in the taxes, for all taxable years affected by the failure to give notice of the effective date of the provision, remaining undivided and being paid into the funds for each public body receiving property taxes generated by the property in the redevelopment project. However, the redevelopment project valuation for the remaining division of ad valorem taxes in accordance with subdivisions (1)(a) and (b) of this section shall be the last certified valuation for the taxable year prior to the effective date of the provision to divide the taxes for the remaining portion of the twenty-year or fifteen-year period pursuant to subsection (4) of this section.

Source: Laws 1979, LB 158, § 10; Laws 1997, LB 875, § 14; Laws 1999, LB 194, § 2; Laws 2002, LB 994, § 2; Laws 2006, LB 808, § 2; Laws 2006, LB 1175, § 2; Laws 2011, LB54, § 1; Laws 2013, LB66, § 4; Laws 2018, LB874, § 34; Laws 2020, LB1021, § 15; Laws 2021, LB25, § 2; Laws 2022, LB1065, § 3; Laws 2023, LB531, § 17.

18-2155 Plan; expedited review; eligibility; limit; procedure; projects; use of property taxes; requirements; revocation of expedited reviews; effect.

(1) The governing body of a city may elect by resolution to allow expedited reviews of redevelopment plans that meet the requirements of subsection (2) of this section. A redevelopment plan that receives an expedited review pursuant to this section shall be exempt from the requirements of sections 18-2111 to 18-2115 and 18-2116.

(2) A redevelopment plan is eligible for expedited review under this section if:

(a) The redevelopment plan includes only one redevelopment project;

(b) The redevelopment project involves:

(i) The repair, rehabilitation, or replacement of an existing structure that has been within the corporate limits of the city for at least sixty years and is located within a substandard and blighted area; or

(ii) The redevelopment of a vacant lot that is located within a substandard and blighted area that has been within the corporate limits of the city for at least sixty years and has been platted for at least sixty years;

(c) The redevelopment project is located in a county with a population of less than one hundred thousand inhabitants; and

(d) The assessed value of the property within the redevelopment project area when the project is complete is estimated to be no more than:

(i) Three hundred fifty thousand dollars for a redevelopment project involving a single-family residential structure;

(ii) One million five hundred thousand dollars for a redevelopment project involving a multi-family residential structure or commercial structure; or

(iii) Ten million dollars for a redevelopment project involving the revitalization of a structure included in the National Register of Historic Places.

(3) The governing body of a city that elects to allow expedited reviews of redevelopment plans under this section may establish by resolution an annual limit on the number of such redevelopment plans that may be approved by the governing body.

(4) The expedited review shall consist of the following steps:

(a) A redeveloper shall prepare the redevelopment plan using a standard form developed by the Department of Economic Development. The form shall include (i) the existing uses and condition of the property within the redevelopment project area, (ii) the proposed uses of the property within the redevelopment project area, (iii) the number of years the existing structure has been within the corporate limits of the city or the number of years that the vacant lot has been platted within the corporate limits of the city, whichever is applicable, (iv) the current assessed value of the property within the redevelopment project area, (v) the increase in the assessed value of the property within the redevelopment project area that is estimated to occur as a result of the redevelopment project, (vi) an indication of whether the redevelopment project will be financed in whole or in part through the division of taxes as provided in section 18-2147, and (vii) the agreed-upon costs of the redevelopment project;

(b) The redeveloper shall submit the redevelopment plan directly to the governing body along with an application fee in an amount set by the governing body, not to exceed fifty dollars. Such application fee shall be separate from any fees for building permits or other permits needed for the project; and

(c) The governing body shall determine whether to approve or deny the redevelopment plan within thirty days after submission of the plan. A redevelopment plan may be denied if:

(i) The redevelopment plan does not meet the requirements of subsection (2) of this section;

(ii) Approval of the redevelopment plan would exceed the annual limit established under subsection (3) of this section; or

(iii) The redevelopment plan is inconsistent with the city's comprehensive development plan.

(5) Each city may select the appropriate employee or department to conduct expedited reviews pursuant to this section.

(6) For any approved redevelopment project that is financed in whole or in part through the division of taxes as provided in section 18-2147:

(a) The authority shall incur indebtedness related to the redevelopment project which shall not exceed the lesser of the agreed-upon costs of the redevelopment project or the amount estimated to be generated over a fifteen-year period from the portion of taxes mentioned in subdivision (1)(b) of section 18-2147. Such indebtedness shall not create a general obligation on behalf of the authority or the city in the event that the amount generated over a fifteen-year period from the portion of taxes mentioned in subdivision (1)(b) of section 18-2147 does not equal the costs of the agreed-upon work to repair, rehabilitate, or replace the structure or to redevelop the vacant lot as provided in the redevelopment plan;

(b) Upon completion of the agreed-upon work to repair, rehabilitate, or replace the structure or to redevelop the vacant lot as provided in the redevelopment plan, the redeveloper shall notify the county assessor of such completion; and

(c) The county assessor shall then determine:

(i) Whether the redevelopment project is complete. Redevelopment projects must be completed within two years after the redevelopment plan is approved under this section; and

(ii) The assessed value of the property within the redevelopment project area.

(7) After the county assessor makes the determinations required under subdivision (6)(c) of this section, the county assessor shall use a standard certification form developed by the Department of Revenue to certify to the authority:

(a) That improvements have been made and completed;

(b) That a valuation increase has occurred;

(c) The amount of the valuation increase; and

(d) That the valuation increase was due to the improvements made.

(8) Once the county assessor has made the certification required under subsection (7) of this section, the authority may begin to use the portion of taxes mentioned in subdivision (1)(b) of section 18-2147 to pay the indebtedness incurred by the authority under subdivision (6)(a) of this section.

(9) The payments shall be remitted to the holder of the indebtedness. The changes made to this subsection by Laws 2023, LB531, shall be retroactive in application and shall apply to redevelopment plans approved prior to, on, or after June 7, 2023.

(10) A single fund may be used for all redevelopment projects that receive an expedited review pursuant to this section. It shall not be necessary to create a separate fund for any such project, including a project financed in whole or in part through the division of taxes as provided in section 18-2147.

(11) The governing body of a city that elects to allow expedited reviews of redevelopment plans under this section may revoke such election by resolution at any time. The revocation of such election shall not affect the validity of (a) any redevelopment plan or redevelopment project that was approved under this section prior to the revocation of such election or (b) any indebtedness incurred by the authority under subdivision (6)(a) of this section prior to the revocation of such election.

Source: Laws 2020, LB1021, § 11; Laws 2022, LB1065, § 4; Laws 2023, LB531, § 20.

18-2156 Substandard and blighted area; extremely blighted area; review; governing body; powers; remove designation; resolution; effect.

(1) If an area has been designated as a substandard and blighted area under section 18-2109 or an extremely blighted area under section 18-2101.02, the governing body of the city may review such area at any time to determine whether the area is still eligible for the relevant designation. As part of such review, the governing body may, but need not:

(a) Examine any study or analysis of such area conducted pursuant to section 18-2101.02 or 18-2109 to determine whether the conditions that led to the relevant designation still exist; and

(b) Examine the conditions within the area to determine whether the area still qualifies as a blighted area, a substandard area, or an extremely blighted area as such terms are defined in section 18-2103.

(2) If a review is conducted under this section and the governing body of the city finds that an area is no longer a substandard and blighted area or an extremely blighted area, the governing body may remove the relevant designation by passing a resolution declaring such area to no longer be a substandard and blighted area or an extremely blighted area. If the same area has been designated as both a substandard and blighted area and an extremely blighted area, the governing body may remove both designations in a single resolution.

(3) Removal of a substandard and blighted area designation or an extremely blighted area designation pursuant to this section shall not affect the validity of (a) any redevelopment plan or redevelopment project involving such area that was approved prior to the removal of such designation or (b) any bond, security for such bond, redevelopment contract, or agreement relating to such a redevelopment plan or redevelopment project.

Source: Laws 2023, LB531, § 18.

18-2157 Substandard and blighted area; extremely blighted area; designation for more than thirty years; analysis of redevelopment projects; when; applicability.

(1) Beginning January 1, 2026, if an area has been designated as a substandard and blighted area under section 18-2109 or an extremely blighted area under section 18-2101.02 for more than thirty years, the governing body of the city shall not approve a new redevelopment plan or redevelopment project within such area unless and until the city conducts an analysis of the redevelopment projects that have occurred within such area. The analysis shall, at a minimum, include an assessment of the factors contributing to the lack of redevelopment in those parts of the area where significant redevelopment has not occurred and goals for the future redevelopment of the area. The analysis shall be provided to the planning commission or board of the city and to the governing body of the city. A copy of such analysis shall be made available for public inspection at a location designated by the city.

(2) This section does not apply to the downtown area of a city of the first class, city of the second class, or village. For purposes of this section, downtown area means the urban core of population density and concentrated commercial activity.

Source: Laws 2023, LB531, § 19.

ARTICLE 24

MUNICIPAL COOPERATIVE FINANCING

Section
18-2441. Agency; powers; enumerated.

18-2441 Agency; powers; enumerated.

The powers of an agency shall include the power:

(1) To plan, develop, construct, reconstruct, operate, manage, dispose of, participate in, maintain, repair, extend, improve, or acquire by purchase, gift, lease, or otherwise, one or more projects within or outside this state and act as agent, or designate one or more other persons to act as its agent, in connection with the planning, acquisition, construction, operation, maintenance, repair, extension, or improvement of such project, except that before any power project is constructed by an agency, approval of the power project shall have been obtained from the Nebraska Power Review Board under sections 70-1012 to 70-1016;

(2) To produce, acquire, sell, and distribute commodities, including, without limitation, fuels necessary to the ownership, use, operation, or maintenance of one or more projects;

(3) To enter into franchises, exchange, interchange, pooling, wheeling, transmission, and other similar agreements;

(4) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the agency;

(5) To employ agents and employees;

(6) To contract with any person within or outside this state for the sale or transmission of any service, product, or commodity supplied, transmitted, conveyed, transformed, produced, or generated by any project, or for any interest therein or any right to capacity thereof, on such terms and for such period of time as the agency's board shall determine;

(7) To purchase, sell, exchange, produce, generate, transmit, or distribute any service, product, or commodity within and outside the state in such amounts as it shall determine to be necessary and appropriate to make the most effective use of its powers and to meet its responsibilities, and to enter into agreements with any person with respect to such purchase, sale, exchange, production, generation, transmission, or distribution on such terms and for such period of time as the agency's board shall determine;

(8) To acquire, own, hold, use, lease, as lessor or lessee, sell, or otherwise dispose of, mortgage, pledge, or grant a security interest in any real or personal property, commodity, product, or service or any interest therein or right thereto;

(9) To exercise the power of eminent domain in the manner set forth in Chapter 76, article 7. No real property of the state, any municipality, or any political subdivision of the state, may be so acquired without the consent of the state, such municipality, or such subdivision;

(10) To incur debts, liabilities, or obligations including the borrowing of money and the issuance of bonds, secured or unsecured, pursuant to the Municipal Cooperative Financing Act;

(11) To borrow money or accept contributions, grants, or other financial assistance from a public authority and to comply with such conditions and enter into such contracts, covenants, mortgages, trust indentures, leases, or agreements as may be necessary, convenient, or desirable;

(12) To fix, maintain, revise, and collect fees, rates, rents, and charges for functions, services, facilities, or commodities provided by the agency, and it shall be the mandatory duty of each agency to fix, maintain, revise, and collect such fees, rates, rents, and charges as will always be sufficient to pay all operating and maintenance expenses of the agency, to pay for costs of renewals

and replacements to a project, to pay interest on and principal of, whether at maturity or upon sinking-fund redemption, any outstanding bonds or other indebtedness of the agency, and to provide, as may be required by a resolution, trust indenture, security instrument, or other agreement of the agency, for any reasonable reserves for any such expenses, costs, or debt service or for any margins or coverages over and above debt service;

(13) Subject to any agreements with holders of outstanding bonds, to invest any funds held in reserve or sinking funds, or any funds not required for immediate disbursement, including the proceeds from the sale of any bonds, in such obligations, securities, and other investments as the board shall deem proper;

(14) To join and pay dues to organizations, membership in which is deemed by the board to be beneficial to the accomplishment of the agency's purposes;

(15) To own and operate, contract to operate, or lease advanced metering infrastructure technology and provide advanced metering infrastructure services regarding publicly owned utility systems, including, without limitation, electric, water, and natural gas systems. The agency shall not engage in the sale of the natural gas commodity;

(16) To provide services related to information technology, physical security, physical infrastructure management, regulatory reporting, and administration regarding publicly owned utility and municipal infrastructure systems; and

(17) To exercise any other powers which are deemed necessary and convenient to carry out the Municipal Cooperative Financing Act.

Source: Laws 1981, LB 132, § 41; Laws 2023, LB565, § 21.

ARTICLE 25

MUNICIPAL INITIATIVE AND REFERENDUM ACT

Section
18-2518. Petition; filed; signature verification; costs; time limitation.

18-2518 Petition; filed; signature verification; costs; time limitation.

(1) Each signed petition shall be filed with the city clerk for signature verification. The city clerk shall immediately notify the county clerk or election commissioner of the signed petition. Upon the filing of a petition, a municipality, upon passage of a resolution by the governing body of such municipality, and the county clerk or election commissioner of the county in which such municipality is located may by mutual agreement provide that the county clerk or election commissioner shall ascertain whether the petition is signed by the requisite number of voters. The municipality shall reimburse the county for any costs incurred by the county clerk or election commissioner. When the verifying official has determined that one hundred percent of the necessary signatures required by the Municipal Initiative and Referendum Act have been obtained, he or she shall notify the governing body of the municipality of that fact and shall immediately forward to the governing body a copy of the petition.

(2) In order for an initiative or referendum proposal to be submitted to the governing body and the voters, the necessary signatures shall be on file with the city clerk within six months from the date the prospective petition was author-

ized for circulation. If the necessary signatures are not obtained by such date, the petition shall be void.

Source: Laws 1982, LB 807, § 18; Laws 2021, LB163, § 171; Laws 2024, LB287, § 4.
Operative date July 19, 2024.

ARTICLE 27

MUNICIPAL ECONOMIC DEVELOPMENT

Section
18-2709. Qualifying business, defined.

18-2709 Qualifying business, defined.

(1) Qualifying business means any corporation, partnership, limited liability company, or sole proprietorship which derives its principal source of income from any of the following: The manufacture of articles of commerce; the conduct of research and development; the processing, storage, transport, or sale of goods or commodities which are sold or traded in interstate commerce; the sale of services in interstate commerce; headquarters facilities relating to eligible activities as listed in this section; telecommunications activities, including services providing advanced telecommunications capability; tourism-related activities; or the production of films, including feature, independent, and documentary films, commercials, and television programs.

(2) Qualifying business also means:

(a) In cities of the first class, cities of the second class, and villages, a business that derives its principal source of income from the construction or rehabilitation of housing;

(b) In cities of the first class, cities of the second class, and villages, a business that derives its principal source of income from early childhood care and education programs;

(c) A business that derives its principal source of income from retail trade, except that no more than forty percent of the total revenue generated pursuant to the Local Option Municipal Economic Development Act for an economic development program in any twelve-month period and no more than twenty percent of the total revenue generated pursuant to the act for an economic development program in any five-year period, commencing from the date of municipal approval of an economic development program, shall be used by the city for or devoted to the use of retail trade businesses. For purposes of this subdivision, retail trade means a business which is principally engaged in the sale of goods or commodities to ultimate consumers for their own use or consumption and not for resale; and

(d) In cities with a population of five thousand inhabitants or less as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, a business shall be a qualifying business even though it derives its principal source of income from activities other than those set out in this section.

(3) If a business which would otherwise be a qualifying business employs people and carries on activities in more than one city in Nebraska or will do so at any time during the first year following its application for participation in an economic development program, it shall be a qualifying business only if, in

each such city, it maintains employment for the first two years following the date on which such business begins operations in the city as a participant in its economic development program at a level not less than its average employment in such city over the twelve-month period preceding participation.

(4) A qualifying business need not be located within the territorial boundaries of the city from which it is or will be receiving financial assistance.

(5) Qualifying business does not include a political subdivision, a state agency, or any other governmental entity, except as allowed for cities of the first class, cities of the second class, and villages for rural infrastructure development as provided for in subdivision (3)(b) of section 18-2705.

Source: Laws 1991, LB 840, § 10; Laws 1993, LB 121, § 145; Laws 1993, LB 732, § 18; Laws 1994, LB 1188, § 1; Laws 1995, LB 207, § 4; Laws 2001, LB 827, § 14; Laws 2011, LB471, § 2; Laws 2012, LB863, § 2; Laws 2015, LB150, § 2; Laws 2017, LB113, § 22; Laws 2019, LB160, § 2; Laws 2021, LB163, § 192; Laws 2023, LB531, § 21.

CHAPTER 19
CITIES AND VILLAGES; LAWS APPLICABLE TO MORE THAN ONE AND LESS THAN ALL CLASSES

ARTICLE 4

COMMISSION FORM OF GOVERNMENT
(Applicable to cities of 2,000 population or over.)

19-412 Officers; employees; compensation; mayor or city council member; salary; procedure.

(1)(a) The officers and employees of a city under the commission plan of government shall receive such compensation as the mayor and city council shall fix by ordinance subject to the requirements in this section. Except as provided in subdivision (b) of this subsection, the salary of the mayor or city council member of a city of the primary or metropolitan class shall not be increased by more than the average percentage change in the unadjusted Consumer Price Index for All Urban Consumers published by the Federal Bureau for Labor Statistics for the period since the last salary increase plus one percent. No such salary shall be increased more than once every two fiscal years.

(b) The city council of a city of the metropolitan or primary class may place the issue on the ballot of whether to increase the salary of the mayor or the city council members or both by more than the amount permitted in subdivision (a) of this subsection for approval by the registered voters of the city. The city council shall determine the percentage of increase and hold a public hearing regarding the increase. If the city council approves the percentage by a vote of at least two-thirds of the members of the city council, the city clerk shall transmit the issue to the election commissioner or county clerk for placement on the ballot at the next statewide general election subject to section 32-559.

(2) The salary of any elective officer in a city under the commission plan of government shall not be increased or diminished during the term for which he or she was elected, except that when there are officers elected to a city council, board, or commission having more than one member and the terms of one or more members commence and end at different times, the compensation of all members of such city council, board, or commission may be increased or diminished at the beginning of the full term of any member thereof. No person who has resigned or vacated any office shall be eligible to be elected or appointed to such office during the time for which he or she was elected when, during the same time, the salary has been increased.

(3) The salary or compensation of all other officers or employees of a city under the commission plan of government shall be determined when they are appointed or elected by the city council, board, or commission and shall be payable at such times or for such periods as the city council, board, or commission shall determine.

Source: Laws 1911, c. 24, § 10, p. 157; Laws 1913, c. 21, § 6, p. 90; R.S.1913, § 5297; Laws 1915, c. 97, § 1, p. 239; C.S.1922, § 4520; Laws 1923, c. 141, § 6, p. 349; C.S.1929, § 19-410; Laws 1943, c. 37, § 1, p. 179; R.S.1943, § 19-412; Laws 1951, c. 21, § 1, p. 105; Laws 1979, LB 80, § 44; Laws 1992, LB 950, § 1; Laws 2019, LB193, § 18; Laws 2024, LB1300, § 40.
Operative date July 19, 2024.

ARTICLE 6

CITY MANAGER PLAN

(Applicable to cities of 1,000 population or more and less than 200,000.)

(c) CITY COUNCIL

Section
19-616. Appointive or elected official; compensation; no change during term of office; mayor and city council members; salaries; procedure.

(c) CITY COUNCIL

19-616 Appointive or elected official; compensation; no change during term of office; mayor and city council members; salaries; procedure.

(1) The annual compensation of the mayor and city council members in cities under the city manager plan of government shall be payable quarterly in equal installments and shall be fixed by the city council subject to subsection (2) of this section. The salary of any appointive or elective officer shall not be increased or diminished during the term for which such officer was elected or appointed, except that when there are officers elected or appointed to the city council or a board or commission having more than one member and the terms of one or more members commence and end at different times, the compensation of all members of such city council, board, or commission may be increased or diminished at the beginning of the full term of any member thereof. No person who has resigned or vacated any office shall be eligible to be elected or appointed to such office during the time for which he or she was elected or appointed when, during the same time, the salary has been increased. For each absence from regular meetings of the city council, unless authorized by a two-thirds vote of all members of the city council, there shall be deducted a sum equal to two percent of such annual salary.

(2)(a) The salaries of the mayor and city council members of a city of the primary class shall be established by ordinance subject to the requirements in this section. Except as provided in subdivision (b) of this subsection, no such salary shall be increased by more than the average percentage change in the unadjusted Consumer Price Index for All Urban Consumers published by the Federal Bureau for Labor Statistics for the period since the last salary increase plus one percent. No such salary shall be increased more than once every two fiscal years. The ordinance may establish the salary for the mayor or the city council members or both.

(b) The city council may place the issue on the ballot of whether to increase the salary of the mayor or the city council members or both by more than the amount permitted in subdivision (a) of this subsection for approval by the registered voters of the city. The city council shall determine the percentage of increase and hold a public hearing regarding the increase. If the city council approves the percentage by a vote of at least two-thirds of the members of the city council, the city clerk shall transmit the issue to the election commissioner or county clerk for placement on the ballot at the next statewide general election subject to section 32-559.

Source: Laws 1917, c. 208, § 17, p. 501; C.S.1922, § 4554; C.S.1929, § 19-617; R.S.1943, § 19-616; Laws 1969, c. 113, § 1, p. 515; Laws 1979, LB 80, § 58; Laws 2002, LB 1054, § 2; Laws 2019, LB193, § 47; Laws 2024, LB1300, § 41.
Operative date July 19, 2024.

Cross References

Vacancies, how filled, see sections 19-3101 and 32-560 to 32-574.

ARTICLE 12

DILAPIDATED COMMERCIAL PROPERTY
(Applicable to cities of the first or second class and villages.)

Section
19-1201. Revitalize Rural Nebraska Grant Program; Department of Environment and Energy; award grants; application; priority; appropriation; legislative intent.
19-1202. City or village; application; approval; conditions.
19-1203. City or village; return grant; when.
19-1204. Revitalize Rural Nebraska Fund; created; use; investment.

19-1201 Revitalize Rural Nebraska Grant Program; Department of Environment and Energy; award grants; application; priority; appropriation; legislative intent.

(1) There is hereby established the Revitalize Rural Nebraska Grant Program. The governing body of a city of the first class, a city of the second class, or a village may apply, on behalf of the city or village, to the Department of Environment and Energy for approval of a dilapidated commercial property demolition grant. The Director of Environment and Energy shall prescribe the form and manner of application.

(2) The department shall award the grants annually on a competitive basis beginning in fiscal year 2023-24 subject to available funds. The department shall give priority to applications from cities of the second class and villages. If

there are funds remaining at the end of each grant period, the department shall consider applications from cities of the first class. A city or village may apply for more than one grant. The department shall give preference to new applicants.

(3) There shall be no limit on the amount that can be awarded to each applicant within the available funding. It is the intent of the Legislature that if the department does not award all of the available appropriation for grants under the program, the unobligated amount of the appropriation shall be reappropriated for the next fiscal year to be awarded during the next grant period.

Source: Laws 2023, LB531, § 1.

19-1202 City or village; application; approval; conditions.

The Department of Environment and Energy shall award a grant to a city or village under the Revitalize Rural Nebraska Grant Program based on a completed application that demonstrates:

(1) A dilapidated commercial property within the corporate limits of the city or village is in need of demolition;

(2) The city or village owns the property or is completing the process prescribed in section 18-1722;

(3) The property has been abandoned or vacant for at least six months prior to application;

(4) The property is not listed, or eligible to be listed, on the National Register of Historic Places; and

(5) The city or village is able to contribute matching funds, whether in cash or in-kind donations, in the amount of ten percent for a village, fifteen percent for a city of the second class, and twenty percent for a city of the first class.

Source: Laws 2023, LB531, § 2.

19-1203 City or village; return grant; when.

If a city or village fails to engage in the demolition of the commercial property identified in the application for a grant under the Revitalize Rural Nebraska Grant Program within twenty-four months after receiving the grant, the city or village shall return the grant to the Department of Environment and Energy. The department shall remit such grant money to the State Treasurer for credit to the Revitalize Rural Nebraska Fund.

Source: Laws 2023, LB531, § 3.

19-1204 Revitalize Rural Nebraska Fund; created; use; investment.

The Revitalize Rural Nebraska Fund is created. The Department of Environment and Energy shall use the fund for the Revitalize Rural Nebraska Grant Program. The fund shall include transfers as directed by the Legislature, money from grants returned under section 19-1203, and money from private contributions and other sources provided for purposes of the program. Any money in the Revitalize Rural Nebraska 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 fund shall be used for the program.

Source: Laws 2023, LB531, § 4.

Cross References

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

ARTICLE 55
MUNICIPAL DENSITY AND MISSING MIDDLE HOUSING ACT

Section
19-5504. Affordable housing; report; contents.
19-5505. Affordable housing action plan; required; failure to adopt; effect.

19-5504 Affordable housing; report; contents.

(1) On or before July 1, 2021, and by each July 1 every two years thereafter, each city shall electronically submit a report to the Urban Affairs Committee of the Legislature detailing its efforts to address the availability of and incentives for affordable housing through its zoning codes, ordinances, and regulations. Such report shall include, but not be limited to:

(a) An overview of the city's current residential zoning requirements;

(b) The percentage of areas within the corporate limits of the city zoned for residential use which permit the construction of multifamily housing and middle housing, including whether such areas are zoned specifically for residential use or generally allow residential use, and whether such construction is permitted with or without any additional permit requirements;

(c) A breakdown of new residential construction within the corporate limits of the city over the previous five years, including the percentage of such construction that was single-family housing, multifamily housing, and middle housing;

(d) A breakdown of residential units annexed by the city over the previous five years, including the percentage of such units that were single-family housing, multifamily housing, and middle housing;

(e) An estimate of the per-unit cost of housing within the corporate limits of the city;

(f) Whether such zoning codes, ordinances, and regulations provide for density bonuses or other concessions or incentives which encourage residential density, and the frequency with which such bonuses, concessions, or incentives are utilized;

(g) Whether such zoning codes, ordinances, and regulations allow the construction of accessory dwelling units;

(h) What incentives the city applies to encourage the development of affordable housing, including both direct incentives and regulatory relief;

(i) The percentage of areas within the corporate limits of the city zoned for residential use which have been declared substandard and blighted areas under the Community Development Law;

(j) The percentage of areas within the corporate limits of the city zoned for residential use which have been declared extremely blighted areas under the Community Development Law;

(k) A demographic analysis of the city with trends and estimates of the housing need classified by housing type and price range; and

(l) Efforts to adopt an affordable housing action plan as required under section 19-5505 or efforts to implement an affordable housing action plan after such plan is adopted.

(2) The Urban Affairs Committee of the Legislature may require any city to present its report to the committee at a public hearing.

Source: Laws 2020, LB866, § 4; Laws 2022, LB800, § 331; Laws 2023, LB531, § 22.

Cross References

Community Development Law, see section 18-2101.

19-5505 Affordable housing action plan; required; failure to adopt; effect.

(1) On or before January 1, 2023, each city with a population of fifty thousand or more inhabitants shall adopt an affordable housing action plan. On or before January 1, 2024, each city with a population of less than fifty thousand inhabitants shall adopt an affordable housing action plan. Such action plan shall include, but not be limited to:

(a) Goals for the construction of new affordable housing units, including multifamily housing and middle housing, with specific types and numbers of units, geographic locations, and specific actions to encourage the development of affordable housing, middle housing, and workforce housing;

(b) Goals for a percentage of areas in the city zoned for residential use which permit the construction of multifamily housing and middle housing;

(c) Plans for the use of federal, state, and local incentives to encourage affordable housing, middle housing, and workforce housing, including the Affordable Housing Trust Fund, the Local Option Municipal Economic Development Act, tax-increment financing, federal community development block grants, density bonuses, and other nonmonetary regulatory relief; and

(d) Updates to the city's zoning codes, ordinances, and regulations to incentivize affordable housing.

(2) An affordable housing action plan required under subsection (1) of this section may be adopted as part of a city's comprehensive plan or as a separate plan.

(3) Each city that adopts an affordable housing action plan as required under subsection (1) of this section shall electronically submit a copy of such plan to the Urban Affairs Committee of the Legislature.

(4) Any city which fails to adopt an affordable housing action plan as required under subsection (1) of this section shall be required to allow the development of:

(a) Middle housing in all areas in the city zoned for residential use that allow for the development of detached single-family dwellings; and

(b) A duplex on each lot or parcel zoned for residential use that allows for the development of detached single-family dwellings.

(5) A city shall amend any building zoning ordinances or regulations as needed to comply with subsection (4) of this section.

Source: Laws 2020, LB866, § 5; Laws 2021, LB44, § 1; Laws 2023, LB531, § 23.

Cross References

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

ARTICLE 57

MUNICIPALITY INFRASTRUCTURE AID
(Applicable to cities of the first or second class and villages.)

Section
19-5701. Act, how cited.
19-5702. Terms, defined.
19-5703. Municipality Infrastructure Aid Program; created; purpose.
19-5704. Grant; application; contents; eligibility; limitations.
19-5705. Department of Economic Development; duties.
19-5706. Department of Economic Development; consultation authorized.
19-5707. Municipality Infrastructure Aid Fund; created; use; investment.
19-5708. Rules and regulations.

19-5701 Act, how cited.

Sections 19-5701 to 19-5708 shall be known and may be cited as the Municipality Infrastructure Aid Act.

Source: Laws 2024, LB600, § 1.
Effective date April 17, 2024.

19-5702 Terms, defined.

For purposes of the Municipality Infrastructure Aid Act:

(1) Eligible grantee means a city of the first class, city of the second class, or village with a redevelopment plan approved under the Community Development Law;

(2) Infrastructure includes water systems, sewer systems, roads, bridges, and other site development activities; and

(3) Program means the Municipality Infrastructure Aid Program created in section 19-5703.

Source: Laws 2024, LB600, § 2.
Effective date April 17, 2024.

Cross References

Community Development Law, see section 18-2101.

19-5703 Municipality Infrastructure Aid Program; created; purpose.

The Municipality Infrastructure Aid Program is created. The Department of Economic Development shall administer the program. The purpose of the program is to finance infrastructure improvements in cities of the first class, cities of the second class, and villages.

Source: Laws 2024, LB600, § 3.
Effective date April 17, 2024.

19-5704 Grant; application; contents; eligibility; limitations.

(1) Beginning July 1, 2024, an eligible grantee may apply to the Department of Economic Development for a grant under the Municipality Infrastructure Aid Act on forms created by the department.

(2) To be eligible for a grant under the Municipality Infrastructure Aid Act, an eligible grantee shall include the following in its application:

(a) The infrastructure improvements that are a part of a redevelopment plan approved under the Community Development Law;

(b) How the infrastructure improvements would attract and support any new business or business expansion;

(c) How the infrastructure improvements would provide infrastructure that is sufficient for the new business or business expansion;

(d) The cost-benefit analysis of the redevelopment plan approved under the Community Development Law; and

(e) How the new business or business expansion would provide the following:

(i) The creation of additional jobs in or near the eligible grantee;

(ii) The creation of high-quality jobs in or near the eligible grantee;

(iii) Increased business investment in or near the eligible grantee; and

(iv) Revitalization of rural and other distressed areas of the state.

(3) A grant shall not be awarded to an eligible grantee if:

(a) The eligible grantee does not provide a positive cost-benefit analysis of the redevelopment plan approved under the Community Development Law; or

(b) The eligible grantee does not provide matching funds in the amount of at least twenty-five percent of the amount of the grant.

(4) An eligible grantee shall not be awarded a grant of more than five million dollars for any single application.

Source: Laws 2024, LB600, § 4.
Effective date April 17, 2024.

Cross References

Community Development Law, see section 18-2101.

19-5705 Department of Economic Development; duties.

The Department of Economic Development shall:

(1) Create an application process for an eligible grantee to apply for a grant under the Municipality Infrastructure Aid Act;

(2) Establish a process for awarding grants under the Municipality Infrastructure Aid Act and how grant money will be provided to a grant recipient; and

(3) Create a process for recoupment of grant money that is not spent for the purpose of a grant or if the grant recipient does not meet all required obligations regarding the grant.

Source: Laws 2024, LB600, § 5.
Effective date April 17, 2024.

19-5706 Department of Economic Development; consultation authorized.

The Department of Economic Development may consult with statewide associations representing municipal officials, economic developers, the Department of Transportation, and the Department of Environment and Energy in order to carry out the Municipality Infrastructure Aid Act.

Source: Laws 2024, LB600, § 6.
Effective date April 17, 2024.

19-5707 Municipality Infrastructure Aid Fund; created; use; investment.

The Municipality Infrastructure Aid Fund is created. The fund shall be administered by the Department of Economic Development and shall be used for the purposes of the Municipality Infrastructure Aid Act. The Municipality Infrastructure Aid Fund shall consist of money transferred by the Legislature and money that was recouped under the Municipality Infrastructure 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. Investment earnings from investment of money in the fund shall be credited to the fund.

Source: Laws 2024, LB600, § 7.
Effective date April 17, 2024.

Cross References

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

19-5708 Rules and regulations.

The Department of Economic Development may adopt and promulgate rules and regulations to carry out the Municipality Infrastructure Aid Act.

Source: Laws 2024, LB600, § 8.
Effective date April 17, 2024.

ARTICLE 58

POVERTY ELIMINATION ACTION PLAN ACT
(Applicable to cities of the metropolitan or primary class.)

Section
19-5801. Act, how cited.
19-5802. Legislative findings; act, purpose.
19-5803. Terms, defined.
19-5804. Poverty elimination action plan; establish and adopt; contents; reevaluate and update.
19-5805. Report.

19-5801 Act, how cited.

Sections 19-5801 to 19-5805 shall be known and may be cited as the Poverty Elimination Action Plan Act.

Source: Laws 2024, LB840, § 1.
Operative date July 19, 2024.

19-5802 Legislative findings; act, purpose.

The Legislature finds that there is a need to address the problem of poverty in high-poverty areas, qualified census tracts, and economic redevelopment areas

in the state. The purpose of the Poverty Elimination Action Plan Act is to create a comprehensive, statewide poverty elimination action plan to address the specific poverty challenges faced in such areas and tracts and promote upward mobility and sustainability.

Source: Laws 2024, LB840, § 2.
Operative date July 19, 2024.

19-5803 Terms, defined.

For purposes of the Poverty Elimination Action Plan Act:

(1) City means any city of the metropolitan class or city of the primary class;

(2) Economic redevelopment area means an area in the State of Nebraska in which:

(a) The average rate of unemployment in the area during the period covered by the most recent federal decennial census or American Community Survey 5-Year Estimate by the United States Bureau of the Census is at least one hundred fifty percent of the average rate of unemployment in the state during the same period; and

(b) The average poverty rate in the area is twenty percent or more for the federal census tract in the area;

(3) High-poverty area means an area consisting of one or more contiguous census tracts, as determined by the most recent federal decennial census, which contain a percentage of persons with incomes below the poverty line of greater than thirty percent, and all census tracts contiguous to such tract or tracts, as determined by the most recent federal decennial census; and

(4) Qualified census tract means a qualified census tract as defined in 26 U.S.C. 42(d)(5)(B)(ii)(I), as such section existed on January 1, 2024.

Source: Laws 2024, LB840, § 3.
Operative date July 19, 2024.

19-5804 Poverty elimination action plan; establish and adopt; contents; reevaluate and update.

(1) No later than July 1, 2025, each city shall establish and adopt a five-year poverty elimination action plan. The city shall electronically submit a copy of the plan to the Urban Affairs Committee of the Legislature and the Clerk of the Legislature. The plan shall include, but not be limited to:

(a) Goals for poverty elimination in high-poverty areas, qualified census tracts, and economic redevelopment areas; and

(b) Plans for the use of federal, state, and local incentives to eliminate poverty in high-poverty areas, qualified census tracts, and economic redevelopment areas.

(2) Each city shall reevaluate its poverty elimination action plan every two years and update its plan every five years to ensure its effectiveness and relevance. Updated plans shall be electronically submitted by the city to the Urban Affairs Committee of the Legislature and the Clerk of the Legislature.

Source: Laws 2024, LB840, § 4.
Operative date July 19, 2024.

19-5805 Report.

(1) On or before July 1, 2025, and on or before July 1 of each odd-numbered year thereafter, each city shall electronically submit a report to the Urban Affairs Committee of the Legislature detailing its efforts to eliminate poverty. The report shall encompass the following key components:

(a) Needs Assessment. Conducting a comprehensive needs assessment to identify challenges in housing, education, health care, employment, access to capital, economic development, and social services in target areas;

(b) Community Engagement. Involving residents, community organizations, and stakeholders in the planning process to ensure community input;

(c) Data Analysis. Utilizing data and research to understand root causes of poverty and measure the impact of interventions;

(d) Education and Job Training. Developing accessible education and job training programs in sectors with growth potential;

(e) Affordable Housing. Implementing strategies to increase affordable housing options, address homelessness, and promote home ownership;

(f) Health Care Access. Improving access to quality health care services, including mental health and substance abuse treatment;

(g) Economic Development. Attracting investments to stimulate local business growth and job creation;

(h) Transportation and Infrastructure. Investing in transportation options and infrastructure improvements;

(i) Social Services. Expanding access to social services such as child care, food assistance, and counseling;

(j) Equity and Inclusion. Promoting equity and inclusivity, and addressing disparities based on race, gender, and other factors;

(k) Accountability and Evaluation. Establishing metrics for progress tracking and regular evaluations;

(l) Funding and Resources. Securing funding from various sources, including government grants and private investments;

(m) Long-Term Sustainability. Developing a long-term sustainability plan to maintain improvements;

(n) Coordination and Collaboration. Fostering coordination and collaboration among government agencies, nonprofit organizations, and businesses; and

(o) Public Awareness. Promoting awareness of the city's efforts, goals, and progress through communication and outreach efforts.

(2) The Urban Affairs Committee of the Legislature may request any city to present its report to the committee at a public hearing.

Source: Laws 2024, LB840, § 5.
Operative date July 19, 2024.

CHAPTER 20
CIVIL RIGHTS

Article.
7. First Freedom Act. 20-701 to 20-705.
8. Personal Privacy Protection Act. 20-801 to 20-804.

ARTICLE 7
FIRST FREEDOM ACT

Section
20-701. Act, how cited.
20-702. Terms, defined.
20-703. Right to the exercise of religion; operation of a religious organization during a state of emergency; restrictions on state action.
20-704. Civil action; assertion of defense; appropriate relief.
20-705. Act; applicability.

20-701 Act, how cited.

Sections 20-701 to 20-705 shall be known and may be cited as the First Freedom Act.

Source: Laws 2024, LB43, § 1.
Operative date July 19, 2024.

20-702 Terms, defined.

For purposes of the First Freedom Act:

(1) Exercise of religion means the practice or observance of religion and includes any action that is motivated by a sincerely held religious belief, whether or not the exercise is compulsory or central to a larger system of religious belief;

(2) Person means any individual, association, partnership, corporation, church, religious institution, estate, trust, foundation, or other legal entity;

(3) Religious organization means:

(a) A house of worship;

(b) A religious group, corporation, association, educational institution, ministry, order, society, or similar entity, regardless of whether it is integrated or affiliated with a church or other house of worship; or

(c) An officer, owner, employee, manager, religious leader, clergy, or minister of an entity or organization described in subdivision (3)(a) or (b) of this section;

(4) Religious service means a meeting, gathering, or assembly of two or more persons organized by a religious organization for the purpose of worship, teaching, training, providing educational services, conducting religious rituals, or other activities that are deemed necessary by the religious organization for the exercise of religion;

(5) State action means the implementation or application of any law, including state and local laws, ordinances, rules, regulations, and policies, whether statutory or otherwise, or other action by the state or any political subdivision

thereof and any local government, municipality, instrumentality, or public official authorized by state or local law; and

(6)(a) Substantially burden means any action that directly or indirectly constrains, inhibits, curtails, or denies the exercise of religion by any person or compels any action contrary to a person's exercise of religion.

(b) Substantially burden includes withholding benefits, imposing criminal, civil, or administrative penalties or damages, or exclusion from governmental programs or access to governmental facilities.

Source: Laws 2024, LB43, § 2.
Operative date July 19, 2024.

20-703 Right to the exercise of religion; operation of a religious organization during a state of emergency; restrictions on state action.

Notwithstanding any other provision of law, state action shall not:

(1) Substantially burden a person's right to the exercise of religion unless it is demonstrated that applying the burden to that person's exercise of religion in this particular instance is essential to further a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest; or

(2) Restrict a religious organization from operating and engaging in religious services during a state of emergency to a greater extent than the state restricts other organizations or businesses from operating during a state of emergency.

Source: Laws 2024, LB43, § 3.
Operative date July 19, 2024.

20-704 Civil action; assertion of defense; appropriate relief.

(1) A person or religious organization whose exercise of religion or religious service has been burdened or restricted, or is likely to be burdened or restricted, in violation of the First Freedom Act, may bring a civil action or assert such violation or impending violation as a defense in a judicial or administrative proceeding.

(2) This section applies regardless of whether the state or a political subdivision is a party to the judicial or administrative proceeding.

(3) A person or religious organization asserting a claim or defense under this section may obtain appropriate relief, including against the state or a political subdivision. Appropriate relief includes:

(a) Actual damages;

(b) Such preliminary and other equitable or declaratory relief as may be appropriate; and

(c) Reasonable attorney's fees and other litigation costs reasonably incurred.

Source: Laws 2024, LB43, § 4.
Operative date July 19, 2024.

20-705 Act; applicability.

The First Freedom Act applies to all state and local laws, and the implementation of those laws, whether statutory or otherwise, regardless of whether adopted before or after July 19, 2024.

Source: Laws 2024, LB43, § 5.
Operative date July 19, 2024.

ARTICLE 8

PERSONAL PRIVACY PROTECTION ACT

Section
20-801. Act, how cited.
20-802. Terms, defined.
20-803. Personal information; exempt from disclosure; public agency; prohibited acts; contractor or grantee; protected information; applicability.
20-804. Civil action; appropriate relief.

20-801 Act, how cited.

Sections 20-801 to 20-804 shall be known and may be cited as the Personal Privacy Protection Act.

Source: Laws 2024, LB43, § 17.
Operative date January 1, 2025.

20-802 Terms, defined.

For purposes of the Personal Privacy Protection Act:

(1) Nonprofit organization means a nonprofit organization holding a certificate of exemption under section 501(c) of the Internal Revenue Code;

(2) Person means any individual, partnership, limited liability company, corporation, association, firm, or agent or employee of any such individual or business entity;

(3) Personal information means any list, record, register, registry, roll, roster, or other compilation of data that directly or indirectly identifies a person as a member, supporter, or volunteer of, or donor of financial or nonfinancial support to, any nonprofit organization; and

(4) Public agency means any state or local governmental unit, including, but not limited to:

(a) The State of Nebraska;

(b) Any agency, department, division, office, commission, board, bureau, committee, council, or other entity of the state;

(c) The University of Nebraska or any state college;

(d) Any political subdivision of the state, including, but not limited to, any county, city, village, township, school district, community college area, public power district, rural fire district, or other local governmental unit, or agency, authority, council, board, or commission thereof;

(e) Any state or local court, tribunal, or other judicial or quasi-judicial body; or

(f) Any public corporation whose primary function is to act as an instrumentality or agency of the state or of any other public agency.

Source: Laws 2024, LB43, § 18.
Operative date January 1, 2025.

20-803 Personal information; exempt from disclosure; public agency; prohibited acts; contractor or grantee; protected information; applicability.

(1) Notwithstanding any provision of law to the contrary, and except as otherwise provided in this section, each public agency is prohibited from:

(a) Requiring any individual to provide personal information or otherwise compelling the release of personal information;

(b) Requiring any nonprofit organization to provide such public agency with personal information or otherwise compelling the release of personal information;

(c) Publicizing or otherwise publicly disclosing personal information in the possession of such public agency without the express permission of every individual who is identifiable from the potential release of such personal information, including individuals identifiable as members, supporters, or volunteers of, or donors to, a nonprofit organization; or

(d) Requesting or requiring a current or prospective contractor or grantee to provide such public agency with a list of nonprofit organizations to which such contractor or grantee has provided financial or nonfinancial support.

(2) Personal information is exempt from disclosure under public records laws, including, but not limited to, sections 84-712 to 84-712.09 and 84-1413.

(3) This section does not prohibit:

(a) Any report or disclosure required by the Nebraska Political Accountability and Disclosure Act;

(b) Any report or disclosure by a public agency regarding testimony received at a public hearing conducted by such public agency;

(c) Any lawful warrant, subpoena, or order issued by a court of competent jurisdiction for the production of personal information;

(d) Any lawful request for discovery of personal information in litigation if both of the following conditions are met:

(i) The requestor demonstrates a compelling need for such personal information by clear and convincing evidence; and

(ii) The requestor obtains an order barring disclosure of such personal information to any person not named in the litigation;

(e) Admission of personal information as relevant evidence before a court of competent jurisdiction. However, no court shall publicly reveal personal information absent a specific finding of good cause;

(f) Any report or disclosure required by state or federal law or regulation for an employee of the University of Nebraska or any state college. Except as otherwise required by law, no such report or disclosure shall be subject to release under the state public records laws;

(g) Any report or disclosure required by conflict of interest, conflict of commitment, or outside income policies for an employee or contractor of the University of Nebraska or any state college. Except as otherwise required by law, no such report or disclosure shall be subject to release under the state public records laws;

(h) Any document required or permitted to be filed with the Secretary of State disclosing the identity of any director, officer, incorporator, or registered agent of a nonprofit organization;

(i) Any request for information required by the Uniform Credentialing Act or Health Care Facility Licensure Act or by a federal funding agency;

(j) A request for information required for a criminal history record information check undertaken pursuant to express statutory authority, except that such information shall only be used in connection with the specific criminal history record information check and for any related proceedings;

(k)(i) The Auditor of Public Accounts from accessing personal information during an examination undertaken pursuant to express statutory authority. The auditor may publicly disclose personal information obtained during such examination only if that information:

(A) Pertains specifically to a person who has violated or is alleged to have violated a state or federal law, rule, or regulation or an ordinance of a city or village; or

(B) Pertains to a person directly associated with a violation described in subdivision (3)(k)(i)(A) of this section.

(ii) This subdivision (3)(k) shall be strictly construed and only authorizes disclosure of personal information pertaining to a person who meets the criteria described in subdivision (3)(k)(i) of this section.

(iii) All other personal information accessed by the Auditor of Public Accounts shall be subject to the restrictions on working papers contained in section 84-311; or

(l) Subject to compliance with section 8-112, any request for, or release of, information, a record, or a report, obtained by the Department of Banking and Finance from a nonprofit organization.

Source: Laws 2024, LB43, § 19.
Operative date January 1, 2025.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Nebraska Political Accountability and Disclosure Act, see section 49-1401.
Uniform Credentialing Act, see section 38-101.

20-804 Civil action; appropriate relief.

Any person aggrieved by a violation of the Personal Privacy Protection Act may bring a civil action for appropriate relief. Appropriate relief includes:

(1) The greater of actual damages or two thousand five hundred dollars in liquidated damages per violation; and

(2) Such preliminary and other equitable or declaratory relief as may be appropriate.

Source: Laws 2024, LB43, § 20.
Operative date January 1, 2025.

CHAPTER 21
CORPORATIONS AND OTHER COMPANIES

ARTICLE 1
NEBRASKA UNIFORM LIMITED LIABILITY COMPANY ACT

(a) GENERAL PROVISIONS

(k) PROFESSIONAL SERVICES AND CERTIFICATE OF REGISTRATION

(a) GENERAL PROVISIONS

21-102 Terms, defined.

(RULLCA 102) In the Nebraska Uniform Limited Liability Company Act:

(1) Certificate of organization means the certificate required by section 21-117. The term includes the certificate as amended or restated.

(2) Certificate of registration means either (a) a document prepared and issued by a regulatory body or (b) verification, by the Secretary of State, that all of those members, managers, professional employees, and agents who are required by law to do so are duly licensed or otherwise legally authorized to render the professional service for which the limited liability company is organized to do business or a service ancillary to those which the limited liability company renders, through the electronic accessing of the regulatory body's licensing records or through compacts or other certifying organizations recognized by the regulatory body.

(3) Contribution means any benefit provided by a person to a limited liability company:

(A) in order to become a member upon formation of the company and in accordance with an agreement between or among the persons that have agreed to become the initial members of the company;

(B) in order to become a member after formation of the company and in accordance with an agreement between the person and the company; or

(C) in the person's capacity as a member and in accordance with the operating agreement or an agreement between the member and the company.

(4) Debtor in bankruptcy means a person that is the subject of:

(A) an order for relief under Title 11 of the United States Code or a successor statute of general application; or

(B) a comparable order under federal, state, or foreign law governing insolvency.

(5) Designated office means:

(A) the office that a limited liability company is required to designate and maintain under section 21-113; or

(B) the principal office of a foreign limited liability company.

(6) Distribution, except as otherwise provided in subsection (g) of section 21-134, means a transfer of money or other property from a limited liability company to another person on account of a transferable interest.

(7) Effective, with respect to a record required or permitted to be delivered to the Secretary of State for filing under the Nebraska Uniform Limited Liability Company Act, means effective under subsection (c) of section 21-121.

(8) Foreign limited liability company means an unincorporated entity formed under the law of a jurisdiction other than this state and denominated by that law as a limited liability company.

(9) Limited liability company, except in the phrase foreign limited liability company, means an entity formed under the Nebraska Uniform Limited Liability Company Act.

(10) Manager means a person that under the operating agreement of a manager-managed limited liability company is responsible, alone or in concert with others, for performing the management functions stated in subsection (c) of section 21-136.

(11) Manager-managed limited liability company means a limited liability company that qualifies under subsection (a) of section 21-136.

(12) Member means a person that has become a member of a limited liability company under section 21-130 and has not dissociated under section 21-145.

(13) Member-managed limited liability company means a limited liability company that is not a manager-managed limited liability company.

(14) Operating agreement means the agreement, whether or not referred to as an operating agreement and whether oral, in a record, implied, or in any combination thereof, of all the members of a limited liability company, including a sole member. The term includes the agreement as amended or restated.

(15) Organizer means a person that acts under section 21-117 to form a limited liability company.

(16) Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(17) Principal office means the principal executive office of a limited liability company or foreign limited liability company, whether or not the office is located in this state.

(18) Professional service means any personal service rendered by an attorney, a certified public accountant, a public accountant, a dentist, an osteopathic physician, a physician and surgeon, a real estate broker, an associate real estate broker, a real estate salesperson, or a veterinarian. For purposes of the act,

those professions pertaining to the diagnosis, care, and treatment of humans shall be considered to be of the same profession.

(19) 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.

(20) Regulatory body means a board, commission, court, or governmental authority which is charged with licensing or regulating the rendering of a professional service in this state.

(21) Sign means, with the present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(22) 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.

(23) Transfer includes an assignment, conveyance, deed, bill of sale, lease, mortgage, trust deed, security interest, encumbrance, gift, and transfer by operation of law.

(24) Transferable interest means the right, as originally associated with a person's capacity as a member, to receive distributions from a limited liability company in accordance with the operating agreement, whether or not the person remains a member or continues to own any part of the right.

(25) Transferee means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a member.

Source: Laws 2010, LB888, § 2; Laws 2024, LB628, § 1.
Effective date July 19, 2024.

(k) PROFESSIONAL SERVICES AND CERTIFICATE OF REGISTRATION

21-185 Professional service; filing required; certificate of registration; contents.

(1) Each member, manager, professional employee, or agent of a limited liability company who renders a professional service shall hold a valid license or otherwise be duly authorized to render that professional service under the law of this state if such member, manager, professional employee, or agent renders a professional service within this state or under the law of the state or other jurisdiction in which such person renders the professional service.

(2) Before rendering a professional service, a limited liability company shall (a)(i) deliver to the Secretary of State for filing a certificate of registration issued to the limited liability company by the regulatory body of the particular profession for which the limited liability company is organized to do business, which certificate sets forth the name and address of every member, manager, professional employee, and agent of the limited liability company who is required by law to be licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business or a service ancillary to those which the limited liability company renders as of the last day of the month preceding the date of delivery of the certificate, and (ii) certify that all of those members, managers, professional employees, and agents of the limited liability company who are required by law to do so are duly

licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business or a service ancillary to those which the limited liability company renders or (b) comply with and qualify under the procedures set forth in subsection (2) of section 21-186.

(3) The registration certificate requirements of this section and sections 21-186 to 21-188 shall apply to both limited liability companies and foreign limited liability companies.

(4) Any limited liability company that, prior to July 19, 2024, has a certificate of registration pursuant to subsection (1) or (2) of section 21-186 may continue to render professional service if the certificate of registration is maintained continuously on and after July 19, 2024.

Source: Laws 2010, LB888, § 85; Laws 2024, LB628, § 2.
Effective date July 19, 2024.

21-186 Certificate of registration; application; contents; display; electronic records; use; license verification; Secretary of State; duties.

(1)(a) An application for issuance of a certificate of registration shall be made by the limited liability company to the regulatory body in writing and shall contain the names of all of those members, managers, professional employees, and agents of the limited liability company who are required by law to be licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business or a service ancillary to those which the limited liability company renders, the street address at which the applicant proposes to render a professional service, and such other information as may be required by the regulatory body. If it appears to the regulatory body that each member, manager, professional employee, and agent of the applicant required by law to be licensed is licensed or otherwise authorized to practice the profession for which the applicant is organized to do business and that each member, manager, professional employee, or agent required by law to be licensed or otherwise authorized to practice the profession for which the applicant is organized to do business is not otherwise disqualified from rendering the professional service of the applicant, such regulatory body shall issue a certificate in duplicate upon a form bearing its date of issuance and prescribed by such regulatory body certifying that the proposed or existing limited liability company complies with the provisions of the Nebraska Uniform Limited Liability Company Act and of the applicable rules and regulations of the regulatory body. Each applicant for such certificate shall pay the regulatory body a fee of twenty-five dollars for the issuance of the certificate.

(b) One copy of a certificate of registration issued pursuant to this subsection shall be prominently displayed to public view upon the premises of the principal place of business of the limited liability company, and, except as provided in subsection (2) of this section, one copy shall be delivered for filing to the Secretary of State who shall charge a fee as specified in section 21-192 for filing the same. The certificate shall be delivered to the Secretary of State for filing with the certificate of organization. A certificate of registration bearing an issuance date more than twelve months old shall not be eligible for filing by the Secretary of State.

(2) When licensing records of regulatory bodies are electronically accessible to the Secretary of State, the regulatory body, in conjunction with the Secretary

of State, shall develop an automated process to allow the Secretary of State to electronically access and verify the records. The access of the records shall be made in lieu of a certificate of registration being prepared and issued by the regulatory body for delivery to the Secretary of State for filing. The limited liability company shall deliver to the Secretary of State for filing an application setting forth the names of all of those members, managers, professional employees, and agents of such limited liability company who are required by law to be licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business, or a service ancillary to those which the limited liability company renders, as of the last day of the month preceding the date of application and shall deliver to the Secretary of State for filing an annual update thereafter. The application shall be completed on a form prescribed by the Secretary of State and shall contain such other information as the Secretary of State may require. The application shall be accompanied by a license verification fee as specified in section 21-192.

The Secretary of State shall verify that all of those members, managers, professional employees, and agents who are required by law to do so are duly licensed or otherwise legally authorized to render the professional service for which the applicant is organized to do business or a service ancillary to those which the limited liability company renders through electronic accessing of the regulatory body's records or through compacts or other certifying organizations recognized by the regulatory body. If any member, manager, professional employee, or agent who is required by law to be licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business, or a service ancillary to those which the limited liability company renders, is not licensed or otherwise legally authorized to render the professional service for which the limited liability company is organized to do business or a service ancillary to those which the limited liability company renders, the limited liability company shall be suspended. The suspension shall remain in effect and a biennial report shall not be delivered to the Secretary of State for filing or filed by the Secretary of State until the limited liability company attests in writing that all of those members, managers, professional employees, or agents who are required by law to be licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business, or a service ancillary to those which the limited liability company renders, are duly licensed or otherwise legally authorized to render the professional service for which the limited liability company is organized to do business or a service ancillary to those which the limited liability company renders and that information is verified by the Secretary of State or all unlicensed or unauthorized members, managers, professional employees, or agents are no longer members, managers, professional employees, or agents of the limited liability company.

Source: Laws 2010, LB888, § 86; Laws 2020, LB910, § 3; Laws 2024, LB628, § 3.
Effective date July 19, 2024.

21-188 Certificate of registration; suspension or revocation; procedure; notice.

A regulatory body may, upon a form prescribed by it, suspend or revoke any certificate of registration issued to any limited liability company pursuant to subsection (1) of section 21-186 upon the suspension or revocation of the

license or other authorization to render a professional service by any member, manager, professional employee, or agent of the limited liability company who is required by law to be licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business or a service ancillary to those which the limited liability company renders. Notice of such suspension or revocation shall be provided to the limited liability company affected by sending by certified or registered mail a certified copy of such suspension or revocation to the limited liability company at its principal place of business set forth in the certificate so suspended or revoked. At the same time, the regulatory body shall forward by regular mail a certified copy of such suspension or revocation to the Secretary of State who shall remove the suspended or revoked registration certificate from his or her files and deliver it to the regulatory body.

Source: Laws 2010, LB888, § 88; Laws 2024, LB628, § 4.
Effective date July 19, 2024.

ARTICLE 17

CREDIT UNIONS

(a) CREDIT UNION ACT

Section

(a) CREDIT UNION ACT

21-1701 Act, how cited.

Sections 21-1701 to 21-17,115 shall be known and may be cited as the Credit Union Act.

Source: Laws 1996, LB 948, § 1; Laws 2000, LB 932, § 23; Laws 2002, LB 957, § 15; Laws 2017, LB375, § 1; Laws 2024, LB1074, § 61.
Operative date July 19, 2024.

21-1702 Definitions, where found.

For purposes of the Credit Union Act, the definitions found in sections 21-1702.01 to 21-1722 shall be used.

Source: Laws 1996, LB 948, § 2; Laws 2024, LB1074, § 62.
Operative date July 19, 2024.

21-1702.01 Associate director, defined.

Associate director shall mean an individual appointed by a credit union board to the position described in section 21-1768.01.

Source: Laws 2024, LB1074, § 63.
Operative date July 19, 2024.

21-1705 Credit union, defined.

Credit union shall mean a cooperative, not-for-profit corporation organized under the Credit Union Act for purposes of educating and encouraging its members in the concept of thrift, creating a source of credit for provident and productive purposes, and carrying on such collateral activities as are set forth in the act.

Source: Laws 1996, LB 948, § 5; Laws 2024, LB1074, § 64.
Operative date July 19, 2024.

21-1729 Place of business.

(1) A credit union may change its principal place of business within this state upon written notice to, and approval by, the director. The written notice may be delivered to the department in person or sent by regular or electronic mail.

(2) A credit union may maintain automatic teller machines and point-of-sale terminals at locations other than its principal office pursuant to section 8-157.01.

Source: Laws 1996, LB 948, § 29; Laws 1999, LB 396, § 20; Laws 2024, LB1074, § 65.
Operative date July 19, 2024.

21-1736 Examinations.

(1) The director shall examine or cause to be examined each credit union as often as deemed necessary. Each credit union and all of its officials and agents shall give the director or any of the examiners appointed by him or her free and full access to all books, papers, securities, and other sources of information relative to such credit union. For purposes of the examination, the director may subpoena witnesses, administer oaths, compel the giving of testimony, and require the submission of documents.

(2) The department shall forward a report of the examination to the chief executive officer, president, or manager of the credit union within ninety calendar days after completion. The report shall contain comments relative to the management of the affairs of the credit union and the general condition of its assets. Within ninety calendar days after the receipt of such report, the members of the board of directors and the members of the supervisory committee and credit committee, if any, shall meet to consider the matters contained in the report.

(3) The director may require special examinations of and special financial reports from a credit union or a credit union service organization in which a credit union loans, invests, or delegates substantially all managerial duties and responsibilities when he or she determines that such examinations and reports are necessary to enable the director to determine the safety of a credit union's operations or its solvency. The cost to the department of such special examinations shall be borne by the credit union being examined.

(4) The director may accept, in lieu of any examination of a credit union authorized by the laws of this state, a report of an examination made of a credit union by the National Credit Union Administration or may examine any such credit union jointly with such federal agency. The director may make available to the National Credit Union Administration copies of reports of any examination or any information furnished to or obtained by the director in any examination.

Source: Laws 1996, LB 948, § 36; Laws 2002, LB 957, § 18; Laws 2017, LB375, § 5; Laws 2024, LB1074, § 66.
Operative date April 18, 2024.

21-1743 Membership; requirements.

(1) The membership of a credit union shall consist of the subscribers to the articles of association and such persons, societies, associations, partnerships, and corporations as have been duly elected, members who have subscribed for one share, have paid for such share in whole or in part, have paid the entrance fee provided in the bylaws, and have complied with such other requirements as the articles of association and bylaws may specify. For purposes of obtaining a loan and to vote at membership meetings, a member, to be in good standing, must own one fully paid share. Credit union organization shall be limited to groups of both large and small membership having a common bond of occupation or association, including religious, social, or educational groups, employees of a common employer, or members of a fraternal, religious, labor, farm, or educational organization and the members of the immediate families of such persons.

(2) A person having been duly admitted to membership, having complied with the Credit Union Act, the articles of association, and the bylaws, having paid the entrance fee, and having paid for one share, shall retain full rights and privileges of membership for life unless that membership is terminated by withdrawal or expulsion in the manner provided by the act.

Source: Laws 1996, LB 948, § 43; Laws 2024, LB1074, § 67.
Operative date July 19, 2024.

21-1749 Meetings.

The annual meeting and any special meeting of the members of the credit union shall be held in accordance with the bylaws. A special meeting of the members of the credit union may be called by the members or by the board of directors as provided in the bylaws. A credit union shall give notice of the time and place or virtual conferencing platform by which members can participate and interact for any meeting of its members. In the case of a special meeting, the notice of such special meeting shall state the purpose of the meeting and the notice shall be given at least ten calendar days prior to the date of such special meeting.

Source: Laws 1996, LB 948, § 49; Laws 2024, LB1074, § 68.
Operative date July 19, 2024.

21-1767 Meetings of directors.

(1) The board of directors shall have regular meetings as often as necessary but not less frequently than six meetings annually with at least one meeting in each calendar quarter. A new credit union shall have regular meetings as often

as necessary but not less frequently than once each month for the first five years of the existence of the credit union. Special meetings of the board may be called as provided in the bylaws.

(2) Unless the articles of association or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means shall be deemed to be present in person at the meeting.

(3) If the Director of Banking and Finance deems it expedient, he or she may call a meeting of the board of directors of any credit union, for any purpose, by giving notice to the directors of the time, place, and purpose thereof at least three business days prior to the meeting, either by personal service or by registered or certified mail sent to their last-known addresses as shown on the credit union books.

(4) A full and complete record of the proceedings and business of all meetings of the board of directors shall be recorded in the minutes of the meeting.

Source: Laws 1996, LB 948, § 67; Laws 2000, LB 932, § 24; Laws 2024, LB1074, § 69.
Operative date July 19, 2024.

21-1768.01 Associate directors.

(1) The board of directors of a credit union may, in its discretion, appoint one or more associate directors to serve in an advisory capacity. The board shall prescribe the duties of an associate director and the manner in which associate directors are appointed and removed. The board shall not delegate to associate directors any of the duties or responsibilities prescribed by the Credit Union Act or other applicable law to be performed by the directors duly elected by the members. An associate director shall not be deemed or considered to be a director for any purpose under the act.

(2) Before appointing an associate director, the board shall confirm that the person meets all of the requirements to serve as a director.

(3) An associate director may participate in meetings of the board but may not vote or otherwise act as a director. With respect to any issue that comes before the board for deliberation, the board may request that any associate director in attendance leave the meeting of the board and any associate director in attendance shall immediately comply with the request.

(4) The board shall require each associate director to sign a confidentiality or nondisclosure agreement to ensure that information concerning the credit union remains confidential.

Source: Laws 2024, LB1074, § 70.
Operative date July 19, 2024.

21-17,102 Authorized investments.

(1) Funds not used in loans to members may be invested:

(a) In securities, obligations, or other instruments of or issued by or fully guaranteed as to principal and interest by the United States of America or any agency or instrumentality thereof or in any trust or trusts established for investing directly or collectively in the same;

(b) In securities, obligations, or other instruments of any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the several territories organized by Congress or any political subdivision thereof;

(c) In deposits, obligations, or other accounts of financial institutions organized under state or federal law;

(d) In loans to or in share accounts of other credit unions or corporate central credit unions;

(e) In obligations issued by banks for cooperatives, federal land banks, federal intermediate credit banks, federal home loan banks, the Federal Home Loan Bank Board, or any corporation designated in 31 U.S.C. 9101 as a wholly owned government corporation; in obligations, participation certificates, or other instruments of or insured by or fully guaranteed as to principal and interest by the Federal National Mortgage Association or the Government National Mortgage Association; in mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act, 12 U.S.C. 1454 et seq.; in obligations or other instruments or securities of the Student Loan Marketing Association; or in obligations, participation, securities, or other instruments of or issued by or fully guaranteed as to principal and interest by any other agency of the United States. A state credit union may issue and sell securities which are guaranteed pursuant to section 306(g) of the National Housing Act, 12 U.S.C. 1721(g);

(f) In participation certificates evidencing a beneficial interest in obligations or in a right to receive interest and principal collections therefrom, which obligations have been subjected by one or more government agencies to a trust or trusts for which any executive department, agency, or instrumentality of the United States or administrator thereof has been named to act as trustee;

(g) In share accounts or deposit accounts of any corporate central credit union in which such investments are specifically authorized by the board of directors of the credit union making the investment;

(h) In the shares, stock, or other obligations of any other organization, not to exceed ten percent of the credit union's capital and not to exceed five percent of the credit union's capital in any one corporation's stock, bonds, or other obligations, unless otherwise approved by the director. Such authority shall not include the power to acquire control, directly or indirectly, of another financial institution, nor invest in shares, stocks, or obligations of any insurance company or trade association except as otherwise expressly provided for or approved by the director;

(i) In the capital stock of the National Credit Union Administration Central Liquidity Facility;

(j) In obligations of or issued by any state or political subdivision thereof, including any agency, corporation, or instrumentality of a state or political subdivision, except that no credit union may invest more than ten percent of its capital in the obligations of any one issuer, exclusive of general obligations of the issuer;

(k) In securities issued pursuant to the Nebraska Business Development Corporation Act;

(l) In participation loans with other credit unions, credit union organizations, or other organizations; and

(m) In insurance policies and other investment products to fund employee benefit plans for its employees, not to exceed fifteen percent of the net worth of a credit union from a single issuer or twenty-five percent of the net worth of a credit union in aggregate. Employee benefit plan has the same meaning as in 29 U.S.C. 1002(3), as such section existed on January 1, 2024. If the employee benefits arrangement does not present a risk to the safety and soundness of the domestic credit union as determined by the director, the purchase of those investment products is not subject to the limitations of the Credit Union Act.

(2) In addition to investments expressly permitted by the Credit Union Act, a credit union may make any other type of investment approved by the department by rule, regulation, or order.

Source: Laws 1996, LB 948, § 102; Laws 1997, LB 137, § 15; Laws 2003, LB 217, § 31; Laws 2005, LB 533, § 31; Laws 2024, LB1074, § 71.
Operative date July 19, 2024.

Cross References

Nebraska Business Development Corporation Act, see section 21-2101.

21-17,109 Merger or consolidation.

(1) Any credit union organized under the Credit Union Act may, with the approval of the department, merge or consolidate with one or more other credit unions organized under the act or under the laws of the United States, if the credit unions merging or consolidating possess coinciding common bonds of association.

(2) When two or more credit unions merge or consolidate, one shall be designated as the continuing credit union or a totally new credit union shall be organized. If the latter procedure is followed, the new credit union shall be organized under the Credit Union Act or under the laws of the United States. All participating credit unions other than the continuing or new credit union shall be designated as merging credit unions.

(3) Any merger or consolidation of credit unions shall be done according to a plan of merger or consolidation. After approval by the boards of directors of all participating credit unions, the plan shall be submitted to the department for preliminary approval. If the plan includes the organization of a new credit union, all documents required pursuant to section 21-1724 shall be submitted as a part of the plan. In addition, each participating credit union shall submit the following information:

(a) The time and place of the meeting of the boards of directors at which the plan of merger or consolidation was agreed upon;

(b) The vote of the directors in favor of the adoption of the plan; and

(c) A copy of a resolution or other action by which the plan was agreed upon.

The department shall grant preliminary approval if the plan has been approved properly by the boards of directors and if the documentation required to organize a new credit union, if any, complies with section 21-1724. The director, in his or her discretion, may order a hearing be held if he or she determines that the condition of the acquiring credit union warrants a hearing or that the plan of merger would be unfair to the merging credit union.

(4) After the department grants preliminary approval, each merging credit union, except the continuing credit union, shall, unless waived by the depart-

ment, conduct a membership vote on its participation in the plan. The vote shall be conducted either at a special meeting called for that purpose or by mail ballot. If a majority of the members voting approve the plan, the credit union shall submit a record of that fact to the department indicating the vote by which the members approved the plan and either the time and place of the membership meeting or the mailing date and closing date of the mail ballot.

(5) The department may waive any voting requirements described in the Credit Union Act for any credit union upon the determination that it is in the best interests of the membership or that the credit union is insolvent or in imminent danger of becoming insolvent.

(6) The director shall grant final approval of the plan of merger or consolidation after determining that the requirements of subsections (1) through (4) of this section have been met in the case of each merging credit union. If the plan of merger or consolidation includes the organization of a new credit union, the department must approve the organization of the new credit union under section 21-1724 as part of the approval of the plan of merger or consolidation. The department shall notify all participating credit unions of the plan.

(7) Upon final approval of the plan by the department, all property, property rights, and members' interests in each merging credit union shall vest in the continuing or new credit union as applicable without deed, obligations, and other instruments of transfer, and all debts, obligations, and liabilities of each merging credit union shall be deemed to have been assumed by the continuing or new credit union. The rights and privileges of the members of each participating credit union shall remain intact. If a person is a member of more than one of the participating credit unions, the person shall be entitled to only a single set of membership rights in the continuing or new credit union.

(8) Notwithstanding any other provision of law, the department may authorize a merger or consolidation of a credit union which is insolvent or which is in danger of insolvency with any other credit union or may authorize a credit union to purchase any of the assets of or assume any of the liabilities of any other credit union which is insolvent or which is in danger of insolvency, if the department is satisfied that:

(a) An emergency requiring expeditious action exists with respect to such credit union;

(b) Other alternatives for such credit union are not reasonably available; and

(c) The public interest would best be served by the approval of such merger, consolidation, purchase, or assumption.

(9) Notwithstanding any other provision of law, the director may authorize an institution, the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation or any derivative thereof, to purchase any assets of or assume any liabilities of a credit union which is insolvent or in danger of insolvency, except that prior to exercising this authority the director shall attempt to effect a merger or consolidation with, or purchase or assumption by, another credit union as provided in subsection (8) of this section.

(10) For purposes of the authority contained in subsection (9) of this section, insured share accounts of each credit union may, upon consummation of the purchase or assumption, be converted to insured deposits or other comparable accounts in the acquiring institution, and the department and the National

Credit Union Share Insurance Fund shall be absolved of any liability to the credit union's members with respect to those accounts.

Source: Laws 1996, LB 948, § 109; Laws 1997, LB 137, § 17; Laws 2002, LB 957, § 19; Laws 2024, LB1074, § 72.
Operative date July 19, 2024.

21-17,115 Credit union organized under laws of Nebraska; rights, powers, privileges, and immunities of federal credit union; exception.

Notwithstanding any of the other provisions of the Credit Union Act or any other Nebraska statute, any credit union incorporated under the laws of the State of Nebraska and organized under the provisions of the act shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of January 1, 2024, by a federal credit union doing business in Nebraska on the condition that such rights, powers, privileges, benefits, and immunities shall not relieve such credit union from payment of state taxes assessed under any applicable laws of this state.

Source: Laws 1977, LB 246, § 5; Laws 1978, LB 772, § 1; Laws 1979, LB 307, § 1; Laws 1980, LB 793, § 1; Laws 1981, LB 60, § 1; Laws 1982, LB 775, § 2; Laws 1983, LB 143, § 1; Laws 1984, LB 643, § 1; Laws 1985, LB 430, § 1; Laws 1986, LB 963, § 1; Laws 1987, LB 197, § 1; Laws 1988, LB 957, § 1; Laws 1989, LB 126, § 1; Laws 1990, LB 1017, § 1; Laws 1991, LB 97, § 1; Laws 1992, LB 984, § 1; Laws 1993, LB 122, § 1; Laws 1994, LB 878, § 1; Laws 1995, LB 76, § 1; R.S.Supp.,1995, § 21-17,120.01; Laws 1996, LB 948, § 115; Laws 1997, LB 152, § 1; Laws 1998, LB 1321, § 75; Laws 1999, LB 278, § 1; Laws 2000, LB 932, § 27; Laws 2001, LB 53, § 26; Laws 2002, LB 957, § 20; Laws 2003, LB 217, § 32; Laws 2004, LB 999, § 21; Laws 2005, LB 533, § 32; Laws 2006, LB 876, § 24; Laws 2007, LB124, § 21; Laws 2008, LB851, § 17; Laws 2009, LB327, § 15; Laws 2010, LB890, § 14; Laws 2011, LB74, § 5; Laws 2012, LB963, § 22; Laws 2013, LB213, § 13; Laws 2014, LB712, § 3; Laws 2015, LB286, § 3; Laws 2016, LB676, § 3; Laws 2017, LB140, § 149; Laws 2018, LB812, § 9; Laws 2019, LB258, § 13; Laws 2020, LB909, § 21; Laws 2021, LB363, § 24; Laws 2022, LB707, § 31; Laws 2023, LB92, § 50; Laws 2024, LB1074, § 73.
Operative date April 18, 2024.

ARTICLE 22
PROFESSIONAL CORPORATIONS

Section
21-2202. Terms, defined.
21-2216. Regulating board; certificate of registration; contents; filing; fee; display; electronic access; Secretary of State; duty; corporate suspension or dissolution; when.

21-2202 Terms, defined.

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

(1) Certificate of registration or registration certificate from or by the regulating board means either (a) a document prepared and issued by the regulating

board or (b) verification, by the Secretary of State, that all of those directors, officers, shareholders, and professional employees listed on the application filed with the Secretary of State, except for the secretary and assistant secretary, are duly licensed or otherwise legally authorized to render the professional service for which the professional corporation is organized or a service ancillary to those which the professional corporation renders, through the electronic accessing of the regulating board's licensing records or through compacts or other certifying organizations recognized by the regulating board;

(2) Professional corporation means a corporation which is organized under the act for the specific purpose of rendering professional service and which has as its shareholders only individuals who themselves are duly licensed or otherwise legally authorized within this state to render the same professional service as the corporation;

(3) Professional service means any personal service rendered by an attorney, a certified public accountant, a public accountant, a dentist, an osteopathic physician, a physician and surgeon, a real estate broker, an associate real estate broker, a real estate salesperson, or a veterinarian. For purposes of the act, those professions pertaining to the diagnosis, care, and treatment of humans shall be considered to be of the same profession; and

(4) Regulating board means a board which is charged with the licensing and regulating of the practice or profession which the professional corporation is organized to render.

Source: Laws 1969, c. 121, § 2, p. 555; Laws 1980, LB 893, § 1; Laws 1989, LB 342, § 1; Laws 1995, LB 406, § 2; Laws 2012, LB852, § 2; Laws 2024, LB628, § 5.
Effective date July 19, 2024.

21-2216 Regulating board; certificate of registration; contents; filing; fee; display; electronic access; Secretary of State; duty; corporate suspension or dissolution; when.

(1) No corporation shall open, operate, or maintain an establishment or do business for any purposes set forth in the Nebraska Professional Corporation Act without (a) filing with the Secretary of State a certificate of registration from the regulating board of the particular profession for which the professional corporation is organized to do business, which certificate shall set forth the name and addresses of all shareholders as of the last day of the month preceding such filing, and (b) certifying that all shareholders, directors, and officers, except the secretary and the assistant secretary, are duly licensed to render the same professional services as those for which the corporation was organized. Application for a certificate of registration shall be made by the professional corporation to the regulating board in writing and shall contain the names of all officers, directors, shareholders, and professional employees of the professional corporation, the street address at which the applicant proposes to perform professional services, and such other information as may be required by the regulating board.

(2) If it appears to the regulating board that each shareholder, officer, director, and professional employee of the applicant, except the secretary and the assistant secretary, is licensed to practice the profession of the applicant and that each shareholder, officer, director, or professional employee is not otherwise disqualified from performing the professional services of the appli-

cant, such regulating board shall certify, in duplicate upon a form bearing its date of issuance and prescribed by such regulating board, that such proposed or existing professional corporation complies with the provisions of the act and of the applicable rules and regulations of such regulating board. Each applicant for such registration certificate shall pay such regulating board a fee of twenty-five dollars for the issuance of such duplicate certificate.

(3) One copy of such certificate shall be prominently exposed to public view upon the premises of the principal place of business of each professional corporation organized under the act, and one copy shall be filed by the professional corporation with the Secretary of State who shall charge a fee as specified in section 21-205. The certificate from the regulating board shall be filed in the office of the Secretary of State together with the articles of incorporation. A registration certificate bearing an issuance date more than twelve months old shall not be eligible for filing with the Secretary of State.

(4) When licensing records of regulating boards are electronically accessible, the regulating board, in conjunction with the Secretary of State, shall develop an automated process to allow the Secretary of State to electronically access and verify the records. The access shall be made in lieu of the certificate of registration or registration certificate being prepared and issued by the regulating board. The professional corporation shall file with the Secretary of State an application setting forth the name and residence addresses of all officers, directors, shareholders, and professional employees as of the last day of the month preceding the date of the application and shall file with the Secretary of State an annual update thereafter. Each application shall be accompanied by a licensure verification fee as specified in section 21-205. The Secretary of State shall verify that all of the directors, officers, shareholders, and professional employees listed on the application, except for the secretary and assistant secretary, are duly licensed or otherwise legally authorized to render the same professional service for which the professional corporation was organized or a service ancillary to those which the professional corporation renders. Verification shall be done by electronically accessing the regulating board's licensing records or through compacts or other certifying organizations recognized by the regulating board. If any director, officer, shareholder, or professional employee is not licensed or otherwise legally authorized to perform the professional service that the professional corporation was organized to render, or a service ancillary to those which the professional corporation renders, the corporation will be suspended. The biennial report and tax cannot be filed and paid in the office of the Secretary of State until the corporation attests in writing that the director, officer, shareholder, or professional employee is licensed or otherwise legally authorized to practice, which shall be verified by the Secretary of State, or is no longer a director, officer, shareholder, or professional employee of the corporation. When the biennial report and the tax become delinquent, the corporation shall be dissolved for nonpayment of taxes in compliance with section 21-323.

Source: Laws 1969, c. 121, § 16, p. 560; Laws 1971, LB 489, § 1; Laws 1973, LB 157, § 4; Laws 1976, LB 749, § 1; Laws 1982, LB 928, § 16; Laws 1992, LB 1019, § 27; Laws 1995, LB 406, § 4; Laws 2003, LB 524, § 18; Laws 2008, LB379, § 20; Laws 2020, LB910, § 8; Laws 2024, LB628, § 6.
Effective date July 19, 2024.

CHAPTER 23
COUNTY GOVERNMENT AND OFFICERS

Article.
1. General Provisions.
   (a) Corporate Powers. 23-103 to 23-104.03.
   (b) Powers and Duties of County Board. 23-118.
3. Provisions Applicable to Various Projects.
   (aa) Bridge Construction and Repair. 23-399.
8. Recreation, Entertainment, Amusements; Regulation.
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   (c) Dance Halls, Roadhouses, Carnivals, Shows, and Amusement Parks. 23-813 to 23-818. Repealed.
11. Salaries of County Officers. 23-1112.01 to 23-1114.07.
17. Sheriff.
   (a) General Provisions. 23-1701, 23-1701.01.
19. County Surveyor and Engineer. 23-1901 to 23-1911.
23. County Employees Retirement. 23-2301 to 23-2332.01.
31. County Purchasing. 23-3104 to 23-3115.

ARTICLE 1
GENERAL PROVISIONS

(a) CORPORATE POWERS

Section
23-103. Powers; how exercised.
23-104. Powers.
23-104.01. Agreements; conditions; limitations; powers.
23-104.03. Power to provide facilities, programs, and services; need for advocacy or protective services.

(b) POWERS AND DUTIES OF COUNTY BOARD

23-118. Electric generation facility; site selection; contract approval; county board; duties.

(a) CORPORATE POWERS

23-103 Powers; how exercised.

(1) The powers of the county as a body corporate or politic shall be exercised by a county board in the following manner:

(a) In counties under township organization, by the board of supervisors composed of the town and other supervisors elected pursuant to law; and

(b) In counties not under township organization, by the board of county commissioners.

(2) In exercising the powers of the county, the board of supervisors or the board of county commissioners may enter into agreements with the board or boards of another county or counties to exercise and carry out jointly any power or powers possessed by or conferred by law upon each board separately.

Source: Laws 1879, § 21, p. 359; R.S.1913, § 950; C.S.1922, § 850; C.S.1929, § 26-103; R.S.1943, § 23-103; Laws 1953, c. 48, § 1, p. 173; Laws 2024, LB940, § 1.
Effective date July 19, 2024.

23-104 Powers.

Each county shall have power to:

(1) Purchase and hold the real and personal estate necessary for the use of the county;

(2) Purchase, lease, lease with option to buy, acquire by gift or devise, and hold for the benefit of the county real estate sold by virtue of judicial proceedings in which the county is plaintiff or is interested;

(3) Hold all real estate conveyed by general warranty deed to trustees in which the county is the beneficiary, whether the real estate is situated in the county so interested or in some other county or counties of the state;

(4) Sell, convey, exchange, or lease any real or personal estate owned by the county in such manner and upon such terms and conditions as may be deemed in the best interest of the county;

(5) Enter into agreements with other counties to exercise and carry out powers possessed by or conferred by law upon each county separately; and

(6) Enter into contracts and to do all other acts in relation to the property and concerns of the county necessary to the exercise of its corporate powers, except that no lease agreement for the rental of equipment shall be entered into if the consideration for all lease agreements for the fiscal year exceeds one-tenth of one percent of the total taxable value of the taxable property of the county.

Source: Laws 1879, § 22, p. 359; Laws 1889, c. 61, § 1, p. 491; R.S.1913, § 951; C.S.1922, § 851; C.S.1929, § 26-104; R.S.1943, § 23-104; Laws 1953, c. 48, § 2, p. 174; Laws 1963, c. 109, § 1, p. 437; Laws 1967, c. 116, § 1, p. 364; Laws 1979, LB 187, § 92; Laws 1992, LB 1063, § 13; Laws 1992, Second Spec. Sess., LB 1, § 13; Laws 2024, LB940, § 2.
Effective date July 19, 2024.

23-104.01 Agreements; conditions; limitations; powers.

Any agreement between counties for the joint exercise of powers shall:

(1)(a) Be in writing and signed by a majority of the board of supervisors or county commissioners of each county that is a party to the agreement; and

(b) After being signed pursuant to subdivision (1)(a) of this section, be filed and recorded in the office of the county clerk of each county that is a party to the agreement;

(2) Specify the powers and obligations of each party under the agreement. Such powers shall:

(a) Be limited to powers imposed by law upon a county that is a party to the agreement or its board of supervisors or county commissioners; and

(b) Not include powers specifically conferred upon and required to be carried out by other elected officers of a county that is a party to the agreement;

(3) Specify the allocation and payment of expenses to be paid by each county under the agreement;

(4) Provide for the following to be reserved to and remain a function of the board of supervisors or county commissioners of each county that is a party to the agreement:

(a) Final action upon the allowance and payment of any claims and obligations against each county; and

(b) The levy and collection of taxes to pay claims and obligations under the agreement; and

(5) Be subject to the Interlocal Cooperation Act.

Source: Laws 1953, c. 48, § 3, p. 174; Laws 1996, LB 1085, § 27; Laws 2024, LB940, § 3.
Effective date July 19, 2024.

Cross References

Consolidation of common functions and services, see section 22-401 et seq.
Interlocal Cooperation Act, see section 13-801.

23-104.03 Power to provide facilities, programs, and services; need for advocacy or protective services.

Each county shall have the authority to:

(1) Plan, initiate, fund, maintain, administer, and evaluate facilities, programs, and services that advocate for or meet the rehabilitation, treatment, care, training, educational, residential, diagnostic, evaluation, community supervision, and protective service needs of the following individuals domiciled in the county:

(a) Any person who is dependent, aged, blind, disabled, ill, or infirm;

(b) Any person with a mental disorder;

(c) Any person with an intellectual disability; or

(d) Any person who is a survivor of domestic violence or sexual assault;

(2) Purchase outright by installment contract or by mortgage with the power to borrow funds in connection with such contract or mortgage, hold, sell, and lease for a period of more than one year real estate necessary for use of the county to plan, initiate, fund, maintain, administer, and evaluate such facilities, programs, and services;

(3) Lease personal property necessary for such facilities, programs, and services. Any such lease may provide for installment payments that extend over a period of more than one year, notwithstanding the provisions of section 23-132 or 23-916;

(4) Enter into agreements with other counties, state agencies, other political subdivisions, and private nonprofit organizations to plan, initiate, fund, maintain, administer, and evaluate such facilities, programs, and services. Any agreement with any public agency pursuant to this subdivision is subject to the Interlocal Cooperation Act; and

(5) Contract for such services from public or private entities that provide such services on a vendor basis.

Source: Laws 1971, LB 599, § 1; Laws 1972, LB 1266, § 1; Laws 1985, LB 393, § 15; Laws 1986, LB 1177, § 4; Laws 2013, LB23, § 2; Laws 2024, LB940, § 4.
Effective date July 19, 2024.

Cross References

Interlocal Cooperation Act, see section 13-801.

(b) POWERS AND DUTIES OF COUNTY BOARD

23-118 Electric generation facility; site selection; contract approval; county board; duties.

(1) For purposes of this section:

(a) Immediate family member means a child residing in an official's household, the spouse of an official, or an individual claimed by an official or the official's spouse as a dependent for federal income tax purposes; and

(b) Official means a member of a county board or a member of a county planning commission.

(2) When the construction of any new electric generation facility is being considered within a county, prior to project site selection for the facility or approval of any contract by the county related to the facility, the county board shall:

(a) Conduct a public meeting announcing the proposed project; and

(b) If any official involved in the selection of such project site or approval of such contract or an immediate family member of such official holds, directly or indirectly, a financial interest in such facility, or in the ownership or lease of the property within the county where such facility will be constructed:

(i) Publish notice of the official's financial interest and whether such official has indicated his or her intent to vote to select such project site or approve such contract; and

(ii) Within ninety days after the publication of such notice, hold a public meeting regarding the official's intention to vote to select such project site or approve such contract.

(3)(a) This section shall not affect the validity of any contract or apply to the ownership or lease of any property existing on March 12, 2024.

(b) This section shall not affect any conflict-of-interest provisions of the Nebraska Political Accountability and Disclosure Act.

Source: Laws 2024, LB569, § 1.
Effective date March 12, 2024.

Cross References

Nebraska Political Accountability and Disclosure Act, see section 49-1401.

ARTICLE 3
PROVISIONS APPLICABLE TO VARIOUS PROJECTS

(aa) BRIDGE CONSTRUCTION AND REPAIR

Section
23-399. Bridge; project payment; schedule.

(aa) BRIDGE CONSTRUCTION AND REPAIR

23-399 Bridge; project payment; schedule.

(1) For any project to repair, retrofit, reconstruct, or replace any bridge, the county board may adopt a resolution which provides for project payment on a set schedule over a period of time that may extend for multiple years beyond the completion date for such project.

(2) This section shall provide full authority for the exercise of the power described in subsection (1) of this section by a county, and no further action shall be required by the county board under any other provision of state law except as provided under the Open Meetings Act prior to the exercise of such power. If there is any provision of law applicable to a county in conflict with this section, this section shall be controlling.

Source: Laws 2024, LB190, § 1.
Effective date July 19, 2024.

Cross References

Open Meetings Act, see section 84-1407.

ARTICLE 8

RECREATION, ENTERTAINMENT, AMUSEMENTS; REGULATION

(b) POOL HALLS AND BOWLING ALLEYS

Section
23-808. Repealed. Laws 2024, LB936, § 1.
23-809. Repealed. Laws 2024, LB936, § 1.
23-810. Repealed. Laws 2024, LB936, § 1.
23-811. Repealed. Laws 2024, LB936, § 1.
23-812. Repealed. Laws 2024, LB936, § 1.

(c) DANCE HALLS, ROADHOUSES, CARNIVALS, SHOWS, AND AMUSEMENT PARKS

23-813. Repealed. Laws 2024, LB936, § 1.
23-814. Repealed. Laws 2024, LB936, § 1.
23-815. Repealed. Laws 2024, LB936, § 1.
23-816. Repealed. Laws 2024, LB936, § 1.
23-817. Repealed. Laws 2024, LB936, § 1.
23-818. Repealed. Laws 2024, LB936, § 1.

(b) POOL HALLS AND BOWLING ALLEYS

23-808 Repealed. Laws 2024, LB936, § 1.

23-809 Repealed. Laws 2024, LB936, § 1.

23-810 Repealed. Laws 2024, LB936, § 1.

23-811 Repealed. Laws 2024, LB936, § 1.

23-812 Repealed. Laws 2024, LB936, § 1.

(c) DANCE HALLS, ROADHOUSES, CARNIVALS, SHOWS, AND AMUSEMENT PARKS

23-813 Repealed. Laws 2024, LB936, § 1.

23-814 Repealed. Laws 2024, LB936, § 1.

23-815 Repealed. Laws 2024, LB936, § 1.

23-816 Repealed. Laws 2024, LB936, § 1.

23-817 Repealed. Laws 2024, LB936, § 1.

23-818 Repealed. Laws 2024, LB936, § 1.

ARTICLE 11
SALARIES OF COUNTY OFFICERS

Section
23-1112.01. County officers; employees; use of automobile; allowance.
23-1114. County officers and deputies; salaries; fixed by county board; when; procedure; method of payment.
23-1114.07. County officers; salaries; Class 6 or 7 counties; exceptions.

23-1112.01 County officers; employees; use of automobile; allowance.

(1) If a trip or trips included in an expense claim filed by any county officer or employee for mileage are made by personal automobile or otherwise, only one claim shall be allowed pursuant to section 23-1112, regardless of the fact that one or more persons are transported in the motor vehicle.

(2) No charge for mileage shall be allowed when such mileage accrues while using any motor vehicle owned by the State of Nebraska.

(3) No charge for mileage shall be allowed when such mileage accrues while using any motor vehicle owned by a county, except as provided in section 33-117.

Source: Laws 1957, c. 70, § 12, p. 304; Laws 1961, c. 88, § 4, p. 309; Laws 1967, c. 125, § 2, p. 401; Laws 1973, LB 338, § 2; Laws 1974, LB 615, § 2; Laws 1978, LB 691, § 2; Laws 1980, LB 615, § 2; Laws 1981, LB 204, § 26; Laws 1996, LB 1011, § 9; Laws 2019, LB609, § 3; Laws 2024, LB1162, § 1.
Effective date July 19, 2024.

23-1114 County officers and deputies; salaries; fixed by county board; when; procedure; method of payment.

(1) Except as otherwise provided in subsection (4) of this section, the salaries of all elected officers of the county shall be fixed by the county board prior to January 15 of the year in which a general election will be held for the respective offices.

(2) The salaries of all deputies in the offices of the elected officers and appointive veterans service officers of the county shall be fixed by the county board at such times as necessity may require.

(3) The county board may make payments that include, but are not limited to, salaries described in this section or reimbursable expenses by electronic funds transfer or a similar means of direct deposit.

(4)(a) The salaries of the members of the county board shall be established by resolution by the members of the county board subject to the requirements in this section. Except as provided in subdivision (b) of this subsection, no such salary shall be increased by more than the cumulative change in the unadjusted Consumer Price Index for All Urban Consumers published by the Federal Bureau for Labor Statistics for the period since the last salary increase plus one percent. No such salary shall be increased more than once every two fiscal years.

(b) The county board may place the issue on the ballot of whether to increase the salary of the members of the county board by more than the amount

permitted in subdivision (a) of this subsection for approval by the registered voters of the county. The county board shall determine the percentage of increase and hold a public hearing regarding the increase. If the county board approves the percentage by a vote of at least two-thirds of the members of the county board, the county board shall transmit the issue to the election commissioner or county clerk for placement on the ballot at the next statewide general election subject to section 32-559.

Source: Laws 1953, c. 63, § 1, p. 204; Laws 1955, c. 72, § 1, p. 224; Laws 1959, c. 85, § 2, p. 391; Laws 1963, c. 118, § 1, p. 463; Laws 1971, LB 574, § 1; Laws 1973, LB 220, § 1; Laws 1975, LB 90, § 1; Laws 1986, LB 1056, § 1; Laws 1996, LB 1085, § 29; Laws 2011, LB278, § 1; Laws 2024, LB1300, § 42.
Operative date July 19, 2024.

23-1114.07 County officers; salaries; Class 6 or 7 counties; exceptions.

Except for members of the county board, salaries of county officers, including appointive full-time veterans service officers, in counties of Class 6 or 7 shall be established by the county board, except that the county assessor in counties of Class 7 shall receive a minimum annual salary of twenty thousand dollars, to be paid periodically as other county employees out of the general fund.

Source: Laws 1961, c. 96, § 7, p. 325; Laws 1965, c. 106, § 1, p. 430; Laws 1967, c. 127, § 6, p. 408; Laws 1969, c. 164, § 6, p. 740; Laws 1971, LB 574, § 7; Laws 1972, LB 1157, § 6; Laws 1973, LB 220, § 7; Laws 2012, LB772, § 1; Laws 2024, LB1300, § 43.
Operative date July 19, 2024.

ARTICLE 17

SHERIFF

(a) GENERAL PROVISIONS

Section
23-1701. Sheriff; general duties; residency; exception.
23-1701.01. Candidate for sheriff; appointee; requirements; sheriff; attend Sheriff's Certification Course; exception; continuing education; violation; penalty.

(a) GENERAL PROVISIONS

23-1701 Sheriff; general duties; residency; exception.

(1) It is the duty of the sheriff to serve or otherwise execute, according to law, and return writs or other legal process issued by lawful authority and directed or committed to the sheriff and to perform such other duties as may be required by law. The county sheriff shall prepare and file the required annual inventory statement of county personal property in his or her custody or possession as provided in sections 23-346 to 23-350.

(2) Except as provided in subsection (3) of this section, a sheriff elected after November 1986 need not be a resident of the county when he or she files for election as sheriff, but a sheriff shall reside in a county for which he or she holds office.

(3) If there is no county sheriff elected pursuant to section 32-520 or if a vacancy occurs for any other reason, the county board of such county may appoint a law enforcement officer qualified pursuant to section 23-1701.01

from any Nebraska county to the office of county sheriff. In making such appointment, the county board shall enter into a contract with the appointed county sheriff, such contract to specify the terms and conditions of the appointment, including the compensation of the appointed county sheriff, which compensation shall not be subject to sections 23-1114.02 to 23-1114.06.

Source: Laws 1879, § 116, p. 384; R.S.1913, § 5653; C.S.1922, § 4980; C.S.1929, § 26-1401; Laws 1939, c. 28, § 15, p. 154; C.S.Supp.,1941, § 26-1401; R.S.1943, § 23-1701; Laws 1986, LB 812, § 6; Laws 1996, LB 1085, § 34; Laws 2024, LB894, § 1. Effective date July 19, 2024.

Cross References

Designate persons for vehicle identification inspections, see section 60-182 et seq.

23-1701.01 Candidate for sheriff; appointee; requirements; sheriff; attend Sheriff's Certification Course; exception; continuing education; violation; penalty.

(1) Any candidate for the office of sheriff and any sheriff appointed under subsection (3) of section 23-1701 shall possess a law enforcement officer certificate or diploma issued by the Nebraska Commission on Law Enforcement and Criminal Justice. A standardized letter issued by the director of the Nebraska Law Enforcement Training Center certifying that the candidate or appointee was duly issued such certificate or diploma shall be filed by a candidate with the candidate filing form required by section 32-607 and by an appointee with the contract entered into under section 23-1701.

(2) Each sheriff shall attend the Sheriff's Certification Course conducted by the Nebraska Law Enforcement Training Center and obtain a certificate awarded by the Nebraska Commission on Law Enforcement and Criminal Justice attesting to satisfactory completion of such course within eight months after taking office unless such sheriff has already been awarded a certificate by the commission attesting to satisfactory completion of such course or unless such sheriff can demonstrate to the Nebraska Police Standards Advisory Council that his or her previous training and education is such that he or she will professionally discharge the duties of the office. Any sheriff in office prior to July 19, 1980, shall not be required to obtain a certificate awarded by the commission attesting to satisfactory completion of the Sheriff's Certification Course but shall otherwise be subject to this section.

(3) Each sheriff shall attend continuing education as provided in section 81-1414.07 each year following the first year of such sheriff's term of office.

(4) Unless a sheriff is able to show good cause for not complying with subsection (2) or (3) of this section or obtains a waiver of the training requirements from the council, any sheriff who violates subsection (2) or (3) of this section shall be punished by a fine equal to such sheriff's monthly salary. Each month in which such violation occurs shall constitute a separate offense.

Source: Laws 1980, LB 628, § 1; Laws 1994, LB 971, § 2; Laws 2004, LB 75, § 1; Laws 2012, LB817, § 1; Laws 2020, LB924, § 2; Laws 2021, LB51, § 1; Laws 2024, LB894, § 2. Effective date July 19, 2024.

ARTICLE 19
COUNTY SURVEYOR AND ENGINEER

Section

23-1901 County surveyor; county engineer; qualifications; powers and duties.

(1) It shall be the duty of the county surveyor to make or cause to be made all surveys within his or her county that the county surveyor may be called upon to make and record the same.

(2) In all counties having a population of at least one hundred thousand inhabitants but less than one hundred fifty thousand inhabitants, the county surveyor shall be ex officio county engineer and shall be either a professional engineer as provided in the Engineers and Architects Regulation Act or a professional land surveyor as provided in the Land Surveyors Regulation Act or both. In such counties, the office of surveyor shall be full time.

In counties having a population of one hundred fifty thousand inhabitants or more, a county engineer shall be a professional engineer as provided in the act and shall be elected as provided in section 32-526.

(3) The county engineer or ex officio county engineer shall:

(a) Prepare all plans, specifications, and detail drawings for the use of the county in advertising and letting all contracts for the building and repair of bridges, culverts, and all public improvements upon the roads;

(b) Make estimates of the cost of all such contemplated public improvements, make estimates of all material required for such public improvements, inspect the material and have the same measured and ascertained, and report to the county board whether the same is in accordance with its requirements;

(c) Superintend the construction of all such public improvements and inspect and require that the same shall be done according to contract;

(d) Make estimates of the cost of all labor and material which shall be necessary for the construction of all bridges and improvements upon public highways, inspect all of the work and materials placed in any such public improvements, and make a report in writing to the county board with a statement in regard to whether the same comply with the plans, specifications, and detail drawings of the county board prepared for such work or improvements and under which the contract was let; and

(e) Have charge and general supervision of work or improvements authorized by the county board, inspect all materials, direct the work, and make a report of each piece of work to the county board.

The county engineer or surveyor shall also have such other and further powers as are necessarily incident to the general powers granted.

(4) The county surveyor shall prepare and file the required annual inventory statement of county personal property in his or her custody or possession as provided in sections 23-346 to 23-350.

(5) In counties having a population of one hundred fifty thousand inhabitants or more, the county engineer shall appoint a full-time county surveyor. The county surveyor shall perform all the duties prescribed in sections 23-1901 to 23-1913 and any other duties assigned to him or her by the county engineer. The county surveyor shall be a professional land surveyor as provided in the Land Surveyors Regulation Act.

Source: Laws 1879, § 127, p. 386; Laws 1905, c. 50, § 1, p. 295; R.S.1913, § 5685; Laws 1921, c. 141, § 1, p. 606; C.S.1922, § 5015; C.S.1929, § 26-1601; Laws 1939, c. 28, § 16, p. 154; C.S.Supp.,1941, § 26-1601; R.S.1943, § 23-1901; Laws 1969, c. 170, § 1, p. 747; Laws 1982, LB 127, § 2; Laws 1986, LB 512, § 1; Laws 1990, LB 821, § 14; Laws 1994, LB 76, § 543; Laws 1997, LB 622, § 58; Laws 2015, LB138, § 1; Laws 2017, LB200, § 1; Laws 2022, LB791, § 1; Laws 2024, LB102, § 2.
Operative date September 1, 2024.

Cross References

Engineers and Architects Regulation Act, see section 81-3401.
Land Surveyors Regulation Act, see section 81-8,108.01.

23-1901.01 County surveyor; residency; appointment; when; qualifications; term.

(1) A person need not be a resident of the county when he or she files for election as county surveyor, but if elected as county surveyor, such person shall reside in a county for which he or she holds office.

(2) In a county having a population of less than one hundred fifty thousand inhabitants in which the voters have voted against the election of a county surveyor pursuant to section 32-525 or in which no county surveyor has been elected and qualified, the county board of such county shall appoint a competent professional land surveyor who is licensed pursuant to the Land Surveyors Regulation Act either on a full-time or part-time basis to such office. In making such appointment, the county board shall negotiate a contract with the surveyor, such contract shall specify the responsibility of the appointee to carry out the statutory duties of the office of county surveyor and shall specify the compensation of the surveyor for the performance of such duties, which compensation shall not be subject to section 33-116. A county surveyor appointed under this subsection shall serve the same term as that of an elected surveyor.

(3) A person appointed to the office of county surveyor in any county shall not be required to reside in the county of appointment.

Source: Laws 1951, c. 45, § 1, p. 161; Laws 1979, LB 115, § 1; Laws 1982, LB 127, § 3; Laws 1986, LB 812, § 7; Laws 1996, LB 1085, § 35; Laws 2014, LB946, § 2; Laws 2021, LB224, § 1; Laws 2024, LB102, § 3.
Operative date September 1, 2024.

Cross References

Land Surveyors Regulation Act, see section 81-8,108.01.

23-1901.02 County surveyor; deputy; appointment; oath; duties.

The county surveyor may appoint a deputy for whose acts he or she will be responsible. The surveyor may not appoint the county treasurer, sheriff, register of deeds, or clerk as deputy.

In counties having a population of one hundred thousand but less than one hundred fifty thousand, if the county surveyor is a professional engineer, he or she shall appoint as deputy a professional land surveyor or, if the county surveyor is a professional land surveyor, he or she shall appoint as deputy a professional engineer. This requirement shall not apply if the county surveyor is both a professional engineer and a professional land surveyor.

The appointment shall be in writing and revocable in writing by the surveyor. Both the appointment and revocation shall be filed and kept in the office of the county clerk.

The deputy shall take the same oath as the surveyor which shall be endorsed upon and filed with the certificate of appointment. The surveyor may require a bond of the deputy.

In the absence or disability of the surveyor, the deputy shall perform the duties of the surveyor pertaining to the office, but when the surveyor is required to act in conjunction with or in place of another officer, the deputy cannot act in the surveyor's place.

Source: Laws 1990, LB 821, § 15; Laws 2017, LB200, § 2; Laws 2022, LB791, § 2; Laws 2024, LB102, § 4.
Operative date September 1, 2024.

23-1908 Corners; establishment and restoration; rules governing.

The boundaries of the public lands established by the duly appointed government surveyors, when approved by the Surveyor General and accepted by the government, are unchangeable, and the corners established thereon by them shall be held and considered as the true corners which they were intended to represent, and the restoration of lines and corners of such surveys and the division of sections into their legal subdivisions shall be in accordance with the laws of the United States, the circular of instructions of the United States Department of the Interior, Bureau of Land Management, on the restoration of lost and obliterated section corners and quarter corners, and the circular of instructions to the county surveyors by the State Surveyor under authority of the Board of Educational Lands and Funds. The county surveyor is hereby authorized to restore lost and obliterated corners of original surveys and to establish the subdivisional corners of sections in accordance with the provisions of this section and section 23-1907. Any professional land surveyor licensed under the Land Surveyors Regulation Act is hereby authorized to establish any corner not monumented in the original government surveys in accordance with the provisions of this section and section 23-1907. Subdivision shall be executed according to the plan indicated by the original field notes and plats of surveys and governed by the original and legally restored corners. The survey of the subdivisional lines of sections in violation of this section shall be absolutely void.

Source: Laws 1913, c. 43, § 6, p. 143; R.S.1913, § 5692; Laws 1915, c. 102, § 1, p. 245; Laws 1917, c. 109, § 1, p. 280; Laws 1921, c. 161, § 1, p. 654; C.S.1922, § 5022; C.S.1929, § 26-1608; R.S.

1943, § 23-1908; Laws 1969, c. 171, § 1, p. 748; Laws 1982, LB 127, § 5; Laws 2015, LB138, § 2; Laws 2024, LB102, § 5. Operative date September 1, 2024.

Cross References

Land Surveyors Regulation Act, see section 81-8,108.01.

23-1911 Surveys; records; contents; available to public.

The county surveyor shall record all surveys, for permanent purposes, made by him or her, as required by sections 81-8,121 to 81-8,122.02. Such record shall set forth the names of the persons making the application for the survey, for whom the work was done, and a statement showing it to be an official county survey or resurvey. The official records, other plats, and field notes of the county surveyor's office shall be deemed and considered public records. Any agent or authority of the United States, the State Surveyor or any deputy state surveyor of Nebraska, or any professional land surveyor licensed pursuant to the Land Surveyors Regulation Act shall at all times, within reasonable office or business hours, have free access to the surveys, field notes, maps, charts, records, and other papers as provided for in sections 23-1901 to 23-1913. In all counties, where no regular office is maintained in a county-owned building for the county surveyor of that county, the county clerk shall be custodian of the official record of surveys and all other permanent records pertaining to the office of county surveyor.

Source: Laws 1913, c. 43, § 9, p. 144; R.S.1913, § 5695; C.S.1922, § 5025; C.S.1929, § 26-1611; Laws 1941, c. 44, § 1, p. 227; C.S.Supp.,1941, § 26-1611; R.S.1943, § 23-1911; Laws 1982, LB 127, § 7; Laws 2015, LB138, § 3; Laws 2024, LB102, § 6. Operative date September 1, 2024.

Cross References

Land Surveyors Regulation Act, see section 81-8,108.01.

ARTICLE 23
COUNTY EMPLOYEES RETIREMENT

Section
23-2301. Terms, defined.
23-2306. Retirement system; members; employees; elected officials; certain contemplated business transactions regarding retirement system participation; procedures; costs; new employee; participation in another governmental plan; how treated; separate employment; effect.
23-2323.01. Reemployment; military service; contributions; effect; applicability.
23-2332. County in excess of 85,000 inhabitants; commissioned law enforcement personnel; supplemental retirement plan.
23-2332.01. County of 85,000 inhabitants or less; commissioned law enforcement personnel; supplemental retirement plan.

23-2301 Terms, defined.

For purposes of the County 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 a member 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 a member 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 23-2317;

(5)(a) Compensation means gross wages or salaries payable to the member for personal services performed during the plan year. Compensation does not include insurance premiums converted into cash payments, reimbursement for expenses incurred, fringe benefits, per diems, or bonuses for services not actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, except for retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements. Compensation includes overtime pay, member retirement contributions, and amounts contributed by the member to plans under sections 125, 403(b), and 457 of the Internal Revenue Code or any other section of the code which defers or excludes such amounts from income.

(b) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993;

(6) Date of adoption of the retirement system by each county means the first day of the month next following the date of approval of the retirement system by the county board or January 1, 1987, whichever is earlier;

(7) Date of disability means the date on which a member is determined by the board to be disabled;

(8) Defined contribution benefit means a member's retirement benefit from a money purchase plan in which member benefits equal annual contributions and earnings pursuant to section 23-2309 and, if vested, employer contributions and earnings pursuant to section 23-2310;

(9) Disability means an inability to engage in 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 be of a long-continued and indefinite duration;

(10) Employee means all persons or officers who are employed by a county of the State of Nebraska on a permanent basis, persons or officers employed by or serving in a municipal county formed by at least one county participating in the retirement system, persons employed as provided in section 2-1608, all elected officers of a county, and such other persons or officers as are classified from time to time as permanent employees by the county board of the county by which they are employed, except that employee does not include judges, employees or officers of any county having a population in excess of two hundred fifty thousand inhabitants as determined by the most recent federal decennial census, or, except as provided in section 23-2306, persons making contributions to the School Employees Retirement System of the State of Nebraska;

(11) Employee contribution credit means an amount equal to the member contribution amount required by section 23-2307;

(12) Employer contribution credit means an amount equal to the employer contribution amount required by section 23-2308;

(13) Final account value means the value of a member's account on the date the account is either distributed to the member or used to purchase an annuity from the plan, which date shall occur as soon as administratively practicable after receipt of a valid application for benefits, but no sooner than forty-five days after the member's termination;

(14) Five-year break in service means a period of five consecutive one-year breaks in service;

(15) Full-time employee means an employee who is employed to work one-half or more of the regularly scheduled hours during each pay period;

(16) Future service means service following the date of adoption of the retirement system;

(17) Guaranteed investment contract means an investment contract or account offering a return of principal invested plus interest at a specified rate. For investments made after July 19, 1996, guaranteed investment contract does not include direct obligations of the United States or its instrumentalities, bonds, participation certificates or other obligations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association, or collateralized mortgage obligations and other derivative securities. This subdivision shall not be construed to require

the liquidation of investment contracts or accounts entered into prior to July 19, 1996;

(18) Hire date or date of hire means the first day of compensated service subject to retirement contributions;

(19) 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;

(20) 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;

(21) Member cash balance account means an account equal to the sum of the employee cash balance account and, if vested, the employer cash balance account and dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317;

(22) One-year break in service means a plan year during which the member has not completed more than five hundred hours of service;

(23) Participation means qualifying for and making the required deposits to the retirement system during the course of a plan year;

(24) Part-time employee means an employee who is employed to work less than one-half of the regularly scheduled hours during each pay period;

(25) Plan year means the twelve-month period beginning on January 1 and ending on December 31;

(26) Prior service means service prior to the date of adoption of the retirement system;

(27) Regular interest means the rate of interest earned each calendar year as determined by the retirement board in conformity with actual and expected earnings on the investments through December 31, 1985;

(28) 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 all employers participating in the plan; 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 all employers participating in the plan; and

(ii) Otherwise reached the date specified by section 401(a)(9) of the Internal Revenue Code and the regulations issued thereunder;

(29) Required contribution means the deduction to be made from the compensation of employees as provided in the act;

(30) Retirement means qualifying for and accepting the retirement benefit granted under the act after terminating employment;

(31) 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;

(32) Retirement board or board means the Public Employees Retirement Board;

(33) 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;

(34) Retirement system means the Retirement System for Nebraska Counties;

(35) Service means the actual total length of employment as an employee and is not deemed to be interrupted by (a) temporary or seasonal suspension of service that does not terminate the employee's employment, (b) leave of absence authorized by the employer for a period not exceeding twelve months, (c) leave of absence because of disability, or (d) military service, when properly authorized by the retirement board. Service does not include any period of disability for which disability retirement benefits are received under section 23-2315;

(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 a county which is a member of the retirement system determines that its employer-employee

relationship with an employee is dissolved. The county shall notify the board of the date on which such a termination has occurred. Termination of employment does not occur if an employee whose employer-employee relationship with a county is dissolved enters into an employer-employee relationship with the same or another county which participates in the Retirement System for Nebraska Counties and there are less than one hundred twenty days between the date when the employee's employer-employee relationship ceased with the county and the date when the employer-employee relationship commenced with the same or another county which qualifies the employee for participation in the plan. It is the responsibility of the employer that is involved in the termination of employment to notify the board of such change in employment and provide the board with such information as the board deems necessary. If the board determines that termination of employment has not occurred and a retirement benefit has been paid to a member of the retirement system pursuant to section 23-2319, the board shall require the member who has received such benefit to repay the benefit to the retirement system; and

(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 1965, c. 94, § 1, p. 402; Laws 1969, c. 172, § 1, p. 750; Laws 1973, LB 216, § 1; Laws 1974, LB 905, § 1; Laws 1975, LB 47, § 1; Laws 1975, LB 45, § 1; Laws 1984, LB 216, § 2; Laws 1985, LB 347, § 1; Laws 1985, LB 432, § 1; Laws 1986, LB 311, § 2; Laws 1991, LB 549, § 1; Laws 1993, LB 417, § 1; Laws 1994, LB 833, § 1; Laws 1995, LB 369, § 2; Laws 1996, LB 847, § 2; Laws 1996, LB 1076, § 1; Laws 1996, LB 1273, § 14; Laws 1997, LB 624, § 1; Laws 1998, LB 1191, § 23; Laws 1999, LB 703, § 1; Laws 2000, LB 1192, § 1; Laws 2001, LB 142, § 32; Laws 2002, LB 407, § 1; Laws 2002, LB 687, § 3; Laws 2003, LB 451, § 2; Laws 2004, LB 1097, § 2; Laws 2006, LB 366, § 2; Laws 2006, LB 1019, § 1; Laws 2011, LB509, § 2; Laws 2012, LB916, § 4; Laws 2013, LB263, § 2; Laws 2015, LB41, § 2; Laws 2017, LB415, § 11; Laws 2020, LB1054, § 1; Laws 2023, LB103, § 1.

Cross References

Spousal Pension Rights Act, see section 42-1101.

23-2306 Retirement system; members; employees; elected officials; certain contemplated business transactions regarding retirement system participation; procedures; costs; new employee; participation in another governmental plan; how treated; separate employment; effect.

(1) The membership of the retirement system shall be composed of all persons who are or were employed by member counties and who maintain an account balance with the retirement system.

(2) The following employees of member counties are authorized to participate in the retirement system: (a) All permanent full-time employees who have attained the age of eighteen years shall begin participation in the retirement system upon employment and full-time elected officials shall begin participation in the retirement system upon taking office, (b) all permanent part-time employees who have attained the age of eighteen years may exercise the option

to begin participation in the retirement system within the first thirty days of employment, and (c) all part-time elected officials may exercise the option to begin participation in the retirement system within thirty days after taking office. An employee who exercises the option to begin participation in the retirement system shall remain in the system until termination or retirement, regardless of any change of status as a permanent or temporary employee.

(3) No employee of a member county shall be authorized to participate in the retirement system provided for in the County Employees Retirement Act unless the employee is a United States citizen or is lawfully present in the United States. The employing member county 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)(a) The board may determine that a governmental entity currently participating in the retirement system no longer qualifies, in whole or in part, under section 414(d) of the Internal Revenue Code as a participating employer in a governmental plan.

(b)(i) To aid governmental entities in their business decisionmaking process, any governmental entity currently participating in the retirement system contemplating a business transaction that may result in such entity no longer qualifying, in whole or in part, under section 414(d) of the Internal Revenue Code may notify the board in writing as soon as reasonably practicable, but no later than one hundred eighty days before the transaction is to occur.

(ii) The board when timely notified shall, as soon as is reasonably practicable, obtain from its contracted actuary the cost of any actuarial study necessary to determine the potential funding obligation. The board shall notify the entity of such cost.

(iii) If such entity pays the board's contracted actuary pursuant to subdivision (4)(c)(vi) of this section for any actuarial study necessary to determine the potential funding obligation, the board shall, as soon as reasonably practicable following its receipt of the actuarial study, (A) determine whether the entity's contemplated business transaction will cause the entity to no longer qualify under section 414(d) of the Internal Revenue Code, (B) determine whether the contemplated business transaction constitutes a plan termination by the entity, (C) determine the potential funding obligation, (D) determine the administrative costs that will be incurred by the board or the Nebraska Public Employees Retirement Systems in connection with the entity's removal from the retirement system, and (E) notify the entity of such determinations.

(iv) Failure to timely notify the board pursuant to subdivision (4)(b)(i) of this section may result in the entity being treated as though the board made a decision pursuant to subdivision (4)(a) of this section.

(c) If the board makes a determination pursuant to subdivision (4)(a) of this section, or if the entity engages in the contemplated business transaction reviewed under subdivision (4)(b) of this section that results in the entity no longer qualifying under section 414(d) of the Internal Revenue Code:

(i) The board shall notify the entity that it no longer qualifies under section 414(d) of the Internal Revenue Code within ten business days after the determination;

(ii) The affected plan members shall be immediately considered fully vested;

(iii) The affected plan members shall become inactive within ninety days after the board's determination;

(iv) The entity shall pay to the County Employees Retirement Fund an amount equal to any funding obligation;

(v) The entity shall pay to the County Employees Cash Balance Retirement Expense Fund an amount equal to any administrative costs incurred by the board or the Nebraska Public Employees Retirement Systems in connection with the entity's removal from the retirement system; and

(vi) The entity shall pay directly to the board's contracted actuary an amount equal to the cost of any actuarial study necessary to aid the board in determining the amount of such funding obligation, if not previously paid.

(d) For purposes of this subsection:

(i) Business transaction means a merger; consolidation; sale of assets, equipment, or facilities; termination of a division, department, section, or subgroup of the entity; or any other business transaction that results in termination of some or all of the entity's workforce; and

(ii) Funding obligation means the financial liability of the retirement system to provide benefits for the affected plan members incurred by the retirement system due to the entity's business transaction calculated using the methodology and assumptions recommended by the board's contracted actuary and approved by the board. The methodology and assumptions used must be structured in a way that ensures the entity is financially liable for all the costs of the entity's business transaction, and the retirement system is not financially liable for any of the cost of the entity's business transaction.

(e) The board may adopt and promulgate rules and regulations to carry out this subsection including, but not limited to, the methods of notifying the board

of pending business transactions, the acceptable methods of payment, and the timing of such payment.

(5) Within the first one hundred eighty days of employment, a full-time employee may apply to the board for vesting credit for years of participation in another Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code. During the years of participation in the other Nebraska governmental plan, the employee must have been a full-time employee, as defined in the Nebraska governmental plan in which the credit was earned. The board may adopt and promulgate rules and regulations governing the assessment and granting of vesting credit.

(6) Any employee who qualifies for membership in the retirement system pursuant to this section may not be disqualified from membership in the retirement system solely because such employee also maintains separate employment which qualifies the employee for membership in another public retirement system, nor may membership in this retirement system disqualify such an employee from membership in another public retirement system solely by reason of separate employment which qualifies such employee for membership in this retirement system.

(7) A full-time or part-time employee of a city, village, or township who becomes a county employee pursuant to a merger of services shall receive vesting credit for his or her years of participation in a Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code, of the city, village, or township.

(8) A full-time or part-time employee of a city, village, fire protection district, or township who becomes a municipal county employee shall receive credit for his or her years of employment with the city, village, fire protection district, or township for purposes of the vesting provisions of this section.

(9) A full-time or part-time employee of the state who becomes a county employee pursuant to transfer of assessment function to a county shall not be deemed to have experienced a termination of employment and shall receive vesting credit for his or her years of participation in the State Employees Retirement System of the State of Nebraska.

(10) Counties shall ensure that employees authorized to participate in the retirement system pursuant to this section shall enroll and make required contributions to the retirement system immediately upon becoming an employee. Information necessary to determine membership in the retirement system shall be provided by the employer.

Source: Laws 1965, c. 94, § 6, p. 405; Laws 1975, LB 32, § 1; Laws 1984, LB 216, § 3; Laws 1985, LB 349, § 1; Laws 1991, LB 549, § 3; Laws 1995, LB 501, § 1; Laws 1996, LB 1076, § 2; Laws 1997, LB 250, § 5; Laws 1997, LB 624, § 2; Laws 1998, LB 1191, § 24; Laws 2000, LB 1192, § 2; Laws 2001, LB 142, § 33; Laws 2002, LB 407, § 2; Laws 2002, LB 687, § 5; Laws 2004, LB 1097, § 3; Laws 2006, LB 366, § 3; Laws 2008, LB1147, § 1; Laws 2009, LB188, § 1; Laws 2010, LB950, § 1; Laws 2011, LB509, § 4; Laws 2013, LB263, § 3; Laws 2015, LB261, § 3; Laws 2018, LB1005, § 4; Laws 2019, LB34, § 1; Laws 2024, LB198, § 4. Effective date March 19, 2024.

23-2323.01 Reemployment; military service; contributions; effect; 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 section 23-2315, 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, an employee who is reemployed on or after December 12, 1994, 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 section, 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 section 23-2307.

(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 county 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 county 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 employee 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 1996, LB 847, § 7; Laws 1998, LB 1191, § 29; Laws 1999, LB 703, § 4; Laws 2017, LB415, § 15; Laws 2018, LB1005, § 9; Laws 2023, LB103, § 2.

23-2332 County in excess of 85,000 inhabitants; commissioned law enforcement personnel; supplemental retirement plan.

Any county with a population in excess of eighty-five thousand inhabitants that participates in the Retirement System for Nebraska Counties established by the County Employees Retirement Act shall establish and fund a supplemental retirement plan for the benefit of all present and future commissioned law enforcement personnel employed by such county. The auxiliary benefit plan shall be funded by additional contributions to the county employees retirement plan in excess of the amounts established by sections 23-2307 and 23-2308. The additional contributions made by employees shall be credited to the employee account, and contributions paid by the county shall be credited to the employer account, with each amount to be established at a rate of three percent of compensation. All contributions made pursuant to this section shall be invested and administered according to the County Employees Retirement Act.

Source: Laws 1985, LB 432, § 5; Laws 1991, LB 549, § 14; Laws 2023, LB103, § 3.

23-2332.01 County of 85,000 inhabitants or less; commissioned law enforcement personnel; supplemental retirement plan.

Any county with a population of eighty-five thousand inhabitants or less that participates in the Retirement System for Nebraska Counties established by the County Employees Retirement Act shall establish and fund a supplemental retirement plan for the benefit of all present and future commissioned law enforcement personnel employed by such county who possess a valid law enforcement officer certificate or diploma, as established by the Nebraska Police Standards Advisory Council. The auxiliary benefit plan shall be funded by additional contributions to the county employees retirement plan in excess of the amounts established by sections 23-2307 and 23-2308. The additional contributions made by employees shall be credited to the employee account, and contributions paid by the county shall be credited to the employer account, with each amount to be established at a rate of two percent of compensation. All contributions made pursuant to this section shall be invested and administered according to the County Employees Retirement Act.

Source: Laws 2001, LB 186, § 3; Laws 2023, LB103, § 4.

ARTICLE 31

COUNTY PURCHASING

Section

23-3104 Terms, defined.

As used in the County Purchasing Act, unless the context otherwise requires:

(1) Mobile equipment means all vehicles propelled by any power other than muscular, including, but not limited to, motor vehicles, off-road designed vehicles, motorcycles, passenger cars, self-propelled mobile homes, truck-tractors, trucks, cabin trailers, semitrailers, trailers, utility trailers, and road and general-purpose construction and maintenance machinery not designed or used primarily for the transportation of persons or property, including, but not limited to, ditchdigging apparatus, asphalt spreaders, bucket loaders, leveling graders, earthmoving carryalls, power shovels, earthmoving equipment, and crawler tractors;

(2) Personal property includes, but is not limited to, supplies, materials, mobile equipment, and equipment used by or furnished to any county officer, office, department, institution, board, or other agency of the county government. Personal property does not include election ballots;

(3) Services means any and all services except telephone, telegraph, postal, and electric light and power service, other similar services, and election contractual services; and

(4) Purchasing or purchase means the obtaining of personal property or services by auction, sale, lease, trade, or other contractual means. Purchase

also includes contracting with sheltered workshops for products or services as provided in Chapter 48, article 15. Purchasing or purchase does not include any purchase or lease of personal property or services by a facility established under section 23-3501 or by or on behalf of a county coroner.

Source: Laws 1943, c. 57, § 5, p. 228; R.S.1943, § 23-324.03; R.S.1943, (1983), § 23-324.03; Laws 1985, LB 393, § 4; Laws 1988, LB 602, § 1; Laws 1988, LB 828, § 5; Laws 2003, LB 41, § 1; Laws 2011, LB628, § 1; Laws 2012, LB995, § 1; Laws 2017, LB458, § 1; Laws 2024, LB938, § 1.
Operative date January 1, 2025.

23-3105 Purchasing agent; compensation; bond.

The county board of a county with a population of more than one hundred fifty thousand shall and the county board of any other county may employ a purchasing agent who shall not be a county officer of the county. All purchases made from appropriated funds of the county shall be made through the purchasing agent. The county board shall pay the agent for such services during the time of employment as shall be agreed upon at or during the time of employment. The person so employed and designated shall serve at the pleasure of the county board and give bond to the county in such amount as the county board shall prescribe.

Source: Laws 1943, c. 57, § 3, p. 227; R.S.1943, § 23-324.01; Laws 1974, LB 1007, § 2; R.S.1943, (1983), § 23-324.01; Laws 1985, LB 393, § 5; Laws 1988, LB 602, § 2; Laws 2024, LB938, § 2.
Operative date January 1, 2025.

23-3107 County board or purchasing agent; administrative duties.

The county board or purchasing agent, subject to the approval of the county board, shall: (1) Prescribe the manner in which personal property shall be purchased, delivered, and distributed; (2) prescribe dates for making estimates, the future period which they are to cover, the form in which they are submitted, and the manner of their authentication; (3) revise forms from time to time as conditions warrant; (4) provide for the transfer to and between county departments and agencies of personal property which is surplus with one department or agency but which may be needed by another or others; (5) pursuant to section 23-3115, dispose of personal property which has been declared by the county board to be surplus and which is obsolete or not usable by the county; (6) prescribe the amount of cash deposit or bond to be submitted with a bid on a contract and the amount of deposit or bond to be given for the performance of a contract, if the amount of the bond is not specifically provided by law; and (7) prescribe the manner in which claims for personal property or services delivered to any department or agency of the county shall be submitted, approved, and paid.

Source: Laws 1943, c. 57, § 6, p. 228; R.S.1943, § 23-324.04; R.S.1943, (1983), § 23-324.04; Laws 1985, LB 393, § 7; Laws 1988, LB 828, § 7; Laws 2003, LB 41, § 2; Laws 2011, LB628, § 2; Laws 2024, LB938, § 3.
Operative date January 1, 2025.

23-3108 Purchases; how made.

(1) Except as provided in section 23-3109, purchases of personal property or services by the county board or purchasing agent shall be made:

(a) Through the competitive sealed bidding process prescribed in section 23-3111 if the estimated value of the purchase is:

(i) Before January 1, 2025, fifty thousand dollars or more;

(ii) Beginning January 1, 2025, and before January 1, 2029, seventy thousand dollars or more;

(iii) Beginning January 1, 2029, and before January 1, 2034, ninety thousand dollars or more; and

(iv) Beginning January 1, 2034, one hundred ten thousand dollars or more;

(b) By securing and recording at least three informal bids, if practicable, if the estimated value of the purchase is equal to or exceeds:

(i) Before January 1, 2025, ten thousand dollars, but is less than fifty thousand dollars;

(ii) Beginning January 1, 2025, and before January 1, 2029, fifteen thousand dollars, but is less than seventy thousand dollars;

(iii) Beginning January 1, 2029, and before January 1, 2034, twenty thousand dollars, but is less than ninety thousand dollars; and

(iv) Beginning January 1, 2034, twenty-five thousand dollars, but is less than one hundred and ten thousand dollars; or

(c) By purchasing in the open market, subject to section 23-3112, if the estimated value of the purchase is:

(i) Before January 1, 2025, less than ten thousand dollars;

(ii) Beginning January 1, 2025, and before January 1, 2029, less than fifteen thousand dollars;

(iii) Beginning January 1, 2029, and before January 1, 2034, less than twenty thousand dollars; and

(iv) Beginning January 1, 2034, less than twenty-five thousand dollars.

(2) In any county having a population of less than one hundred thousand inhabitants and in which the county board has not appointed a purchasing agent pursuant to section 23-3105, all elected officials are hereby authorized to make purchases with an estimated value as prescribed in subdivision (1)(c) of this section.

(3) In no case shall a purchase made pursuant to subdivision (1)(a), (b), or (c) of this section be divided to produce several purchases which are of an estimated value below that established in the relevant subdivision.

(4) All contracts and leases shall be approved as to form by the county attorney, and a copy of each long-term contract or lease shall be filed with the county clerk.

Source: Laws 1985, LB 393, § 8; Laws 1987, LB 55, § 1; Laws 2003, LB 41, § 3; Laws 2018, LB1098, § 1; Laws 2024, LB938, § 4. Operative date January 1, 2025.

23-3109 Competitive bidding; when not required; waiver of bidding requirements; when; auction; procedure.

(1) Competitive bidding shall not be required (a) when purchasing unique or noncompetitive items, (b) when purchasing petroleum products, (c) when obtaining professional services or equipment maintenance, or (d) when the price has been established by one of the following: (i) The federal General Services Administration; (ii) the materiel division of the Department of Administrative Services; or (iii) a cooperative purchasing agreement by which supplies, equipment, or services are procured in accordance with a contract established by another governmental entity or group of governmental entities if the contract was established in accordance with the laws and regulations applicable to the establishing governmental entity or, if a group, the lead governmental entity.

(2) The county board may, by majority vote of its members, waive the bidding requirements of the County Purchasing Act if such waiver is necessary to meet an emergency which threatens serious loss of life, health, or property in the county.

(3) The county board may waive the bidding requirements of the County Purchasing Act if the county can save a significant amount of money through an auction. The amount of the purchase shall not exceed a maximum dollar amount set by the county board at a regular or special meeting of the board as described in this subsection. Notice of such special meeting shall be published in a newspaper of general circulation within the county at least five days before the special meeting. If no edition of a newspaper of general circulation within the county is to be finalized for printing prior to such publication deadline, notice of such special meeting shall be (a) posted by the newspaper to the newspaper's website, if available, (b) posted by the newspaper on a statewide website established and maintained as a repository for such notices by a majority of Nebraska newspapers, and (c) posted by the county board at the courthouse. Such special meeting may be conducted by virtual conferencing. The county board shall, at its next regular meeting following the purchase, approve the purchase price by a vote of the county board. If no bids are received, the county board may purchase the personal property on the open market.

Source: Laws 1985, LB 393, § 9; Laws 2003, LB 41, § 4; Laws 2024, LB938, § 5.
Operative date January 1, 2025.

23-3111 Competitive bidding; procedure.

When competitive sealed bidding is required by section 23-3108:

(1) Sealed bids shall be solicited by public notice in a legal newspaper of general circulation in the county at least once a week for two consecutive weeks before the final date of submitting bids;

(2) In addition to subdivision (1) of this section, sealed bids may also be solicited by sending requests by United States mail or electronic mail to prospective suppliers and by posting notice on a public bulletin board;

(3) The notice shall contain: (a) A general description of the proposed purchase; (b) an invitation for sealed bids; (c) the name of the county official in charge of receiving the bids; (d) the date, time, and place the bids received shall be opened; and (e) whether alternative items will be considered;

(4) All bids shall remain sealed until opened on the published date and time by the county board or its designated agent;

(5) Any or all bids may be rejected and the bid need not be awarded at the time of opening, but may be held over for further consideration;

(6) If all bids received on a pending contract are for the same unit price or total amount and appear to be so as the result of collusion between the bidders, the county board or purchasing agent shall have authority to reject all bids and to purchase the personal property or services in the open market, except that the price paid in the open market shall not exceed the bid price;

(7) Each bid, with the name of bidder, shall be entered on a record and each record, with the successful bidder indicated thereon, shall, after the award or contract, be open to public inspection; and

(8) Except as otherwise provided in the County Purchasing Act, all lettings on such bids shall be public and shall be conducted as provided in Chapter 73, article 1.

Source: Laws 1985, LB 393, § 11; Laws 2024, LB938, § 6.
Operative date January 1, 2025.

23-3115 Surplus personal property other than mobile equipment; surplus mobile equipment; sale; conditions.

(1)(a) The county board or the purchasing agent, with the approval of the county board, may authorize a county official or employee to sell surplus personal property, other than mobile equipment, which is obsolete or not usable by the county and which has a value of:

(i) Before January 1, 2025, less than two thousand five hundred dollars;

(ii) Beginning January 1, 2025, and before January 1, 2029, less than three thousand five hundred dollars;

(iii) Beginning January 1, 2029, and before January 1, 2034, less than four thousand five hundred dollars; and

(iv) Beginning January 1, 2034, less than six thousand dollars.

(b) In making such authorization, the county board or purchasing agent may place any restriction on the type or value of property to be sold, restrict such authority to a single transaction or to a period of time, or make any other appropriate restrictions or conditions. Surplus personal property which is obsolete or not usable by the county and which has a value exceeding the applicable amount described in subdivision (1)(a) of this section shall be sold through competitive bidding or at auction.

(2)(a) The county board or the purchasing agent, with the approval of the county board, may authorize a county official or employee to sell surplus mobile equipment which is obsolete or not usable by the county and which has a value of:

(i) Before January 1, 2025, less than five thousand dollars;

(ii) Beginning January 1, 2025, and before January 1, 2029, less than seven thousand dollars;

(iii) Beginning January 1, 2029, and before January 1, 2034, less than nine thousand dollars; and

(iv) Beginning January 1, 2034, less than twelve thousand dollars.

(b) In making such authorization, the county board or purchasing agent may place any restriction on the type or value of property to be sold, restrict such authority to a single transaction or to a period of time, or make any other appropriate restrictions or conditions. Surplus mobile equipment which is obsolete or not usable by the county and which has a value exceeding the applicable amount prescribed in subdivision (2)(a) of this section shall be sold through competitive bidding or at auction.

(3) Any county official or employee granted the authority to sell surplus personal property which is obsolete or not usable by the county as prescribed in subsection (1) or (2) of this section shall make a written report to the county board within thirty days after the end of the fiscal year reflecting, for each transaction, the item sold, the name and address of the purchaser, the price paid by the purchaser for each item, and the total amount paid by the purchaser.

(4) The money generated by any sales authorized by this section shall be payable to the county treasurer and shall be credited to the funds of the department, office, or agency to which the property belonged.

(5) No person authorized by the county board or purchasing agent to make such sales shall be authorized to make or imply any warranty of any kind whatsoever as to the nature, use, condition, or fitness for a particular purpose of any property sold pursuant to this section. Any person making sales authorized by this section shall inform the purchaser that such property is being sold as is without any warranty of any kind whatsoever.

(6) Sales of surplus property not subject to competitive bidding may be made by auction, sealed bid, public or private sale, or trade.

Source: Laws 1988, LB 828, § 2; Laws 2011, LB628, § 3; Laws 2024, LB938, § 7.
Operative date January 1, 2025.

CHAPTER 24
COURTS

Article.
2. Supreme Court.
   (a) Organization. 24-201.01 to 24-209.
   (b) Clerk and Reporter. 24-211, 24-212.
   (l) Report Regarding Eviction Proceedings. 24-232.
3. District Court.
   (a) Organization. 24-301.02, 24-303.
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5. County Court.
   (a) Organization. 24-503, 24-517.
7. Judges, General Provisions.
   (a) Judges Retirement. 24-701 to 24-710.15.
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   (a) Judicial Nominating Commissions. 24-803.
10. Courts, General Provisions. 24-1003 to 24-1008.
11. Court of Appeals. 24-1103 to 24-1109.
12. Judicial Resources Commission. 24-1203, 24-1204.
13. Problem Solving Courts. 24-1302.

ARTICLE 2
SUPREME COURT

(a) ORGANIZATION

Section
24-201.01. Supreme Court judges; salary; amount; restriction on other employment of judges.
24-201.02. Supreme Court judicial districts; numbers; boundaries; established by maps; Clerk of Legislature; Secretary of State; duties.
24-201.04. Supreme Court judicial districts; population figures and maps; basis.
24-209. Nebraska Appellate Courts Online Library; repository of decisions of the Supreme Court and Court of Appeals; distribution of electronic opinions; sale of printed volumes or issues; Supreme Court Reports Cash Fund; created.

(b) CLERK AND REPORTER

24-211. Clerk and reporter; salaries; how fixed; duties.
24-212. Preparation and publication of decisions of the Supreme Court and Court of Appeals; annotations.

(l) REPORT REGARDING EVICTION PROCEEDINGS

24-232. Eviction proceedings; annual report; contents.

(a) ORGANIZATION

24-201.01 Supreme Court judges; salary; amount; restriction on other employment of judges.

On July 1, 2022, the salary of the Chief Justice and the judges of the Supreme Court shall be one hundred ninety-eight thousand four hundred twenty-six dollars and fifty-one cents. On July 1, 2023, the salary of the Chief Justice and

the judges of the Supreme Court shall be two hundred twelve thousand three hundred sixteen dollars and thirty-seven cents. On July 1, 2024, the salary of the Chief Justice and the judges of the Supreme Court shall be two hundred twenty-five thousand fifty-five dollars and thirty-five cents.

The Chief Justice and the judges of the Supreme Court shall hold no other public office of profit or trust during their terms of office nor accept any public appointment or employment under the authority of the government of the United States for which they receive compensation for their services. Such salaries shall be payable in equal monthly installments.

Source: Laws 1947, c. 345, § 1, p. 1089; Laws 1951, c. 58, § 1, p. 191; Laws 1955, c. 77, § 1, p. 231; Laws 1959, c. 93, § 1, p. 406; Laws 1963, c. 127, § 1, p. 480; Laws 1963, c. 534, § 1, p. 1676; Laws 1967, c. 136, § 1, p. 421; Laws 1969, c. 173, § 1, p. 754; Laws 1969, c. 174, § 1, p. 755; Laws 1972, LB 1293, § 2; Laws 1974, LB 923, § 1; Laws 1976, LB 76, § 1; Laws 1978, LB 672, § 1; Laws 1979, LB 398, § 1; Laws 1983, LB 269, § 1; Laws 1986, LB 43, § 1; Laws 1987, LB 564, § 1; Laws 1990, LB 42, § 1; Laws 1995, LB 189, § 1; Laws 1997, LB 362, § 1; Laws 1999, LB 350, § 1; Laws 2001, LB 357, § 1; Laws 2005, LB 348, § 1; Laws 2007, LB377, § 1; Laws 2009, LB414, § 1; Laws 2012, LB862, § 1; Laws 2013, LB306, § 1; Laws 2015, LB663, § 1; Laws 2017, LB647, § 1; Laws 2019, LB300, § 1; Laws 2021, LB386, § 1; Laws 2023, LB799, § 1.

24-201.02 Supreme Court judicial districts; numbers; boundaries; established by maps; Clerk of Legislature; Secretary of State; duties.

(1) Based on the 2020 Census of Population by the United States Department of Commerce, Bureau of the Census, the State of Nebraska is hereby divided into six Supreme Court judicial districts. Each district shall be entitled to one Supreme Court judge.

(2) The numbers and boundaries of the districts are designated and established by maps identified and labeled as maps SUP21-39001, SUP21-39001-1, SUP21-39001-2, SUP21-39001-3, SUP21-39001-3A, SUP21-39001-4, SUP21-39001-5, and SUP21-39001-6, filed with the Clerk of the Legislature, and incorporated by reference as part of Laws 2021, LB6, 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 1971, LB 545, § 1; Laws 1981, LB 552, § 1; R.S.1943, (1987), § 5-109; Laws 1990, LB 822, § 9; Laws 1991, LB 616, § 1; Laws 2001, LB 853, § 1; Laws 2011, LB699, § 1; Laws 2021, First Spec. Sess., LB6, § 1.

Cross References

Constitutional provisions, see Article V, section 5, Constitution of Nebraska.

24-201.04 Supreme Court judicial districts; population figures and maps; basis.

For purposes of section 24-201.02, 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 1991, LB 616, § 2; Laws 2001, LB 853, § 2; Laws 2011, LB699, § 2; Laws 2021, First Spec. Sess., LB6, § 2.

24-209 Nebraska Appellate Courts Online Library; repository of decisions of the Supreme Court and Court of Appeals; distribution of electronic opinions; sale of printed volumes or issues; Supreme Court Reports Cash Fund; created.

(1) The Nebraska Appellate Courts Online Library shall be the repository for the published judicial opinions of the Supreme Court and the Court of Appeals which have been designated for permanent publication. All previous official bound and printed volumes of the appellate courts' opinions shall be made available on the Nebraska Appellate Courts Online Library. Other distribution of such electronic opinions shall be as directed by the Supreme Court.

(2) As directed by the Supreme Court, extra circulating copies of previously printed volumes or issues of the Nebraska Reports, Nebraska Appellate Reports, Nebraska Advance Sheets, and Decisions of the Nebraska Court of Appeals may be sold as prescribed by the Supreme Court. The money received from such sales shall be paid into the Supreme Court Reports Cash Fund which is hereby created.

Source: Laws 1879, § 20, p. 86; Laws 1901, c. 24, § 2, p. 330; Laws 1907, c. 41, § 1, p. 179; R.S.1913, § 1147; Laws 1921, c. 213, § 1, p. 752; C.S.1922, § 1076; Laws 1923, c. 129, § 1, p. 322; C.S.1929, § 27-209; Laws 1937, c. 59, § 1, p. 236; C.S.Supp.,1941, § 27-209; R.S.1943, § 24-209; Laws 1947, c. 185, § 3, p. 611; Laws 1957, c. 210, § 1, p. 742; Laws 1961, c. 101, § 1, p. 332; Laws 1961, c. 243, § 1, p. 724; Laws 1963, c. 303, § 1, p. 897; Laws 1963, c. 129, § 1, p. 496; Laws 1971, LB 10, § 1; Laws 1972, LB 1284, § 13; Laws 1977, LB 9, § 1; Laws 1979, LB 377, § 1; Laws 1983, LB 271, § 1; Laws 1984, LB 13, § 5; Laws 1984, LB 848, § 1; Laws 1985, LB 498, § 1; Laws 1986, LB 750, § 1; Laws 1986, LB 811, § 11; Laws 1991, LB 732, § 33; Laws 1992, LB 1059, § 2; Laws 1995, LB 271, § 2; Laws 2002, LB 876, § 4; Laws 2015, LB301, § 2; Laws 2023, LB799, § 2.

(b) CLERK AND REPORTER

24-211 Clerk and reporter; salaries; how fixed; duties.

(1) The Clerk of the Supreme Court shall keep his or her office at the State Capitol, be the custodian of the seal of the court, perform the duties devolving upon him or her by law, and be subject to the orders of the court. The Clerk of the Supreme Court shall receive an annual salary to be fixed by the Supreme Court.

(2) The Reporter of Decisions shall keep his or her office at the State Capitol, perform the duties devolving upon him or her by law, and be subject to the orders of the court. The Reporter of Decisions shall receive an annual salary to be fixed by the Supreme Court.

Source: Laws 1879, § 17, p. 85; R.S.1913, § 1144; Laws 1921, c. 103, § 1, p. 373; C.S.1922, § 1073; C.S.1929, § 27-211; R.S.1943, § 24-211; Laws 1955, c. 78, § 1, p. 233; Laws 1965, c. 109, § 1, p. 433; Laws 1991, LB 732, § 34; Laws 1995, LB 271, § 3; Laws 2023, LB799, § 3.

Cross References

Clerk:
Amercement for neglect of duty, see section 25-1546.
Deputy, appointment, see section 24-401.
General duties, see sections 25-2204 to 25-2214.
Not to practice as an attorney, see section 7-111.
Oaths and affirmations, power to administer, see section 24-1002.
Serves as State Librarian, see section 51-102.

24-212 Preparation and publication of decisions of the Supreme Court and Court of Appeals; annotations.

(1) The Reporter of Decisions shall prepare the opinions designated for permanent publication from the Supreme Court and Court of Appeals for publication in the Nebraska Appellate Courts Online Library as soon as feasible. Such opinions should show the name of the judge writing the opinion, the names of the judges concurring therein, and the names of the judges, if any, dissenting from the opinion.

(2) At such times as the Revisor of Statutes may request, the Reporter shall also edit and arrange for publication or electronic release in the statutes of Nebraska, annotations of the decisions of the Supreme Court of Nebraska and the decisions of the Court of Appeals designated for permanent publication and transmit them to the Revisor of Statutes.

Source: Laws 1879, § 19, p. 85; Laws 1901, c. 24, § 1, p. 329; R.S.1913, § 1146; C.S.1922, § 1075; Laws 1929, c. 84, § 1, p. 334; C.S. 1929, § 27-212; R.S.1943, § 24-212; Laws 1967, c. 328, § 1, p. 868; Laws 1979, LB 377, § 2; Laws 1984, LB 848, § 2; Laws 1994, LB 1244, § 1; Laws 1995, LB 271, § 4; Laws 2015, LB301, § 3; Laws 2023, LB799, § 4.

(l) REPORT REGARDING EVICTION PROCEEDINGS

24-232 Eviction proceedings; annual report; contents.

(1) On or before January 15, 2022, and July 15, 2022, and on or before each January 15 and July 15 thereafter, the Supreme Court shall electronically submit a report to the Clerk of the Legislature that includes, for the preceding

six months the following information pertaining to eviction proceedings, broken down by county:

(a) The number of eviction proceedings initiated;

(b) The number of tenants represented by counsel;

(c) The number of landlords represented by counsel;

(d) The number of orders granting restitution of the premises entered by default; and

(e) The number of orders granting restitution of the premises entered, broken down by the specific statutory authority under which possession was sought.

(2) For purposes of this section:

(a) Eviction proceeding means an action involving a claim for forcible entry and detainer involving a residential tenancy under sections 25-21,219 to 25-21,235, the Uniform Residential Landlord and Tenant Act, or the Mobile Home Landlord and Tenant Act;

(b) Landlord includes a landlord as defined in section 76-1410 and a landlord as defined in section 76-1462;

(c) Residential tenancy means a tenancy subject to the Uniform Residential Landlord and Tenant Act or the Mobile Home Landlord and Tenant Act or any other tenancy involving a dwelling unit as defined in section 76-1410;

(d) Tenant means a tenant or former tenant of a residential tenancy; and

(e) When reference in this section is made to a definition found in both the Uniform Residential Landlord and Tenant Act and the Mobile Home Landlord and Tenant Act, the definition relevant to the type of tenant at issue applies for purposes of this section.

Source: Laws 2021, LB320, § 14.

Cross References

Mobile Home Landlord and Tenant Act, see section 76-1450.
Uniform Residential Landlord and Tenant Act, see section 76-1401.

ARTICLE 3

DISTRICT COURT

(a) ORGANIZATION

(a) ORGANIZATION

24-301.02 District court judicial districts; described; number of judges.

The State of Nebraska shall be divided into the following twelve district court judicial districts:

District No. 1 shall contain the counties of Saline, Jefferson, Gage, Thayer, Johnson, Pawnee, Nemaha, Fillmore, Richardson, and Otoe;

District No. 2 shall contain the counties of Sarpy and Cass;

District No. 3 shall contain the county of Lancaster;

District No. 4 shall contain the county of Douglas;

District No. 5 shall contain the counties of Merrick, Platte, Colfax, Boone, Nance, Hamilton, Polk, York, Butler, Seward, and Saunders;

District No. 6 shall contain the counties of Dixon, Dakota, Cedar, Burt, Thurston, Dodge, and Washington;

District No. 7 shall contain the counties of Knox, Cuming, Antelope, Pierce, Wayne, Madison, and Stanton;

District No. 8 shall contain the counties of Cherry, Keya Paha, Brown, Rock, Blaine, Loup, Custer, Boyd, Holt, Garfield, Wheeler, Valley, Greeley, Sherman, and Howard;

District No. 9 shall contain the counties of Buffalo and Hall;

District No. 10 shall contain the counties of Adams, Phelps, Kearney, Harlan, Franklin, Webster, Clay, and Nuckolls;

District No. 11 shall contain the counties of Hooker, Thomas, Arthur, McPherson, Logan, Keith, Perkins, Lincoln, Dawson, Chase, Hayes, Frontier, Gosper, Dundy, Hitchcock, Red Willow, and Furnas; and

District No. 12 shall contain the counties of Sioux, Dawes, Box Butte, Sheridan, Scotts Bluff, Morrill, Garden, Banner, Kimball, Cheyenne, Grant, and Deuel.

In the fourth district there shall be eighteen judges of the district court. In the third district there shall be eight judges of the district court. In the second, fifth, ninth, eleventh, and twelfth districts there shall be four judges of the district court. In the first and sixth districts there shall be three judges of the district court. In the seventh, eighth, and tenth districts there shall be two judges of the district court.

Source: Laws 1911, c. 5, § 1, p. 70; Laws 1913, c. 203, § 1, p. 623; R.S.1913, § 217; Laws 1915, c. 12, § 1, p. 64; Laws 1917, c. 3, § 1, p. 55; Laws 1919, c. 114, § 1, p. 278; Laws 1921, c. 146, § 1, p. 620; C.S.1922, § 199; Laws 1923, c. 119, § 1, p. 283; C.S.1929, § 5-103; R.S.1943, § 5-105; Laws 1961, c. 11, § 1, p. 99; Laws 1963, c. 24, § 1, p. 125; Laws 1965, c. 23, § 1, p. 186; Laws 1965, c. 24, § 1, p. 189; Laws 1969, c. 27, § 1, p. 229; Laws 1972, LB 1301, § 1; Laws 1975, LB 1, § 1; Laws 1980, LB 618, § 1; Laws 1983, LB 121, § 1; Laws 1985, LB 287, § 1; Laws 1986, LB 516, § 1; R.S.1943, (1987), § 5-105; Laws 1990, LB 822, § 10; Laws 1991, LB 181, § 1; Laws 1992, LB 1059, § 3; Laws 1993, LB 306, § 1; Laws 1995, LB 19, § 1; Laws 1995, LB 189, § 2; Laws 1998, LB 404, § 1; Laws 2001, LB 92, § 1; Laws 2004, LB 1207, § 1; Laws 2007, LB377, § 2; Laws 2009, LB35, § 4; Laws 2018, LB697, § 1; Laws 2019, LB309, § 1; Laws 2022, LB922, § 1.

Cross References

Constitutional provisions, see Article V, sections 10 and 11, Constitution of Nebraska.

24-303 Terms of court; when fixed; where held; assignment of judges by Supreme Court; telephonic or videoconference hearing; authorized.

(1) The judges of the district court shall, the last two months in each year, fix the time of holding terms of court in the counties composing their respective districts during the ensuing year, and cause the same to be published throughout the district, if the same can be done without expense. All jury terms of the district court shall be held at the county seat in the courthouse, or other place provided by the county board, but nothing herein contained shall preclude the district court, or a judge thereof, from rendering a judgment or other final order or from directing the entry thereof in any cause, in any county other than where such cause is pending, where the trial or hearing upon which such judgment or other final order is rendered took place in the county in which such cause is pending. Terms of court may be held at the same time in different counties in the same judicial district, by the judge of the district court thereof, if there be more than one, and upon request of the judge or judges of such court, any term in such district may be held by a judge of the district court of any other district of the state. The Supreme Court may order the assignment of judges of the district court to other districts whenever it shall appear that their services are needed to relieve a congested trial docket or to adjust judicial case loads, or on account of the disqualification, absence, disability, or death of a judge, or for other adequate cause. When necessary, a term of the district court sitting in any county may be continued into and held during the time fixed for holding such court in any other county within the district, or may be adjourned and held beyond such time.

(2) All nonevidentiary hearings, and any evidentiary hearings approved by the district court and by stipulation of all parties that have filed an appearance, may be heard by the court telephonically or by videoconferencing or similar equipment at any location within the judicial district as ordered by the court and in a manner that ensures the preservation of an accurate record. Such hearings shall not include trials before a jury. Hearings conducted in this manner shall be consistent with the public's access to the courts.

Source: Laws 1879, § 42, p. 91; Laws 1885, c. 45, § 1, p. 242; R.S.1913, § 1162; C.S.1922, § 1085; C.S.1929, § 27-303; Laws 1935, c. 58, § 1, p. 213; C.S.Supp.,1941, § 27-303; R.S.1943, § 24-303; Laws 1955, c. 79, § 1, p. 235; Laws 1961, c. 102, § 1, p. 333; Laws 2008, LB1014, § 1; Laws 2018, LB193, § 4.

(c) CLERK

24-337 Repealed. Laws 2018, LB193, § 97.

(e) UNCALLED-FOR FUNDS; DISPOSITION

24-345 Funds uncalled for; payment to State Treasurer; clerk's liability discharged.

All money, other than witness fees, fines, penalties, forfeitures and license money, that comes into the possession of the clerk of the district court for any county in the State of Nebraska by virtue of his or her office and remains in the custody of the clerk of the district court, uncalled for by the party or parties entitled to the money for a period of three years following the close of litigation

in relation to the money, shall be remitted by the clerk of the district court to the State Treasurer on the first Tuesday in January, April, July, or October, respectively, following the expiration of the three-year period, for deposit in the Unclaimed Property Trust Fund pursuant to section 69-1317. Such payment shall release the bond of the clerk of the district court making such payment from all liability for the money so paid in compliance with this section.

Source: Laws 1933, c. 33, § 1, p. 214; C.S.Supp.,1941, § 27-342; R.S. 1943, § 24-345; Laws 1980, LB 572, § 1; Laws 1992, Third Spec. Sess., LB 26, § 1; Laws 2019, LB406, § 1; Laws 2021, LB532, § 1.

Cross References

Filing of claim to property delivered to state, see section 69-1318.

24-348 Repealed. Laws 2018, LB193, § 97.

ARTICLE 5

COUNTY COURT

(a) ORGANIZATION

(a) ORGANIZATION

24-503 County judge districts; created; number of judges.

For the purpose of serving the county courts in each county, twelve county judge districts are hereby created:

District No. 1 shall contain the counties of Saline, Jefferson, Gage, Thayer, Johnson, Pawnee, Nemaha, and Richardson;

District No. 2 shall contain the counties of Sarpy, Cass, and Otoe;

District No. 3 shall contain the county of Lancaster;

District No. 4 shall contain the county of Douglas;

District No. 5 shall contain the counties of Merrick, Platte, Colfax, Boone, Nance, Hamilton, Polk, York, Butler, Seward, and Saunders;

District No. 6 shall contain the counties of Dixon, Dakota, Cedar, Burt, Thurston, Dodge, and Washington;

District No. 7 shall contain the counties of Knox, Cuming, Antelope, Pierce, Wayne, Madison, and Stanton;

District No. 8 shall contain the counties of Cherry, Keya Paha, Brown, Rock, Blaine, Loup, Custer, Boyd, Holt, Garfield, Wheeler, Valley, Greeley, Sherman, and Howard;

District No. 9 shall contain the counties of Buffalo and Hall;

District No. 10 shall contain the counties of Fillmore, Adams, Clay, Phelps, Kearney, Harlan, Franklin, Webster, and Nuckolls;

District No. 11 shall contain the counties of Hooker, Thomas, Arthur, McPherson, Logan, Keith, Perkins, Lincoln, Dawson, Chase, Hayes, Frontier, Gosper, Dundy, Hitchcock, Red Willow, and Furnas; and

District No. 12 shall contain the counties of Sioux, Dawes, Box Butte, Sheridan, Scotts Bluff, Morrill, Garden, Banner, Kimball, Cheyenne, Grant, and Deuel.

District 4 shall have twelve county judges. District 3 shall have seven county judges. Districts 5, 9, 11, and 12 shall have five county judges. Districts 2 and 6 shall have four county judges. Districts 1, 7, 8, and 10 shall have three county judges.

Judge of the county court shall include any person appointed to the office of county judge or municipal judge prior to July 1, 1985, pursuant to Article V, section 21, of the Constitution of Nebraska.

Any person serving as a municipal judge in district 3 or 4 immediately prior to July 1, 1985, shall be a judge of the county court and shall be empowered to hear only those cases as provided in section 24-517 which the presiding judge of the county court for such district, with the concurrence of the Supreme Court, shall direct.

Source: Laws 1972, LB 1032, § 3; Laws 1974, LB 785, § 1; Laws 1980, LB 618, § 2; Laws 1984, LB 13, § 7; Laws 1985, LB 287, § 2; Laws 1986, LB 516, § 3; Laws 1987, LB 509, § 1; Laws 1990, LB 822, § 13; Laws 1991, LB 181, § 2; Laws 1992, LB 1059, § 4; Laws 1993, LB 306, § 2; Laws 1998, LB 404, § 2; Laws 2007, LB377, § 3; Laws 2012, LB790, § 1; Laws 2023, LB799, § 5.

24-517 Jurisdiction.

Each county court shall have the following jurisdiction:

(1) Exclusive original jurisdiction of all matters relating to decedents' estates, including the probate of wills and the construction thereof, except as provided in subsection (c) of section 30-2464 and section 30-2486;

(2) Exclusive original jurisdiction in all matters relating to the guardianship of a person, except if a separate juvenile court already has jurisdiction over a child in need of a guardian, concurrent original jurisdiction with the separate juvenile court in such guardianship;

(3) Exclusive original jurisdiction of all matters relating to conservatorship of any person, including (a) original jurisdiction to consent to and authorize a voluntary selection, partition, and setoff of a ward's interest in real estate owned in common with others and to exercise any right of the ward in connection therewith which the ward could exercise if competent and (b) original jurisdiction to license the sale of such real estate for cash or on such terms of credit as shall seem best calculated to produce the highest price subject only to the requirements set forth in section 30-3201;

(4) Concurrent jurisdiction with the district court to involuntarily partition a ward's interest in real estate owned in common with others;

(5) Concurrent original jurisdiction with the district court in all civil actions of any type when the amount in controversy is forty-five thousand dollars or less through June 30, 2005, and as set by the Supreme Court pursuant to subdivision (b) of this subdivision on and after July 1, 2005.

(a) When the pleadings or discovery proceedings in a civil action indicate that the amount in controversy is greater than the jurisdictional amount of subdivision (5) of this section, the county court shall, upon the request of any party, certify the proceedings to the district court as provided in section 25-2706. An

award of the county court which is greater than the jurisdictional amount of subdivision (5) of this section is not void or unenforceable because it is greater than such amount, however, if an award of the county court is greater than the jurisdictional amount, the county court shall tax as additional costs the difference between the filing fee in district court and the filing fee in county court.

(b) The Supreme Court shall adjust the jurisdictional amount for the county court every fifth year commencing July 1, 2005. The adjusted jurisdictional amount shall be equal to the then current jurisdictional amount adjusted by the average percentage change in the unadjusted Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics for the five-year period preceding the adjustment date. The jurisdictional amount shall be rounded to the nearest one-thousand-dollar amount;

(6) Concurrent original jurisdiction with the district court in any criminal matter classified as a misdemeanor or for any infraction. The district court shall have concurrent original jurisdiction in any criminal matter classified as a misdemeanor that arises from the same incident as a charged felony;

(7) Concurrent original jurisdiction with the district court in domestic relations matters as defined in section 25-2740 and with the district court and separate juvenile court in paternity or custody determinations as provided in section 25-2740;

(8) Concurrent original jurisdiction with the district court in matters arising under the Nebraska Uniform Trust Code;

(9) Exclusive original jurisdiction in any action based on violation of a city or village ordinance, except with respect to violations committed by persons under eighteen years of age;

(10) The jurisdiction of a juvenile court as provided in the Nebraska Juvenile Code when sitting as a juvenile court in counties which have not established separate juvenile courts;

(11) Exclusive original jurisdiction in matters of adoption, except if a separate juvenile court already has jurisdiction over the child to be adopted, concurrent original jurisdiction with the separate juvenile court;

(12) Exclusive original jurisdiction in matters arising under the Nebraska Uniform Custodial Trust Act;

(13) Concurrent original jurisdiction with the district court in any matter relating to a power of attorney and the action or inaction of any agent acting under a power of attorney;

(14) Exclusive original jurisdiction in any action arising under sections 30-3401 to 30-3432;

(15) Exclusive original jurisdiction in matters arising under the Nebraska Uniform Transfers to Minors Act;

(16) Concurrent original jurisdiction with the district court in matters arising under the Uniform Principal and Income Act;

(17) Concurrent original jurisdiction with the district court in matters arising under the Uniform Testamentary Additions to Trusts Act (1991) except as otherwise provided in subdivision (1) of this section;

(18) Concurrent original jurisdiction with the district court to determine contribution rights under section 68-919;

(19) Concurrent original jurisdiction with the district court in matters arising under the Uniform Community Property Disposition at Death Act except for all matters relating to decedents' estates for which the county court has exclusive original jurisdiction under subdivision (1) of this section; and

(20) All other jurisdiction heretofore provided and not specifically repealed by Laws 1972, Legislative Bill 1032, and such other jurisdiction as hereafter provided by law.

Source: Laws 1972, LB 1032, § 17; Laws 1973, LB 226, § 6; Laws 1977, LB 96, § 1; Laws 1979, LB 373, § 1; Laws 1983, LB 137, § 1; Laws 1984, LB 13, § 12; Laws 1986, LB 529, § 7; Laws 1986, LB 1229, § 1; Laws 1991, LB 422, § 1; Laws 1996, LB 1296, § 2; Laws 1997, LB 229, § 1; Laws 1998, LB 1041, § 1; Laws 2001, LB 269, § 1; Laws 2003, LB 130, § 114; Laws 2005, LB 361, § 29; Laws 2008, LB280, § 1; Laws 2008, LB1014, § 4; Laws 2009, LB35, § 5; Laws 2014, LB464, § 2; Laws 2015, LB314, § 1; Laws 2017, LB268, § 1; Laws 2024, LB83, § 16.
Effective date July 19, 2024.

Cross References

Nebraska Juvenile Code, see section 43-2,129.
Nebraska Uniform Custodial Trust Act, see section 30-3501.
Nebraska Uniform Transfers to Minors Act, see section 43-2701.
Nebraska Uniform Trust Code, see section 30-3801.
Uniform Community Property Disposition at Death Act, see section 30-4701.
Uniform Principal and Income Act, see section 30-3116.
Uniform Testamentary Additions to Trusts Act (1991), see section 30-3601.

ARTICLE 7
JUDGES, GENERAL PROVISIONS

(a) JUDGES RETIREMENT

Section
24-701. Terms, defined.
24-703. Judges; contributions; deductions; fees taxed as costs; payment; late fees; funding of retirement system; actuarial valuation; transfer of funds; adjustments.
24-703.01. Participation in retirement system; requirements.
24-704. Administration of system; Public Employees Retirement Board, Auditor of Public Accounts, and Nebraska Investment Council; duties; employer education program.
24-704.01. Board; power to adjust contributions and benefits; overpayment of benefits; investigatory powers; subpoenas.
24-708. Retirement of judge; when; deferment of payment; board; duties.
24-710. Judges; retirement annuity; amount; how computed; cost-of-living adjustment.
24-710.01. Judges; alternative contribution rate and retirement benefit; election; notice.
24-710.04. Reemployment; military service; credit; effect; applicability.
24-710.05. Direct rollover; terms, defined; distributee; powers; board; powers.
24-710.06. Retirement system; accept payments and rollovers; limitations; board; powers.
24-710.15. Judges who became members on and after July 1, 2015; cost-of-living payment.

(c) RETIRED JUDGES

24-729. Judges; retired; assignment; when; retired judge, defined.

Section

(d) GENERAL POWERS

24-734. Judges; powers; enumerated.

(a) JUDGES RETIREMENT

24-701 Terms, defined.

For purposes of the Judges Retirement Act, unless the context otherwise requires:

(1)(a) Actuarial equivalence means the equality in value of the aggregate amounts expected to be received under different forms of payment.

(b) For a judge hired prior to July 1, 2017, the determinations are to be based on the 1994 Group Annuity Mortality Table reflecting sex-distinct factors blended using seventy-five percent of the male table and twenty-five percent of the female table. An interest rate of eight percent per annum shall be reflected in making these determinations.

(c) For a judge hired on or after July 1, 2017, or rehired on or after July 1, 2017, after termination of employment and being paid a retirement benefit, the determinations shall be based on a unisex mortality table and an interest rate specified by the board. Both the mortality table and the interest rate shall be 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, interest rate, and actuarial factors in effect on the judge'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;

(2) Beneficiary means a person so designated by a judge in the last designation of beneficiary on file with the board or, if no designated person survives or if no designation is on file, the estate of such judge;

(3) Board means the Public Employees Retirement Board;

(4)(a) Compensation means the statutory salary of a judge or the salary being received by such judge pursuant to law. Compensation does not include compensation for unused sick leave or unused vacation leave converted to cash payments, 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 and 457 of the Internal Revenue Code as defined in section 49-801.01 or any other section of the code which defers or excludes such amounts from income.

(b) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code as defined in section 49-801.01 shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993;

(5) Creditable service means the total number of years served as a judge, including prior service, military service, and current service, computed to the

nearest one-twelfth year. For current service prior to the time that the member has contributed the required percentage of salary until the maximum benefit as limited by section 24-710 has been earned, creditable service does not include current service for which member contributions are not made or are withdrawn and not repaid;

(6) Current benefit means the initial benefit increased by all adjustments made pursuant to the Judges Retirement Act;

(7)(a) Current service means the period of service (i) any judge of the Supreme Court or judge of the district court serves in such capacity from and after January 3, 1957, (ii)(A) any judge of the Nebraska Workmen's Compensation Court served in such capacity from and after September 20, 1957, and prior to July 17, 1986, and (B) any judge of the Nebraska Workers' Compensation Court serves in such capacity on and after July 17, 1986, (iii) any county judge serves in such capacity from and after January 5, 1961, (iv) any judge of a separate juvenile court serves in such capacity, (v) any judge of the municipal court served in such capacity subsequent to October 23, 1967, and prior to July 1, 1985, (vi) any judge of the county court or associate county judge serves in such capacity subsequent to January 4, 1973, (vii) any clerk magistrate, who was an associate county judge and a member of the fund at the time of appointment as a clerk magistrate, serves in such capacity from and after July 1, 1986, and (viii) any judge of the Court of Appeals serves in such capacity on or after September 6, 1991.

(b) Current service shall not be deemed to be interrupted by (i) temporary or seasonal suspension of service that does not terminate the employee's employment, (ii) leave of absence authorized by the employer for a period not exceeding twelve months, (iii) leave of absence because of disability, or (iv) military service, when properly authorized by the board. Current service does not include any period of disability for which disability retirement benefits are received under section 24-709;

(8) Final average compensation for a judge who becomes a member prior to July 1, 2015, means the average monthly compensation for the three twelve-month periods of service as a judge in which compensation was the greatest or, in the event of a judge serving less than three twelve-month periods, the average monthly compensation for such judge's period of service. Final average compensation for a judge who becomes a member on and after July 1, 2015, means the average monthly compensation for the five twelve-month periods of service as a judge in which compensation was the greatest or, in the event of a judge serving less than five twelve-month periods, the average monthly compensation for such judge's period of service;

(9) Fund means the Nebraska Retirement Fund for Judges;

(10) Future member means a judge who first served as a judge on or after December 25, 1969, or means a judge who first served as a judge prior to December 25, 1969, who elects to become a future member on or before June 30, 1970, as provided in section 24-710.01;

(11) Hire date or date of hire means the first day of compensated service subject to retirement contributions;

(12) Initial benefit means the retirement benefit calculated at the time of retirement;

(13) Judge means and includes (a) all duly elected or appointed Chief Justices or judges of the Supreme Court and judges of the district courts of Nebraska who serve in such capacity on and after January 3, 1957, (b)(i) all duly appointed judges of the Nebraska Workmen's Compensation Court who served in such capacity on and after September 20, 1957, and prior to July 17, 1986, and (ii) judges of the Nebraska Workers' Compensation Court who serve in such capacity on and after July 17, 1986, (c) judges of separate juvenile courts, (d) judges of the county courts of the respective counties who serve in such capacity on and after January 5, 1961, (e) judges of the county court and clerk magistrates who were associate county judges and members of the fund at the time of their appointment as clerk magistrates, (f) judges of municipal courts established by Chapter 26, article 1, who served in such capacity on and after October 23, 1967, and prior to July 1, 1985, and (g) judges of the Court of Appeals;

(14) Member means a judge eligible to participate in the retirement system established under the Judges Retirement Act;

(15) Normal form annuity means a series of equal monthly payments payable at the end of each calendar month during the life of a retired judge as provided in sections 24-707 and 24-710, except as provided in section 42-1107. The first payment shall include all amounts accrued since the effective date of the award of the annuity. The last payment shall be at the end of the calendar month in which such judge dies. If at the time of death the amount of annuity payments such judge has received is less than contributions to the fund made by such judge, plus regular interest, the difference shall be paid to the beneficiary or estate;

(16) Normal retirement date means the first day of the month following attainment of age sixty-five;

(17) Original member means a judge who first served as a judge prior to December 25, 1969, who does not elect to become a future member pursuant to section 24-710.01, and who was retired on or before December 31, 1992;

(18) Plan year means the twelve-month period beginning on July 1 and ending on June 30 of the following year;

(19) Prior service means all the periods of time any person has served as a (a) judge of the Supreme Court or judge of the district court prior to January 3, 1957, (b) judge of the county court prior to January 5, 1961, (c) judge of the Nebraska Workmen's Compensation Court prior to September 20, 1957, (d) judge of the separate juvenile court, or (e) judge of the municipal court prior to October 23, 1967;

(20) Regular interest means interest fixed at a rate equal to the daily treasury yield curve for one-year treasury securities, as published by the Secretary of the Treasury of the United States, that applies on July 1 of each year, which may be credited monthly, quarterly, semiannually, or annually as the board may direct;

(21) 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;

(22) 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;

(23) 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;

(24) Retirement system or system means the Nebraska Judges Retirement System as provided in the Judges Retirement Act;

(25) 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 the qualified domestic relations order are less than the value of benefits entitled to the surviving spouse, the spouse married to the member on the date of the member's death shall be the surviving spouse for the balance of the benefits; and

(26) Termination of employment occurs on the date on which the State Court Administrator's office determines that the judge's employer-employee relationship with the State of Nebraska is dissolved. The State Court Administrator's office shall notify the board of the date on which such a termination has occurred. Termination of employment does not include ceasing employment as a judge if the judge returns to regular employment as a judge or is employed on a regular basis by another agency of the State of Nebraska and there are less than one hundred twenty days between the date when the judge's employer-employee relationship ceased and the date when the employer-employee relationship recommences. 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 24-710, the board shall require the member who has received such benefit to repay the benefit to the retirement system.

Source: Laws 1955, c. 83, § 1, p. 244; Laws 1957, c. 78, § 1, p. 315; Laws 1957, c. 79, § 1, p. 318; Laws 1959, c. 95, § 1, p. 409; Laws 1959, c. 189, § 13, p. 687; Laws 1965, c. 115, § 1, p. 440; Laws 1969, c. 178, § 1, p. 759; Laws 1971, LB 987, § 4; Laws 1972, LB 1032, § 120; Laws 1973, LB 226, § 10; Laws 1974, LB 905, § 3; Laws 1983, LB 223, § 1; Laws 1984, LB 13, § 32; Laws 1984, LB 750, § 1; Laws 1986, LB 92, § 1; Laws 1986, LB 311, § 9; Laws 1986, LB 351, § 1; Laws 1986, LB 529, § 17; Laws 1986, LB 811, § 12; Laws 1989, LB 506, § 2; Laws 1991, LB 549, § 15; Laws 1991, LB 732, § 36; Laws 1992, LB 682, § 1; Laws 1994, LB 833, § 12; Laws 1996, LB 700, § 1; Laws 1996, LB 847, § 11; Laws 1996, LB 1076, § 8; Laws 1996, LB 1273, § 19; Laws 1997, LB 624, § 9; Laws 1999, LB 674, § 1; Laws 2000, LB 1192, § 4; Laws 2001, LB 408, § 6; Laws 2003, LB 451, § 14; Laws 2011, LB6, § 1; Laws 2012, LB916, § 14; Laws 2013, LB263, § 10; Laws 2015, LB468, § 1; Laws 2016, LB790, § 2; Laws 2017, LB415, § 18; Laws 2020, LB1054, § 5; Laws 2021, LB17, § 1; Laws 2023, LB103, § 5.

Cross References

Spousal Pension Rights Act, see section 42-1101.

24-703 Judges; contributions; deductions; fees taxed as costs; payment; late fees; funding of retirement system; actuarial valuation; transfer of funds; adjustments.

(1) Each original member shall contribute monthly four percent of his or her monthly compensation to the fund until the maximum benefit as limited in subsection (1) of section 24-710 has been earned. It shall be the duty of the Director of Administrative Services in accordance with subsection (7) of this section to make a deduction of four percent on the monthly payroll of each original member who is a judge of the Supreme Court, a judge of the Court of Appeals, a judge of the district court, a judge of a separate juvenile court, a judge of the county court, a clerk magistrate of the county court who was an associate county judge and a member of the fund at the time of his or her appointment as a clerk magistrate, or a judge of the Nebraska Workers' Compensation Court showing the amount to be deducted and its credit to the fund. The Director of Administrative Services and the State Treasurer shall credit the four percent as shown on the payroll and the amounts received from the various counties to the fund and remit the same to the director in charge of the judges retirement system who shall keep an accurate record of the contributions of each judge.

(2)(a) In addition to the contribution required under subdivision (c) of this subsection, beginning on July 1, 2004, each future member who became a member prior to July 1, 2015, and who has not elected to make contributions and receive benefits as provided in section 24-703.03 shall contribute monthly six percent of his or her monthly compensation to the fund until the maximum benefit as limited in subsection (2) of section 24-710 has been earned. After the maximum benefit as limited in subsection (2) of section 24-710 has been earned, such future member shall make no further contributions to the fund,

except that (i) any time the maximum benefit is changed, a future member who has previously earned the maximum benefit as it existed prior to the change shall contribute monthly six percent of his or her monthly compensation to the fund until the maximum benefit as changed and as limited in subsection (2) of section 24-710 has been earned and (ii) such future member shall continue to make the contribution required under subdivision (c) of this subsection.

(b) In addition to the contribution required under subdivision (c) of this subsection, beginning on July 1, 2004, a judge who became a member prior to July 1, 2015, and who first serves as a judge on or after July 1, 2004, or a future member who became a member prior to July 1, 2015, and who elects to make contributions and receive benefits as provided in section 24-703.03 shall contribute monthly eight percent of his or her monthly compensation to the fund until the maximum benefit as limited by subsection (2) of section 24-710 has been earned. In addition to the contribution required under subdivision (c) of this subsection, after the maximum benefit as limited in subsection (2) of section 24-710 has been earned, such judge or future member shall contribute monthly four percent of his or her monthly compensation to the fund for the remainder of his or her active service.

(c) Beginning on July 1, 2009, a member or judge described in subdivisions (a) and (b) of this subsection shall contribute monthly an additional one percent of his or her monthly compensation to the fund.

(d) Beginning on July 1, 2015, a judge who first serves as a judge on or after such date shall contribute monthly ten percent of his or her monthly compensation to the fund.

(e) It shall be the duty of the Director of Administrative Services to make a deduction on the monthly payroll of each such future member who is a judge of the Supreme Court, a judge of the Court of Appeals, a judge of the district court, a judge of a separate juvenile court, a judge of the county court, a clerk magistrate of the county court who was an associate county judge and a member of the fund at the time of his or her appointment as a clerk magistrate, or a judge of the Nebraska Workers' Compensation Court showing the amount to be deducted and its credit to the fund. This shall be done each month. The Director of Administrative Services and the State Treasurer shall credit the amount as shown on the payroll and the amounts received from the various counties to the fund and remit the same to the director in charge of the judges retirement system who shall keep an accurate record of the contributions of each judge.

(3)(a) Except as otherwise provided in this subsection, a Nebraska Retirement Fund for Judges fee of six dollars through June 30, 2021, eight dollars beginning July 1, 2021, through June 30, 2022, nine dollars beginning July 1, 2022, through June 30, 2023, ten dollars beginning July 1, 2023, through June 30, 2024, eleven dollars beginning July 1, 2024, through June 30, 2025, and twelve dollars beginning July 1, 2025, shall be taxed as costs in each (i) civil cause of action, criminal cause of action, traffic misdemeanor or infraction, and city or village ordinance violation filed in the district courts, the county courts, and the separate juvenile courts, (ii) filing in the district court of an order, award, or judgment of the Nebraska Workers' Compensation Court or any judge thereof pursuant to section 48-188, (iii) appeal or other proceeding filed in the Court of Appeals, and (iv) original action, appeal, or other proceeding filed in the Supreme Court. In county courts a sum shall be charged which is

equal to ten percent of each fee provided by sections 33-125, 33-126.02, 33-126.03, and 33-126.06, rounded to the nearest even dollar. No judges retirement fee shall be charged for filing a report pursuant to sections 33-126.02 and 33-126.06.

(b) The fee increases described in subdivision (a) of this subsection shall not be taxed as a cost in any criminal cause of action, traffic misdemeanor or infraction, or city or village ordinance violation filed in the district court or the county court. The fee on such criminal causes of action, traffic misdemeanors or infractions, or city or village ordinance violations shall remain six dollars on and after July 1, 2021.

(c) When collected by the clerk of the district or county court, such fees shall be remitted to the State Treasurer within ten days after the close of each calendar month for credit to the Nebraska Retirement Fund for Judges. In addition, information regarding collection of court fees shall be submitted to the director in charge of the judges retirement system by the State Court Administrator within ten days after the close of each calendar month.

(d) The board may charge a late administrative processing fee not to exceed twenty-five dollars if the information is not timely received or the money is delinquent. In addition, the board may charge a late fee of thirty-eight thousandths of one percent of the amount required to be submitted pursuant to this section for each day such amount has not been received. Such late fees shall be remitted to the director who shall promptly thereafter remit such fees to the State Treasurer for credit to the fund.

(e) No Nebraska Retirement Fund for Judges fee which is uncollectible for any reason shall be waived by a county judge as provided in section 29-2709.

(4) All expenditures from the fund shall be authorized by voucher in the manner prescribed in section 24-713. The fund shall be used for the payment of all annuities and other benefits to members and their beneficiaries and for the expenses of administration.

(5)(a) Prior to July 1, 2021:

(i) Beginning July 1, 2013, and each fiscal year thereafter, the board shall cause an annual actuarial valuation to be performed that will value the plan assets for the year and ascertain the contributions required for such fiscal year. The actuary for the board shall perform an actuarial valuation of the system on the basis of actuarial assumptions recommended by the actuary, approved by the board, and kept on file with the board 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 percentage of salary 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;

(ii) Beginning July 1, 2006, any existing unfunded liabilities shall be reinitialized and amortized over a thirty-year period, and during each subsequent actuarial valuation through June 30, 2021, 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 thirty-year period beginning on the valuation date of such change;

(iii) If the unfunded actuarial accrued liability under the entry age actuarial cost method is zero or less than zero on an actuarial valuation date, then all prior unfunded actuarial accrued liabilities shall be considered fully funded and the unfunded actuarial accrued liability shall be reinitialized and amortized over a thirty-year period as of the actuarial valuation date; and

(iv) If the actuarially required contribution rate exceeds the rate of all contributions required pursuant to the Judges Retirement Act, there shall be a supplemental appropriation sufficient to pay for the differences between the actuarially required contribution rate and the rate of all contributions required pursuant to the Judges Retirement Act.

(b) Beginning July 1, 2021, and each fiscal year thereafter:

(i) The board shall cause an annual actuarial valuation to be performed that will value the plan assets for the year and ascertain the contributions required for such fiscal year. The actuary for the board shall perform an actuarial valuation of the system on the basis of actuarial assumptions recommended by the actuary, approved by the board, and kept on file with the board using the entry age actuarial cost method. Under such 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 percentage of salary basis. The normal cost under such 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;

(ii) Any 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;

(iii) 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; and

(iv) If the actuarially required contribution rate exceeds the rate of all contributions required pursuant to the Judges Retirement Act, there shall be a supplemental appropriation sufficient to pay for the differences between the actuarially required contribution rate and the rate of all contributions required pursuant to the act.

(c) Upon the recommendation of the actuary to the board, and after the board notifies the Nebraska Retirement Systems Committee of the Legislature, the board may combine or offset certain amortization bases to reduce future volatility of the actuarial contribution rate. Such notification to the committee shall be in writing and include, at a minimum, the actuary's projection of the contributions to fund the plan if the combination or offset were not implemented, the actuary's projection of the contributions to fund the plan if the combination or offset were implemented, and the actuary's explanation of why the combination or offset is in the best interests of the plan at the proposed time.

(d) For purposes of this subsection, the rate of all contributions required pursuant to the Judges Retirement Act includes (i) member contributions, (ii) state contributions pursuant to subsection (6) of this section which shall be considered as a contribution for the plan year ending the prior June 30, (iii)

court fees as provided in subsection (3) of this section, and (iv) all fees pursuant to sections 25-2804, 33-103, 33-103.01, 33-106.02, 33-123, 33-124, 33-125, 33-126.02, 33-126.03, and 33-126.06, as directed to be remitted to the fund.

(6)(a) In addition to the contributions otherwise required by this section, beginning July 1, 2023, and on July 1 of each year thereafter, or as soon thereafter as administratively possible, the State Treasurer shall transfer from the General Fund to the Nebraska Retirement Fund for Judges an amount equal to five percent of the total annual compensation of all members of the retirement system except as otherwise provided in this subsection and as such rate shall be adjusted or terminated by the Legislature. No adjustment may cause the total contribution rate established in this subsection to exceed five percent. For purposes of this subsection, (i) total annual compensation is based on the total member compensation reported in the most recent annual actuarial valuation report for the retirement system produced for the board pursuant to section 84-1503 and (ii) the contribution described in this subsection shall be considered as a contribution for the plan year ending the prior June 30.

(b) If the funded ratio on the actuarial value of assets is at or above one hundred percent for two consecutive years as reported in the annual actuarial valuation report, the actuary shall assess whether the percentage of the state contribution rate should be adjusted based on projected annual actuarial valuation report results including the funded ratio, actuarial contribution, and expected revenue sources using several assumed investment return scenarios that the actuary deems to be reasonable, and shall make a recommendation to the board as part of the annual actuarial valuation report.

(c) If the state contribution rate has been adjusted to less than five percent and the funded ratio on the actuarial value of assets is below one hundred percent for two consecutive years as reported in the annual actuarial valuation report, the actuary shall assess whether the percentage of the state contribution rate should be adjusted based on projected annual actuarial valuation report results including the funded ratio, actuarial contribution, and expected revenue sources using several assumed investment return scenarios that the actuary deems to be reasonable, and shall make a recommendation to the board as part of the annual actuarial valuation report.

(d) If an annual actuarial valuation report includes a recommendation from the actuary to adjust the contribution rate as described in subdivision (b) or (c) of this subsection, the board shall provide written notice electronically to the Nebraska Retirement Systems Committee of the Legislature, to the Governor, and to the Supreme Court of such recommendation within seven business days after voting to approve an annual actuarial valuation report. The notice shall include the actuary's recommendation and analysis regarding such adjustment.

(e) Following receipt of the actuary's recommendation and analysis pursuant to this subsection, the Nebraska Retirement Systems Committee of the Legislature shall determine the amount of any adjustment of the contribution rate and, if necessary, shall propose any such adjustment to the Legislature.

(7) The state or county shall pick up the member contributions required by this section for all compensation paid on or after January 1, 1985, and the contributions so picked up shall be treated as employer contributions 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 member until such time as they are distributed or made available. The contribu-

tions, although designated as member contributions, shall be paid by the state or county in lieu of member contributions. The state or county shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The state or county shall pick up these contributions by a compensation deduction through a reduction in the compensation of the member. Member contributions picked up shall be treated for all purposes of the Judges Retirement Act in the same manner and to the extent as member contributions made prior to the date picked up.

Source: Laws 1955, c. 83, § 3, p. 246; Laws 1957, c. 79, § 2, p. 321; Laws 1959, c. 95, § 2, p. 411; Laws 1959, c. 189, § 14, p. 689; Laws 1963, c. 137, § 1, p. 513; Laws 1965, c. 115, § 2, p. 442; Laws 1965, c. 116, § 2, p. 446; Laws 1967, c. 140, § 1, p. 428; Laws 1969, c. 178, § 2, p. 957; Laws 1971, LB 987, § 5; Laws 1972, LB 1032, § 121; Laws 1972, LB 1471, § 1; Laws 1973, LB 226, § 11; Laws 1974, LB 228, § 1; Laws 1977, LB 344, § 2; Laws 1977, LB 467, § 1; Laws 1981, LB 459, § 3; Laws 1984, LB 13, § 33; Laws 1984, LB 218, § 2; Laws 1986, LB 92, § 2; Laws 1986, LB 529, § 18; Laws 1989, LB 233, § 1; Laws 1989, LB 506, § 3; Laws 1991, LB 549, § 16; Laws 1991, LB 732, § 37; Laws 1992, LB 672, § 31; Laws 1992, LB 682, § 2; Laws 1994, LB 833, § 14; Laws 1995, LB 574, § 34; Laws 2001, LB 408, § 9; Laws 2002, LB 407, § 13; Laws 2003, LB 320, § 1; Laws 2003, LB 760, § 4; Laws 2004, LB 1097, § 11; Laws 2005, LB 348, § 2; Laws 2005, LB 364, § 7; Laws 2006, LB 1019, § 5; Laws 2009, LB414, § 2; Laws 2013, LB263, § 11; Laws 2013, LB306, § 2; Laws 2013, LB553, § 1; Laws 2015, LB468, § 3; Laws 2021, LB17, § 2.

24-703.01 Participation in retirement system; requirements.

No judge shall be authorized to participate in the retirement system provided for in the Judges Retirement Act unless the judge is a United States citizen or is lawfully present in the United States. The court and the judge 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 judge's date of hire and produce any such document so maintained upon request of the board or the Nebraska Public Employees Retirement Systems:

(1) A state-issued driver's license;

(2) A state-issued identification card;

(3) A certified copy of a birth certificate or delayed birth certificate issued in any state, territory, or possession of the United States;

(4) A Consular Report of Birth Abroad issued by the United States Department of State;

(5) A United States passport;

(6) A foreign passport with a United States visa;

(7) A United States Certificate of Naturalization;

(8) A United States Certificate of Citizenship;

(9) A tribal certificate of Native American blood or similar document;

(10) A United States Citizenship and Immigration Services Employment Authorization Document, Form I-766;

(11) A United States Citizenship and Immigration Services Permanent Resident Card, Form I-551; or

(12) 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 board.

Source: Laws 2010, LB950, § 9; Laws 2024, LB198, § 5.
Effective date March 19, 2024.

24-704 Administration of system; Public Employees Retirement Board, Auditor of Public Accounts, and Nebraska Investment Council; duties; employer education program.

(1) The general administration of the retirement system for judges provided for in the Judges Retirement Act, except the investment of funds, is hereby vested in the board. The Auditor of Public Accounts shall make an annual audit of the retirement system and electronically file an annual report of its condition with the Clerk of the Legislature. Each member of the Legislature shall receive an electronic copy of the annual report by making a request for such report to the Auditor of Public Accounts. The board may adopt and promulgate rules and regulations as may be necessary to carry out the Judges Retirement Act.

(2)(a) The board shall employ a director and such assistants and employees as may be necessary to efficiently discharge the duties imposed by the act. The director shall keep a record of all acts and proceedings taken by the board.

(b) The director shall keep a complete record of all members with respect to name, current address, age, contributions, length of service, compensation, and any other facts as may be necessary in the administration of the act. The information in the records shall be provided by the State Court Administrator 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.

(c) 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) Information necessary to determine membership in the retirement system shall be provided by the State Court Administrator.

(4) Any funds of the retirement system available for investment shall be invested by the Nebraska Investment Council pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Payment for investment services by the council shall be charged directly against the gross investment returns of the funds. Charges so incurred shall not be a part of the

board's annual budget request. The amounts of payment for such services, as of December 31 of each year, shall be reported not later than March 31 of the following year to the council, the board, and the Nebraska Retirement Systems Committee of the Legislature. The report submitted to the committee shall be submitted electronically. The state investment officer shall sell any such securities upon request from the director so as to provide money for the payment of benefits or annuities.

Source: Laws 1955, c. 83, § 4, p. 246; Laws 1971, LB 987, § 6; Laws 1979, LB 322, § 6; Laws 1986, LB 311, § 10; Laws 1991, LB 549, § 17; Laws 1994, LB 833, § 15; Laws 1994, LB 1066, § 18; Laws 1995, LB 369, § 4; Laws 1996, LB 847, § 13; Laws 2000, LB 1192, § 5; Laws 2005, LB 503, § 4; Laws 2012, LB782, § 24; Laws 2018, LB1005, § 13.

Cross References

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

24-704.01 Board; power to adjust contributions and benefits; overpayment of benefits; investigatory powers; subpoenas.

(1)(a) If the board determines that the retirement system has previously received contributions or distributed benefits which for any reason are not in accordance with the Judges Retirement Act, the board shall refund contributions, require additional contributions, adjust benefits, 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 thereon. In the event of an underpayment of a benefit, the board shall immediately make payment equal to the deficit amount plus regular interest.

(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, § 10; Laws 2004, LB 1097, § 12; Laws 2015, LB40, § 6; Laws 2018, LB1005, § 14.

24-708 Retirement of judge; when; deferment of payment; board; duties.

(1) Except as provided in section 24-721, a judge may retire upon reaching the age of sixty-five years and upon making application to the board. Upon retiring each such judge shall receive retirement annuities as provided in section 24-710.

(2) Except as provided in section 24-721, a judge may retire upon reaching the age of fifty-five years and elect to receive a reduced monthly retirement income in lieu of a deferred vested annuity. The judge may request that the reduced monthly retirement income commence at any date, beginning on the first day of the month following the actual retirement date and ending on the normal retirement date. The amount of the reduced monthly retirement income shall be calculated based on the length of creditable service and average compensation at the actual retirement date. When a judge has elected to receive a reduced monthly retirement income to commence at the age of sixty-four years, the monthly payments shall be reduced by three percent. When a judge has elected to receive a reduced monthly retirement income to commence at the age of sixty-three years, the monthly payments shall be reduced by six percent. When a judge has elected to receive a reduced monthly retirement income to commence at the age of sixty-two years, the monthly payments shall be reduced by nine percent. When a judge has elected to receive a reduced monthly retirement income to commence prior to the age of sixty-two years, the monthly payments shall be further reduced to an amount that is actuarially equivalent to the amount payable at the age of sixty-two years.

(3) Payment of any benefit provided under the Judges Retirement Act shall not be deferred later than the required beginning date.

(4) The effective date of retirement payments shall be the first day of the month following (a) the date a member qualifies for retirement as provided in this section or (b) the date upon which a member's request for retirement is received on an application form provided by the retirement system, whichever is later. An application may be filed no more than one hundred twenty days in advance of qualifying for retirement.

(5) 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 Judges Retirement Act.

Source: Laws 1955, c. 83, § 8, p. 248; Laws 1957, c. 78, § 2, p. 317; Laws 1957, c. 79, § 3, p. 322; Laws 1965, c. 115, § 3, p. 444; Laws 1972, LB 1032, § 123; Laws 1973, LB 353, § 1; Laws 1984, LB 750, § 2; Laws 1986, LB 311, § 11; Laws 1987, LB 296, § 2; Laws 1989, LB 506, § 6; Laws 1994, LB 833, § 21; Laws 1997, LB 624, § 13; Laws 2003, LB 320, § 2; Laws 2003, LB 451, § 16; Laws 2004, LB 1097, § 14; Laws 2008, LB1147, § 5; Laws 2017, LB415, § 19; Laws 2020, LB1054, § 6.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

24-710 Judges; retirement annuity; amount; how computed; cost-of-living adjustment.

(1) The retirement annuity of a judge who is an original member, who has not made the election provided for in section 24-710.01, and who retires under section 24-708 or 24-709 shall be computed as follows: Each such judge shall be entitled to receive an annuity, each monthly payment of which shall be in an amount equal to three and one-third percent of his or her final average compensation as such judge, multiplied by the number of his or her years of creditable service. The amount stated in this section shall be supplemental to any benefits received by such judge under the Nebraska and federal old age and survivors' insurance acts at the date of retirement, but the monthly combined benefits received thereunder and by the Judges Retirement Act shall not exceed sixty-five percent of the final average compensation such judge was receiving when he or she last served as such judge. The amount of retirement annuity of a judge who retires under section 24-708 or 24-709 shall not be less than twenty-five dollars per month if he or she has four years or more of service credit.

(2) The retirement annuity of a judge who is a future member and who retires after July 1, 1986, under section 24-708 or 24-709 shall be computed as follows: Each such judge shall be entitled to receive an annuity, each monthly payment of which shall be in an amount equal to three and one-half percent of his or her final average compensation as such judge, multiplied by the number of his or her years of creditable service, except that prior to an actuarial factor adjustment for purposes of calculating an optional form of annuity benefits under subsection (3) of this section, the monthly benefits received under this subsection shall not exceed seventy percent of the final average compensation such judge was receiving when he or she last served as such judge.

(3) Except as provided in section 42-1107, any member may, when filing an application as provided by the retirement system, elect to receive, in lieu of the normal form annuity benefits to which the member or his or her beneficiary may otherwise be entitled under the Judges Retirement Act, an optional form of annuity benefits which the board may by rules and regulations provide, the value of which, determined by accepted actuarial methods and on the basis of actuarial assumptions recommended by the actuary, approved by the board, and kept on file in the office of the director, is equal to the value of the benefit replaced. The board may (a) adopt and promulgate appropriate rules and regulations to establish joint and survivorship annuities, with and without reduction on the death of the first annuitant, and such other forms of annuities as may in its judgment be appropriate and establishing benefits as provided in sections 24-707 and 24-707.01, (b) prescribe appropriate forms for making the election by the members, and (c) provide for the necessary actuarial services to make the required valuations.

(4) A one-time cost-of-living adjustment shall be made for each retired judge and each surviving beneficiary who is receiving a retirement annuity as provided for in this section. The annuity shall be adjusted by the increase in the cost of living or wage levels between the effective date of retirement and June 30, 1992, except that such increases shall not exceed three percent per year of retirement and the total increase shall not exceed two hundred fifty dollars per month.

Source: Laws 1955, c. 83, § 10, p. 249; Laws 1957, c. 79, § 4, p. 323; Laws 1959, c. 95, § 4, p. 413; Laws 1965, c. 116, § 3, p. 448; Laws 1965, c. 117, § 1, p. 489; Laws 1969, c. 178, § 4, p. 766; Laws 1973, LB 478, § 2; Laws 1974, LB 740, § 1; Laws 1975, LB

49, § 1; Laws 1977, LB 467, § 2; Laws 1977, LB 344, § 5; Laws 1981, LB 459, § 4; Laws 1981, LB 462, § 4; Laws 1986, LB 92, § 5; Laws 1986, LB 311, § 13; Laws 1989, LB 506, § 7; Laws 1991, LB 549, § 18; Laws 1992, LB 672, § 32; Laws 1992, LB 682, § 3; Laws 1994, LB 833, § 22; Laws 1996, LB 1273, § 21; Laws 1997, LB 624, § 15; Laws 2004, LB 1097, § 15; Laws 2011, LB509, § 11; Laws 2018, LB1005, § 15; Laws 2021, LB17, § 3.

24-710.01 Judges; alternative contribution rate and retirement benefit; election; notice.

Any original member, as defined in section 24-701, who has not previously retired, may elect to make contributions and receive benefits pursuant to subsection (2) of section 24-703 and subsection (2) of section 24-710, instead of those provided by subsection (1) of section 24-703 and subsection (1) of section 24-710. Such election shall be by written notice delivered to the board not later than November 1, 1981. Such member shall thereafter be considered a future member.

Source: Laws 1977, LB 344, § 1; Laws 1981, LB 459, § 5; Laws 1986, LB 92, § 6; Laws 2016, LB790, § 3; Laws 2017, LB415, § 20; Laws 2023, LB103, § 6.

24-710.04 Reemployment; military service; credit; effect; applicability.

(1) Any judge who returns to service as a judge for the State of Nebraska pursuant to 38 U.S.C. 4301 et seq., shall be treated as not having incurred a break in service by reason of the judge's period of military service. Such military service shall be credited for purposes of determining the nonforfeitability of the member's accrued benefits and the accrual of benefits under the plan.

(2) The state 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 State Court Administrator shall pay to the retirement system an amount equal to:

(a) The sum of the judge's contributions that would have been paid during such period of military service; and

(b) 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, or interest credits that would have accrued on the judge's contributions that are paid by the State Court Administrator pursuant to this section shall not be included.

(3) The amount required in subsection (2) of this section shall be paid to the retirement system as soon as reasonably practicable following the date the judge returns to service as a judge for the State of Nebraska, but must be paid within eighteen months of the date the board notifies the State Court Administrator of the amount due. If the State Court Administrator fails to pay the required amount within such eighteen-month period, then the State Court Administrator is also responsible for any actuarial costs and interest on actuarial costs that accrue from eighteen months after the date the State Court Administrator is notified by the board until the date the amount is paid.

(4) The board may adopt and promulgate rules and regulations to carry out this section, including, but not limited to, rules and regulations on:

(a) How and when the judge and State Court Administrator must notify the retirement system of a period of military service;

(b) The acceptable methods of payment;

(c) Determining the service and compensation upon which the contributions must be made;

(d) Accelerating the payment from the State Court Administrator due to unforeseen circumstances that occur before payment is made pursuant to this section, including, but not limited to, the judge's termination or retirement or the court's reorganization, consolidation, or merger; and

(e) The documentation required to substantiate that the judge returned to service as a judge for the State of Nebraska pursuant to 38 U.S.C. 4301 et seq.

(5) 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 1996, LB 847, § 14; Laws 2017, LB415, § 21; Laws 2023, LB103, § 7.

24-710.05 Direct rollover; terms, defined; distributee; powers; board; powers.

(1) For purposes of this section and section 24-710.06:

(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 24-710.06, 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 July 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, § 15; Laws 2002, LB 407, § 14; Laws 2012, LB916, § 17; Laws 2018, LB1005, § 16.

24-710.06 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 24-706 if the contributions do not exceed the amount of payment required for the service credits purchased by the member pursuant to such section 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 for service credits.

(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, § 16; Laws 2002, LB 407, § 15; Laws 2018, LB1005, § 17.

24-710.15 Judges who became members on and after July 1, 2015; cost-of-living payment.

(1) Beginning July 1, 2015, for judges who become members on and after July 1, 2015, if the annual valuation made by the actuary, as approved by the board, indicates that the system is fully funded and has sufficient actuarial surplus to provide for a supplemental lump-sum cost-of-living payment, the board may, in its discretion, elect to pay a maximum one and one-half percent supplemental lump-sum cost-of-living payment to each retired member or beneficiary based on the retired member's or beneficiary's total monthly benefit through June 30 of the year for which the supplemental lump-sum cost-of-living payment is being calculated. The supplemental lump-sum cost-of-living payment shall be paid within sixty days after the board's decision. In no event shall the board declare a supplemental lump-sum cost-of-living payment if such payment would cause the plan to be less than fully funded.

(2) For purposes of this section, fully funded means the unfunded actuarial accrued liability, based on the lesser of the actuarial value and the market value, under the entry age actuarial cost method is less than zero on the most recent actuarial valuation date.

(3) Any decision or determination by the board to declare or not declare a cost-of-living payment or as to whether the annual valuation indicates a sufficient actuarial surplus to provide for a cost-of-living payment shall be made in the sole, absolute, and final discretion of the board and shall not be subject to challenge by any member or beneficiary. In no event shall the Legislature be constrained or limited in amending the system notwithstanding the effect of any such change upon the actuarial surplus of the system and the ability of the board to declare future cost-of-living payments.

Source: Laws 2015, LB468, § 6; Laws 2017, LB415, § 22.

(c) RETIRED JUDGES

24-729 Judges; retired; assignment; when; retired judge, defined.

The Supreme Court of Nebraska is empowered, with the consent of the retired judge, (1) to assign judges of the Supreme Court, Court of Appeals, and district court who are now retired or who may be retired hereafter to (a) sit in any court in the state to relieve congested trial dockets or to prevent the trial

docket of such court from becoming congested or (b) sit for the judge of any court who may be incapacitated or absent for any reason whatsoever and (2) to assign any judge of the separate juvenile court, county court, or Nebraska Workers' Compensation Court who is now retired or who may be retired hereafter to (a) sit in any court having the same jurisdiction as one in which any such judge may have previously served to relieve congested trial dockets or to prevent the trial docket of any such court from becoming congested or (b) sit for the judge of any such court who may be incapacitated or absent for any reason. Any judge who has retired on account of disability may not be so assigned.

For purposes of sections 24-729 to 24-733, retired judge shall include a judge who, before, on, or after March 31, 1993, has retired upon the attainment of age fifty-five and has elected to defer the commencement of his or her retirement annuity to a later date.

Source: Laws 1974, LB 832, § 1; Laws 1976, LB 296, § 1; Laws 1979, LB 240, § 1; Laws 1991, LB 732, § 39; Laws 1993, LB 363, § 2; Laws 2018, LB193, § 5.

(d) GENERAL POWERS

24-734 Judges; powers; enumerated.

(1) A judge of any court established under the laws of the State of Nebraska shall, in any case in which that judge is authorized to act, have power to exercise the powers conferred upon the judge and court, and specifically to:

(a) Upon the stipulation of the parties to an action, hear and determine any matter, including the trial of an equity case or case at law in which a jury has been waived;

(b) Hear and determine pretrial and posttrial matters in civil cases not involving testimony of witnesses by oral examination;

(c) With the consent of the defendant, receive pleas of guilty and pass sentences in criminal cases;

(d) With the consent of the defendant, hear and determine pretrial and posttrial matters in criminal cases;

(e) Hear and determine cases brought by petition in error or appeal not involving testimony of witnesses by oral examination;

(f) Hear and determine any matter in juvenile cases with the consent of the guardian ad litem or attorney for the minor, the other parties to the proceedings, and the attorneys for those parties, if any; and

(g) Without notice, make any order and perform any act which may lawfully be made or performed by him or her ex parte in any action or proceeding which is on file in any district of this state.

(2) A judgment or order made pursuant to this section shall be deemed effective when the judgment is entered in accordance with the provisions of subsection (3) of section 25-1301.

(3) The judge, in his or her discretion, may in any proceeding authorized by the provisions of this section not involving testimony of witnesses by oral examination, use telephonic, videoconferencing, or similar methods to conduct such proceedings. The court may require the parties to make reimbursement for any charges incurred.

(4) In any criminal case, with the consent of the parties, a judge may permit any witness who is to be examined by oral examination to appear by telephonic, videoconferencing, or similar methods, with any costs thereof to be taxed as costs.

(5)(a) Unless an objection under subdivision (5)(c) of this section is sustained, in any civil case, a judge shall, for good cause shown, permit any witness who is to be examined by oral examination to appear by telephonic, videoconferencing, or similar methods.

(b) Unless the court orders otherwise for good cause shown, all costs of testimony taken by telephone, videoconferencing, or similar methods shall be provided and paid by the requesting party and may not be charged to any other party. A court may find that there is good cause to allow the testimony of a witness to be taken by telephonic, videoconferencing or similar methods if:

(i) The witness is otherwise unavailable to appear because of age, infirmity, or illness;

(ii) The personal appearance of the witness cannot be secured by subpoena or other reasonable means;

(iii) A personal appearance would be an undue burden or expense to a party or witness; or

(iv) There are any other circumstances that constitute good cause for allowing the testimony of the witness to be taken by telephonic, videoconferencing, or similar methods.

(c) A party may object to examination by telephonic, videoconferencing, or similar methods under subdivision (5)(a) of this section on grounds of unreliability or unfairness. The objecting party has the burden of proving unreliability or unfairness by a preponderance of the evidence.

(d) Nothing in this section shall prohibit an award of expenses, including attorney fees, pursuant to Neb. Ct. R. of Discovery 6-337.

(6) The enumeration of the powers in subsections (1), (2), (3), (4), and (5) of this section shall not be construed to deny the right of a party to trial by jury in the county in which the action was first filed if such right otherwise exists.

(7) Nothing in this section shall be construed to exempt proceedings under this section from the provisions of the Guidelines for Use by Nebraska Courts in Determining When and Under What Conditions a Hearing Before Such Court May Be Closed in Whole or in Part to the Public, adopted by the Supreme Court of the State of Nebraska September 8, 1980, and any amendments to those provisions.

Source: Laws 1879, § 39, p. 90; Laws 1913, c. 209, § 1, p. 635; R.S.1913, § 1176; Laws 1921, c. 177, § 1, p. 676; C.S.1922, § 1099; C.S. 1929, § 27-317; R.S.1943, § 24-317; Laws 1953, c. 64, § 1, p. 208; Laws 1965, c. 111, § 1, p. 435; R.S.1943, (1979), § 24-317; Laws 1983, LB 272, § 1; Laws 1999, LB 43, § 1; Laws 2013, LB103, § 1; Laws 2020, LB912, § 10.

ARTICLE 8

SELECTION AND RETENTION OF JUDGES

(a) JUDICIAL NOMINATING COMMISSIONS

(a) JUDICIAL NOMINATING COMMISSIONS

24-803 Judicial nominating commission; members; term; appointments by Governor; elections by lawyers.

(1) Except as provided in subsection (3) of this section, as the term of a member of a judicial nominating commission initially appointed or selected expires, the term of office of each successor member shall be for a period of four years. The Governor shall appoint all successor members of each nominating commission who are judges of the Supreme Court and citizen members or alternate citizen members. The Governor shall appoint two alternate citizen members, not of the same political party, to each nominating commission. The term of office of an alternate citizen member of a commission shall be for a period of four years except that the initial appointments shall terminate on December 31, 1999. The lawyers residing in the judicial district or area of the state served by a judicial nominating commission shall select all successor and alternate lawyer members of such commission in the manner prescribed in section 24-806. The term of office of an alternate lawyer member of a commission shall be for a period of four years. No member of any nominating commission, including the Supreme Court member of any such commission, shall serve more than a total of eight consecutive years as a member of the commission, and if such member has served for more than six years as a member of the commission, he or she shall not be eligible for reelection or reappointment. Alternate lawyer and citizen members shall be selected to fill vacancies in their order of election or appointment.

(2) For purposes of this section and Article V, section 21, of the Constitution of Nebraska, a member of a judicial nominating commission shall be deemed to have served on such commission if he or she was a member of the commission at the time of the publication of the notice required by subsection (1) of section 24-810.

(3) Members of the judicial nominating commissions for the office of judge of the district court shall also serve as members of the judicial nominating commissions for the office of judge of the county court for counties located within the district court judicial districts served, except that members of the judicial nominating commissions for district judge and county judge in districts 1, 2, 3, 4, and 10 shall be appointed or selected separately to serve on such commissions.

Source: Laws 1963, c. 124, § 3, p. 472; Laws 1973, LB 110, § 2; Laws 1991, LB 251, § 2; Laws 1992, LB 1059, § 6; Laws 1995, LB 189, § 3; Laws 1995, LB 303, § 2; Laws 2019, LB339, § 1.

ARTICLE 10
COURTS, GENERAL PROVISIONS

24-1003 Evidence; recording and preservation; court reporters; appointment; uniform salary schedules; expenses; payment.

The Supreme Court shall provide by rule for the recording and preservation of evidence in all cases in the district and separate juvenile courts and for the preparation of transcripts and bills of exceptions. Court reporters and other persons employed to perform the duties required by such rules shall be appointed by the judge under whose direction they work. The Supreme Court shall prescribe uniform salary schedules for such employees, based on their experience and training and the methods used by them in recording and preserving evidence and preparing transcripts and bills of exceptions. Salaries and expenses of such employees shall be paid by the State of Nebraska from funds appropriated to the Supreme Court. Such employees shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 1974, LB 647, § 1; Laws 1981, LB 204, § 34; R.S.1943, (1985), § 24-342.02; Laws 2020, LB381, § 18.

24-1004 Records and exhibits; preservation; disposition.

The Supreme Court shall provide by rule for the preservation of all records and of all exhibits offered or received in evidence in the trial of any action. When the records of the district court do not show any unfinished matter pending in the action, a judge of the district court if satisfied they are no longer valuable for any purpose may, upon such notice as the judge may direct, order the destruction, return, or other disposition of such exhibits as the judge deems appropriate when approval is given by the State Records Administrator pursuant to the Records Management Act.

Source: Laws 1957, c. 75, § 1, p. 311; Laws 1969, c. 105, § 4, p. 480; Laws 1974, LB 647, § 3; R.S.1943, (1985), § 24-342.01; Laws 2020, LB1028, § 1.

Cross References

Records Management Act, see section 84-1220.

24-1005 Records; preservation duplicate; admissible in evidence; destruction of original record.

The clerk of any district court or of any other court of record may maintain any court record as a preservation duplicate in the manner provided in section 84-1208. The original record may be destroyed only with the approval of the State Records Administrator pursuant to the Records Management Act. The

reproduction of the preservation duplicate shall be admissible as evidence in any court of record in the State of Nebraska.

Source: Laws 1967, c. 134, § 1, p. 419; Laws 1969, c. 105, § 2, p. 480; Laws 1971, LB 128, § 2; R.S.1943, (1985), § 24-337.02; Laws 2020, LB1028, § 2.

Cross References

Records Management Act, see section 84-1220.

24-1008 Virtual behavioral health services; pilot program; use courthouse resources; purpose of program; report.

(1) The State Court Administrator shall create a pilot program to utilize physical space and information technology resources within Nebraska courthouses to serve as points of access for virtual behavioral health services for court-involved individuals.

(2) The pilot program shall be limited to a single probation district. Such district shall be chosen by the State Court Administrator in consultation with the probation administrator.

(3) The purpose of the program is to provide access to safe, confidential, and reliable behavioral health treatment via telehealth for individuals involved with the criminal justice system, either as defendants, probationers, or victims in a criminal proceeding.

(4) On or before June 1, 2024, the State Court Administrator shall electronically submit a report to the Judiciary Committee of the Legislature regarding the pilot program.

Source: Laws 2023, LB50, § 2.

ARTICLE 11
COURT OF APPEALS

Section
24-1103. Active or retired judges; assignment; expenses.
24-1105. Cases pending on September 6, 1991; assignment to Court of Appeals.
24-1106. Jurisdiction; direct review by Supreme Court; when; removal of case.
24-1109. Clerk; reporter; State Court Administrator; duties; expenses of court; rules and regulations.

24-1103 Active or retired judges; assignment; expenses.

(1) The Chief Justice of the Supreme Court may call active judges of the district court to serve on the Court of Appeals in case of incapacity or absence for any reason whatsoever or temporary vacancy in the office of a judge of the Court of Appeals. Any active judge designated to serve on the Court of Appeals shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

(2) The number of retired judges assigned to serve pursuant to subdivision (1) of section 24-729 may not at any one time exceed three, and no panel of the Court of Appeals may contain a majority of retired judges so assigned. Payments to a retired judge shall be made in the manner prescribed in sections 24-730 to 24-733.

Source: Laws 1991, LB 732, § 3; Laws 2020, LB381, § 19.

24-1105 Cases pending on September 6, 1991; assignment to Court of Appeals.

Any case on appeal before the Supreme Court on September 6, 1991, except cases in which a sentence of death or life imprisonment has been imposed and cases involving the constitutionality of a statute, may be assigned to the Court of Appeals by the Supreme Court.

Source: Laws 1991, LB 732, § 5; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 24-1105 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

24-1106 Jurisdiction; direct review by Supreme Court; when; removal of case.

(1) In cases which were appealable to the Supreme Court before September 6, 1991, the appeal, if taken, shall be to the Court of Appeals except in capital cases, cases in which life imprisonment has been imposed, and cases involving the constitutionality of a statute.

(2) Any party to a case appealed to the Court of Appeals may file a petition in the Supreme Court to bypass the review by the Court of Appeals and for direct review by the Supreme Court. The procedure and time for filing the petition shall be as provided by rules of the Supreme Court. In deciding whether to grant the petition, the Supreme Court may consider one or more of the following factors:

(a) Whether the case involves a question of first impression or presents a novel legal question;

(b) Whether the case involves a question of state or federal constitutional interpretation;

(c) Whether the case raises a question of law regarding the validity of a statute;

(d) Whether the case involves issues upon which there is an inconsistency in the decisions of the Court of Appeals or of the Supreme Court;

(e) Whether the case is one of significant public interest; and

(f) Whether the case involves a question of qualified immunity in any civil action under 42 U.S.C. 1983, as the section existed on August 24, 2017.

When a petition for direct review is granted, the case shall be docketed for hearing before the Supreme Court.

(3) The Supreme Court shall by rule provide for the removal of a case from the Court of Appeals to the Supreme Court for decision by the Supreme Court at any time before a final decision has been made on the case by the Court of Appeals. The removal may be on the recommendation of the Court of Appeals or on motion of the Supreme Court. Cases may be removed from the Court of Appeals for decision by the Supreme Court for any one or more of the reasons set forth in subsection (2) of this section or in order to regulate the caseload existing in either the Court of Appeals or the Supreme Court. The Chief Judge of the Court of Appeals and the Chief Justice of the Supreme Court shall regularly inform each other of the number and nature of cases docketed in the respective court.

Source: Laws 1991, LB 732, § 6; Laws 2015, LB268, § 3; Referendum 2016, No. 426; Laws 2017, LB204, § 1.

24-1109 Clerk; reporter; State Court Administrator; duties; expenses of court; rules and regulations.

The Clerk of the Supreme Court shall serve as the clerk of the Court of Appeals. The Reporter of Decisions shall serve as the reporter of the Court of Appeals. The State Court Administrator shall provide facilities, supplies, equipment, and support staff needed by the Court of Appeals. All expenses of the Court of Appeals shall be included in the budget of the Supreme Court. The Supreme Court shall adopt and promulgate rules to implement sections 24-1101 to 24-1109.

Source: Laws 1991, LB 732, § 9; Laws 1995, LB 271, § 5; Laws 2023, LB799, § 6.

ARTICLE 12

JUDICIAL RESOURCES COMMISSION

Section
24-1203. Judicial Resources Commission; expenses.
24-1204. Existence of judicial vacancy; determination.

24-1203 Judicial Resources Commission; expenses.

Members of the Judicial Resources Commission shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 1992, LB 1059, § 9; R.S.Supp.,1994, § 24-809.03; Laws 2020, LB381, § 20.

24-1204 Existence of judicial vacancy; determination.

In the event of the death, retirement, resignation, or removal of a district, county, or separate juvenile judge or the failure of a district, county, or separate juvenile judge to be retained in office or upon the request of a majority of the members of the Judicial Resources Commission, the commission shall, after holding a public hearing, determine whether a judicial vacancy exists in the affected district or any other judicial district or whether a new judgeship or change in number of judicial districts or boundaries is appropriate. If the commission determines a vacancy exists in a district or county court district, the commission may also make a recommendation to the Supreme Court of the site for a primary office location. The public hearing may include virtual conferencing or, if the judicial workload statistics compiled pursuant to section 24-1007 indicate a need for a number of judges equal to or greater than the number currently authorized by law, the commission may conduct a hearing by telephone conference. If a telephone conference is used, a recording shall be made of the telephone conference and maintained by the commission for at least one year, and the commission shall only determine whether a judicial vacancy exists in the affected district and make no other determinations.

Source: Laws 1995, LB 189, § 6; Laws 1997, LB 229, § 4; Laws 1999, LB 47, § 1; Laws 2021, LB83, § 2.

ARTICLE 13

PROBLEM SOLVING COURTS

Section
24-1302. Problem solving court; establish; Supreme Court; rules; funding, legislative intent; Supreme Court Administrator; duties.

24-1302 Problem solving court; establish; Supreme Court; rules; funding, legislative intent; Supreme Court Administrator; duties.

(1) For purposes of this section, problem solving court means a drug, veterans, mental health, driving under the influence, reentry, young adult, or other problem solving court.

(2) A district, county, or juvenile court may establish a problem solving court, subject to the Supreme Court's rules. A problem solving court shall function within the existing structure of the court system. The goals of a problem solving court shall be consistent with any relevant standards adopted by the United States Department of Justice and the National Association of Drug Court Professionals, as such standards existed on January 1, 2023.

(3) An individual may participate in a problem solving court as a condition of probation, as a sentence imposed by a court, or as otherwise provided by the Supreme Court's rules.

(4) Problem solving courts shall be subject to rules which shall be promulgated by the Supreme Court for procedures to be implemented in the administration of such courts.

(5) It is the intent of the Legislature that funds be appropriated separately to the Supreme Court such that each judicial district may operate at least one drug, veterans, mental health, driving under the influence, reentry, and young adult problem solving court. The State Court Administrator shall ensure that each judicial district has at least one of such courts by January 1, 2024.

(6) The State Court Administrator shall track and evaluate outcomes of problem solving courts. On or before June 1, 2024, and on or before each June 1 thereafter, the State Court Administrator shall electronically submit a report to the Legislature regarding the impact of problem solving courts on recidivism rates in the state. The report shall also include rates of return to court and program completion. The report shall identify judicial districts that are underserved by problem solving courts and what services or funding are needed to properly serve such districts.

Source: Laws 2004, LB 454, § 2; Laws 2008, LB1014, § 7; Laws 2016, LB919, § 2; Laws 2023, LB50, § 1.

CHAPTER 25
COURTS; CIVIL PROCEDURE

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35. Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images. 25-3501 to 25-3509.
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ARTICLE 2

COMMENCEMENT AND LIMITATION OF ACTIONS

Section
25-213. Tolling of statutes of limitation; when.
25-217. Action; commencement; defendant not properly served; effect.
25-223. Action on breach of warranty on improvements to real property.
25-228. Action by victim of sexual assault of a child; when.
25-229. Action against real estate licensee; when.

25-213 Tolling of statutes of limitation; when.

Except as provided in sections 76-288 to 76-298, if a person entitled to bring any action mentioned in Chapter 25, the Political Subdivisions Tort Claims Act, the Nebraska Hospital-Medical Liability Act, the State Contract Claims Act, the State Tort Claims Act, the State Miscellaneous Claims Act, or the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act, except for a penalty or forfeiture, for the recovery of the title or possession of lands, tenements, or hereditaments, or for the foreclosure of mortgages thereon, is, at the time the cause of action accrued, within the age of twenty years, a person with a mental disorder, or imprisoned, every such person shall be entitled to bring such action within the respective times limited by Chapter 25 after such disability is removed. For the recovery of the title or possession of lands, tenements, or hereditaments or for the foreclosure of mortgages thereon, every such person shall be entitled to bring such action within twenty years from the accrual thereof but in no case longer than ten years after the termination of such disability. Absence from the state, death, or other disability shall not

operate to extend the period within which actions in rem are to be commenced by and against a nonresident or his or her representative.

Source: R.S.1867, Code § 17, p. 396; R.S.1913, § 7576; C.S.1922, § 8519; Laws 1925, c. 64, § 2, p. 221; C.S.1929, § 20-213; R.S.1943, § 25-213; Laws 1947, c. 243, § 12, p. 766; Laws 1972, LB 1049, § 1; Laws 1974, LB 949, § 2; Laws 1984, LB 692, § 2; Laws 1986, LB 1177, § 5; Laws 1988, LB 864, § 5; Laws 2007, LB339, § 1; Laws 2019, LB680, § 10.

Cross References

Nebraska Hospital-Medical Liability Act, see section 44-2855.
Political Subdivisions Tort Claims Act, see section 13-901.
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.
Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act, see section 25-3501.

25-217 Action; commencement; defendant not properly served; effect.

(1) An action is commenced on the day the complaint is filed with the court.

(2) Each defendant in the action must be properly served within one hundred eighty days of the commencement of the action. If the action is stayed or enjoined during the one-hundred-eighty-day period, then any defendant who was not properly served before the action was stayed or enjoined must be properly served within ninety days after the stay or injunction is terminated or modified so as to allow the action to proceed.

(3) If any defendant is not properly served within the time specified by subsection (2) of this section then the action against that defendant is dismissed by operation of law. The dismissal is without prejudice and becomes effective on the day after the time for service expires.

Source: R.S.1867, Code § 19, p. 396; R.S.1913, § 7580; C.S.1922, § 8523; C.S.1929, § 20-217; R.S.1943, § 25-217; Laws 1979, LB 510, § 1; Laws 1986, LB 529, § 21; Laws 2002, LB 876, § 5; Laws 2019, LB308, § 1.

Cross References

For commencement of action, see section 25-501.

25-223 Action on breach of warranty on improvements to real property.

(1) Any action to recover damages based on any alleged breach of warranty on improvements to real property or based on any alleged deficiency in the design, planning, supervision, or observation of construction, or construction of an improvement to real property, except improvements to real property subject to the Nebraska Condominium Act, shall be commenced within four years after any alleged act or omission constituting such breach of warranty or deficiency. If such cause of action is not discovered and could not be reasonably discovered within such four-year period, or within one year preceding the expiration of such four-year period, then the cause of action may be commenced within two years from the date of such discovery or from the date of discovery of facts which would reasonably lead to such discovery, whichever is earlier. In no event may any action be commenced to recover damages for an alleged breach of warranty on improvements to real property or deficiency in the design, planning, supervision, or observation of construction, or construction of an

improvement to real property more than ten years beyond the time of the act giving rise to the cause of action.

(2)(a) Any action to recover damages based on any alleged breach of warranty on improvements to real property or based on any alleged deficiency in the design, planning, supervision, or observation of construction, or construction of an improvement to real property that is a condominium or part of a condominium project subject to the Nebraska Condominium Act shall be commenced within two years after any alleged act or omission constituting such breach of warranty or deficiency. If such cause of action is not discovered and could not be reasonably discovered within such two-year period, or within one year preceding the expiration of such two-year period, then the cause of action may be commenced within one year from the date of such discovery or from the date of discovery of facts which would reasonably lead to such discovery, whichever is earlier. In no event may any action be commenced to recover damages for an alleged breach of warranty on improvements to real property or deficiency in the design, planning, supervision, or observation of construction, or construction of an improvement to real property more than five years beyond the time of the act giving rise to the cause of action.

(b) Any action brought under this section shall also comply with section 76-890.

Source: Laws 1976, LB 495, § 1; Laws 2020, LB808, § 40.

Cross References

Nebraska Condominium Act, see section 76-825.

25-228 Action by victim of sexual assault of a child; when.

(1) Notwithstanding any other provision of law:

(a) There shall not be any time limitation for an action against the individual or individuals directly causing an injury or injuries suffered by a plaintiff when the plaintiff was a victim of a violation of section 28-319.01 or 28-320.01 if such violation occurred (i) on or after August 24, 2017, or (ii) prior to August 24, 2017, if such action was not previously time barred; and

(b) An action against any person or entity other than the individual directly causing an injury or injuries suffered by a plaintiff when the plaintiff was a victim of a violation of section 28-319.01 or 28-320.01 may only be brought within twelve years after the plaintiff's twenty-first birthday.

(2) Criminal prosecution of a defendant under section 28-319.01 or 28-320.01 is not required to maintain a civil action for violation of such sections.

Source: Laws 2012, LB612, § 1; Laws 2017, LB300, § 1.

25-229 Action against real estate licensee; when.

(1) For purposes of this section, real estate licensee means a broker or salesperson who is licensed under the Nebraska Real Estate License Act.

(2) Any action to recover damages based on any act or omission of a real estate licensee relating to real estate brokerage services shall be commenced within two years after whichever of the following occurs first with respect to such brokerage services: (a) A transaction is completed or closed; (b) an agency agreement is terminated; or (c) an unconsummated transaction is terminated or

expires. Such two-year period shall not be reduced by agreement and shall not apply to disciplinary actions initiated by the State Real Estate Commission.

(3) If the cause of action described in subsection (2) of this section is not discovered and could not be reasonably discovered within the two-year period described in such subsection, then the action may be commenced within one year from the date of such discovery or from the date of discovery of facts which would reasonably lead to such discovery, whichever is earlier, except that in no event may any such action be commenced more than ten years after the date of rendering or failing to render the brokerage services which provide the basis for the cause of action.

Source: Laws 2017, LB257, § 1.

Cross References

Nebraska Real Estate License Act, see section 81-885.

ARTICLE 3
PARTIES

Section
25-307. Suit by infant, guardian, or next friend; exception; substitution by court.
25-309. Suit against infant; guardian for suit; when appointed; exception.
25-323. Necessary parties; brought into suit.
25-331. Third-party action; procedure.

25-307 Suit by infant, guardian, or next friend; exception; substitution by court.

Except as provided by the Nebraska Probate Code, section 43-104.05, and sections 43-4801 to 43-4812, the action of an infant shall be commenced, maintained, and prosecuted by his or her guardian or next friend. Such actions may be dismissed with or without prejudice by the guardian or next friend only with approval of the court. When the action is commenced by his or her next friend, the court has power to dismiss it, if it is not for the benefit of the infant, or to substitute the guardian of the infant, or any person, as the next friend. Any action taken pursuant to this section shall be binding upon the infant.

Source: R.S.1867, Code § 36, p. 398; R.S.1913, § 7588; C.S.1922, § 8531; C.S.1929, § 20-307; R.S.1943, § 25-307; Laws 1975, LB 480, § 1; Laws 1975, LB 481, § 10; Laws 2006, LB 1115, § 10; Laws 2018, LB714, § 13; Laws 2022, LB741, § 1.

Cross References

Nebraska Probate Code, see section 30-2201.

25-309 Suit against infant; guardian for suit; when appointed; exception.

Except as provided by the Nebraska Probate Code and section 43-104.05, the defense of an infant must be by a guardian for the suit, who may be appointed by the court in which the action is prosecuted, or by a judge thereof, or by a county judge. The appointment cannot be made until after service of the summons in the action as directed by this code.

Source: R.S.1867, Code § 38, p. 399; R.S.1913, § 7590; C.S.1922, § 8533; C.S.1929, § 20-309; R.S.1943, § 25-309; Laws 1975, LB 481, § 12; Laws 2022, LB741, § 2.

Cross References

Nebraska Probate Code, see section 30-2201.

25-323 Necessary parties; brought into suit.

The court may determine any controversy between parties before it when it can be done without prejudice to the rights of others or by saving their rights; but when a determination of the controversy cannot be had without the presence of other parties, the court shall order them to be brought in.

Source: R.S.1867, Code § 46, p. 400; R.S.1913, § 7604; C.S.1922, § 8547; C.S.1929, § 20-323; R.S.1943, § 25-323; Laws 1995, LB 411, § 1; Laws 2002, LB 876, § 8; Laws 2023, LB157, § 2.

25-331 Third-party action; procedure.

(1)(a) A defending party may, as a third-party plaintiff, serve a summons and complaint on a nonparty:

(i) Who is or may be liable to the defending party for all or part of the claim against the defending party; or

(ii) Whose negligence was or may have been a proximate cause of the transaction or occurrence that is the subject matter of the plaintiff's claim and who is not precluded by section 25-21,185.11 from being made a party.

(b) The third-party plaintiff shall, by motion, obtain the court's leave if the third-party plaintiff files the third-party complaint more than fourteen days after serving its original answer.

(c) The person served with the summons and third-party complaint, hereinafter called the third-party defendant, has all the rights and obligations of a defendant, including those created by this section and by the rules promulgated by the Supreme Court pursuant to sections 25-801.01 and 25-1273.01.

(d) The third-party defendant may assert against the plaintiff any defense that the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert against the plaintiff any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff.

(e) The plaintiff may assert against the third-party defendant any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff.

(f) A defending party may assert against the third-party defendant a claim that the third-party defendant is liable to the defending party for all or part of the claim against the defending party.

(g) A third-party defendant may bring in a nonparty if subdivision (1)(a) of this section would allow a defending party to do so.

(h) Any party may move to strike the third-party claim, to sever it, or try it separately.

(2) When a claim is asserted against a plaintiff, the plaintiff may bring in a nonparty if subdivision (1)(a) of this section would allow a defending party to do so.

Source: Laws 1967, c. 144, § 1, p. 441; Laws 2002, LB 876, § 11; Laws 2023, LB157, § 3.

ARTICLE 4
COMMENCEMENT OF ACTIONS; VENUE

(a) GENERAL PROVISIONS

(a) GENERAL PROVISIONS

25-410 Transfer of actions; clerk of transferor court; duties; clerk of transferee court; duties; certain support orders; how treated.

(1) For the convenience of the parties and witnesses or in the interest of justice, a district court of any county, the transferor court, may transfer any civil action to the district court of any other county in this state, the transferee court. The transfer may occur before or after the entry of judgment, and there shall be no additional fees required for the transfer.

(2) To transfer a civil action, the transferor court shall order transfer of the action to the specific transferee court requested. The clerk of the transferor court shall file with the transferee court within ten days after the entry of the transfer order a certification of the case file and costs. The clerk of the transferor court shall certify any judgment and payment records of such judgments in the action maintained by the transferor court.

(3) Upon the filing of such documents by the clerk of the transferor court, the clerk of the transferee court shall enter any judgment in the action on the judgment index of the transferee court. The judgment, once filed and entered on the judgment index of the transferee court, shall be a lien on the property of the debtor in any county in which such judgment is filed. Transfer of the action shall not change the obligations of the parties under any judgment entered in the action regardless of the status of the transfer.

(4) If the transferred civil action involves a support order that has payment records maintained by the Title IV-D Division as defined in section 43-3341, the transferor court order shall notify the division to make the necessary changes in the support payment records. Support payments shall commence in the transferee court on the first day of the month following the order of transfer, payments made prior to such date shall be considered payment on a judgment entered by the transferor court, and payments made on and after such date shall be considered payment on a judgment entered by the transferee court.

Source: R.S.1867, Code § 61, p. 402; G.S.1873, c. 57, § 61, p. 532; R.S.1913, § 7621; C.S.1922, § 8564; C.S.1929, § 20-410; R.S.1943, § 25-410; Laws 1971, LB 576, § 8; Laws 2010, LB712, § 1; Laws 2018, LB193, § 6.

Cross References

For disqualification of judge, see sections 24-723.01, 24-739, and 24-740.

25-412 Change of venue in local actions involving real estate; transfer and entry of judgment.

When an action affecting the title or possession of real estate has been brought in or transferred to any court of a county, other than the county in which the real estate or some portion of it is situated, the clerk of such court must, after final judgment therein, certify such judgment under his or her seal of office, and transmit the same to the corresponding court of the county in which the real estate affected by the action is situated. The clerk receiving such copy must file and record such judgment in the records of the court, briefly designating it as a judgment transferred from ..... court (naming the proper court).

Source: G.S.1873, c. 57, § 4, p. 712; R.S.1913, § 7623; C.S.1922, § 8566; C.S.1929, § 20-412; R.S.1943, § 25-412; Laws 2018, LB193, § 7.

25-412.04 Criminal and civil trials; agreements for change of venue; jury; selection.

The jury for any case to be tried pursuant to an agreement entered into under section 25-412.03 shall be selected from the county in which the case was first filed. The jury shall be selected in the manner prescribed in the Jury Selection Act. The summons shall direct attendance before the court by which the case is to be tried and the return thereof shall be made to the same court.

Source: Laws 1975, LB 97, § 4; R.S.1943, (1985), § 24-904; Laws 2020, LB387, § 36.

ARTICLE 5

COMMENCEMENT OF ACTIONS; PROCESS

(b) SERVICE AND RETURN OF SUMMONS

(b) SERVICE AND RETURN OF SUMMONS

25-511 Service on employee of the state.

Any employee of the state, as defined in section 81-8,210, sued in an individual capacity for an act or omission occurring in connection with duties performed on the state's behalf, regardless of whether the employee is also sued in an official capacity, must be served by serving the employee under section 25-508.01 and also by serving the state under section 25-510.02.

Source: Laws 2017, LB204, § 2.

25-516.01 Service; voluntary appearance; defenses.

(1) The voluntary appearance of the party is equivalent to service.

(2) A defense of lack of personal jurisdiction, insufficiency of process, or insufficiency of service of process may be asserted only under the procedure provided in the pleading rules adopted by the Supreme Court. If any of those

defenses are asserted either by motion or in a responsive pleading and the court overrules the defense, an objection that the court erred in its ruling will be waived and not preserved for appellate review if the party asserting the defense either (a) thereafter files a demand for affirmative relief by way of counterclaim, cross-claim, or third-party claim or (b) fails to dismiss a demand for such affirmative relief that was previously filed. If any of those defenses are asserted either by motion or in a responsive pleading and the court overrules the defense, an objection that the court erred in its ruling on any issue, except an objection to the court's ruling on personal jurisdiction, will be waived and not preserved for appellate review if the party asserting the defense thereafter participates in proceedings on any issue other than those defenses.

(3) The filing of a suggestion of bankruptcy is not an appearance and does not waive the defense of lack of personal jurisdiction, insufficiency of process, or insufficiency of service of process.

Source: Laws 1983, LB 447, § 32; Laws 2002, LB 876, § 15; Laws 2019, LB308, § 2.

(c) CONSTRUCTIVE SERVICE

25-520.01 Service by publication; mailing of published notice; requirements; waiver; when mailing not required.

(1) Except as provided in subsection (3) of this section, in any action or proceeding of any kind or nature, as defined in section 25-520.02, where a notice by publication is given as authorized by law, a party instituting or maintaining the action or proceeding with respect to notice or such party's attorney shall within five days after the first publication of notice send by United States mail a copy of such published notice or, if applicable, the notice described in subsection (4) of this section, to each and every party appearing to have a direct legal interest in such action or proceeding whose name and post office address are known to such party or attorney.

(2) Proof by affidavit of the mailing of such notice shall be made by the party or such party's attorney and shall be filed with the officer with whom filings are required to be made in such action or proceeding within ten days after mailing of such notice. Such affidavit of mailing of notice shall further be required to state that such party and such party's attorney, after diligent investigation and inquiry, were unable to ascertain and do not know the post office address of any other party appearing to have a direct legal interest in such action or proceeding other than those to whom notice has been mailed in writing.

(3) It shall not be necessary to serve the notice prescribed by this section upon any competent person, fiduciary, partnership, or corporation, who has waived notice in writing, has entered a voluntary appearance, or has been personally served with summons or notice in such proceeding.

(4) In the case of a lien for a special assessment imposed by any city or village, in lieu of sending a copy of published notice, the city or village may instead send by United States mail, to each and every party appearing to have a direct legal interest in such action or proceeding whose name and post office address are known to the city or village or its attorney, a notice containing the amount owed, the date due, and the date the board of equalization meets in case of an appeal.

Source: Laws 1957, c. 80, § 1, p. 325; Laws 1959, c. 97, § 1, p. 416; Laws 2021, LB58, § 1.

(e) LIS PENDENS

25-533 Attachment and execution issued from another county; sheriff file notice.

No levy of attachment or execution on real estate issued from any other county shall be notice to a subsequent vendee or encumbrancer in good faith, unless the sheriff has filed a notice on the record that the land, describing it, has been so attached or levied on, the cause in which it was so attached, and when it was done.

Source: Laws 1895, c. 73, § 2, p. 314; R.S.1913, § 7653; C.S.1922, § 8597; C.S.1929, § 20-533; R.S.1943, § 25-533; Laws 2018, LB193, § 8.

ARTICLE 6

DISMISSAL OF ACTIONS

Section
25-602. Dismissal without prejudice; by plaintiff in vacation; exceptions; payment of costs.

25-602 Dismissal without prejudice; by plaintiff in vacation; exceptions; payment of costs.

The plaintiff in any case pending in the district court or Supreme Court of the state, when no counterclaim or setoff has been filed by the opposite party, has the right in the vacation of any of such courts to dismiss such action without prejudice, upon payment of costs, which dismissal shall be, by the clerk of any of such courts, entered upon the record and take effect from and after the date thereof.

Source: Laws 1867, § 1, p. 51; R.S.1913, § 7655; C.S.1922, § 8599; C.S.1929, § 20-602; R.S.1943, § 25-602; Laws 2018, LB193, § 9.

ARTICLE 9

MISCELLANEOUS PROCEEDINGS; MOTIONS AND ORDERS

(a) OFFER TO COMPROMISE

Section
25-901. Offer of judgment before trial; procedure; effect.

(d) MOTIONS AND ORDERS

25-915. Orders out of court; record.

(a) OFFER TO COMPROMISE

25-901 Offer of judgment before trial; procedure; effect.

The defendant in an action for the recovery of money only may, at any time before the trial, serve upon the plaintiff or the plaintiff's attorney an offer in writing to allow judgment to be taken against the defendant for the sum specified therein. If the plaintiff accepts the offer and gives notice thereof to the defendant or the defendant's attorney, within five days after the offer was served, the offer and an affidavit that the notice of acceptance was delivered in the time limited may be filed by the plaintiff or the defendant may file the acceptance, with a copy of the offer verified by affidavit. In either case, the offer

and acceptance shall be entered upon the record, and judgment shall be rendered accordingly. If the notice of acceptance is not given in the period limited, the offer shall be deemed withdrawn and shall not be given in evidence or mentioned on the trial. If the plaintiff fails to obtain judgment for more than was offered by the defendant, the plaintiff shall pay the defendant's cost from the time of the offer.

Source: R.S.1867, Code § 565, p. 493; R.S.1913, § 7717; C.S.1922, § 8661; C.S.1929, § 20-901; R.S.1943, § 25-901; Laws 2018, LB193, § 10.

(d) MOTIONS AND ORDERS

25-915 Orders out of court; record.

Orders made out of court shall be forthwith entered by the clerk in the record of the court in the same manner as orders made in term.

Source: R.S.1867, Code § 579, p. 495; R.S.1913, § 7731; C.S.1922, § 8675; C.S.1929, § 20-915; R.S.1943, § 25-915; Laws 2018, LB193, § 11.

ARTICLE 10

PROVISIONAL REMEDIES

(a) ATTACHMENT AND GARNISHMENT

(a) ATTACHMENT AND GARNISHMENT

25-1031.02 Garnishment; costs; fee.

(1) The party seeking garnishment shall advance the costs of transcript and filing the matter in the district court.

(2) The district court shall be entitled to the following fee in civil matters: For issuance of a writ of execution, restitution, garnishment, attachment, and examination in aid of execution, a fee of five dollars each.

Source: Laws 1955, c. 86, § 3, p. 259; Laws 1988, LB 1030, § 16; Laws 2018, LB193, § 12.

(d) RECEIVERS

25-1081 Appointment of receiver; grounds.

A receiver may be appointed by the district court (1) in an action by a vendor to vacate a fraudulent purchase of property, by a creditor to subject any property or fund to his or her claim, or between partners, limited liability company members, or others jointly owning or interested in any property or fund on the application of any party to the suit when the property or fund is in danger of being lost, removed, or materially injured, (2) in an action for the

foreclosure of a mortgage or in an action to foreclose a trust deed as a mortgage when the mortgaged property or property subject to the trust deed is in danger of being lost, removed, or materially injured or is probably insufficient to discharge the mortgage debt secured by the mortgage or trust deed, (3) in connection with the exercise of the power of sale under a trust deed and following the filing of a notice of default under the Nebraska Trust Deeds Act when the property subject to the trust deed is in danger of being lost, removed, or materially injured or is probably insufficient to discharge the debt secured by the trust deed, (4) in an action brought pursuant to section 52-1705 to enforce a written assignment of rents provision contained in any agreement and the agreement provides for the appointment of a receiver, (5) in any other case in which a mortgagor or trustor has agreed in writing to the appointment of a receiver, (6) after judgment or decree to carry the judgment into execution, to dispose of the property according to the decree or judgment, or to preserve it during the pendency of an appeal, (7) in an action under the Foreign-owned Real Estate National Security Act, (8) in all cases provided for by special statutes, and (9) in all other cases when receivers have heretofore been appointed by the usages of courts of equity.

Source: R.S.1867, Code § 266, p. 437; R.S.1913, § 7810; C.S.1922, § 8754; C.S.1929, § 20-1081; R.S. 1943, § 25-1081; Laws 1991, LB 732, § 45; Laws 1993, LB 121, § 170; Laws 1994, LB 884, § 53; Laws 2007, LB99, § 1; Laws 2024, LB1301, § 2.
Operative date January 1, 2025.

Cross References

Attachment, receiver appointed, when, see sections 25-1018 to 25-1022.
Foreclosure of mortgages, see sections 25-2137 to 25-2155.
Foreign-owned Real Estate National Security Act, see section 76-3701.
Judgment debtor, receiver of property, when, see section 25-1573.
Nebraska Trust Deeds Act, see section 76-1018.

(e) REPLEVIN

25-1093.03 Affidavit; temporary order; notice; hearing; summons; service.

If filed at the commencement of suit, such affidavit and request for delivery and such temporary order containing the notice of hearing shall be served by the sheriff or other officer with the summons. If filed after the commencement of suit but before answer, they shall be served separately from the summons, but as soon after their filing and issuance as practicable. The summons shall be served within three days, excluding nonjudicial days, after the date of issuance.

Source: Laws 1973, LB 474, § 4; Laws 2021, LB355, § 2.

ARTICLE 11

TRIAL

(b) TRIAL BY JURY

(c) VERDICT

(d) TRIAL BY COURT

Section

(e) TRIAL BY REFEREE

25-1129. Reference by consent; when allowed.

(f) EXCEPTIONS

25-1140.09. Bill of exceptions; preparation; court reporter; fees; procedure for preparation; taxation of cost.

(h) GENERAL PROVISIONS

25-1149. Issues; order in which tried; time of hearing.

(b) TRIAL BY JURY

25-1107.01 Jurors; permitted to take notes; use; destruction.

Jurors shall be permitted, but not required, to take notes. The notes may be used during the jury's deliberations and shall be treated as confidential between the juror making them and the other jurors. The notes shall not be preserved in any form. The trial judge shall ensure the confidentiality of the notes during the course of the trial and the jury's deliberations and shall instruct the bailiff to immediately mutilate and destroy such notes upon return of the verdict.

Source: Laws 2008, LB1014, § 71; Laws 2020, LB387, § 37.

25-1108 View of property or place by jury.

Whenever, in the opinion of the court, it is proper for the jury to have a view of property which is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conducted in a body, under charge of the bailiff, to the place, which shall be shown to them by the bailiff, an individual appointed by the court for that purpose, or both. While the jury are thus absent, no person other than the bailiff or individual so appointed shall speak to them on any subject connected with the trial.

Source: R.S.1867, Code § 284, p. 442; R.S.1913, § 7847; C.S.1922, § 8791; C.S.1929, § 20-1108; R.S.1943, § 25-1108; Laws 2020, LB387, § 38.

(c) VERDICT

25-1121 Special verdicts; when allowed; procedure; filing; record.

In every action for the recovery of money only or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases the court may direct the jury to find a special verdict, in writing, upon all or any of the issues and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact to be stated in writing, and may direct a written finding thereon. The special verdict or finding must be filed with the clerk and entered upon the record.

Source: R.S.1867, Code § 293, p. 443; R.S.1913, § 7860; C.S.1922, § 8804; C.S.1929, § 20-1121; R.S.1943, § 25-1121; Laws 2018, LB193, § 13.

(d) TRIAL BY COURT

25-1126 Jury trial; waiver.

The trial by jury may be waived by the parties in actions arising on contract and with assent of the court in other actions (1) by the consent of the party

appearing, when the other party fails to appear at the trial by himself or herself or by attorney, (2) by written consent, in person or by attorney, filed with the clerk, and (3) by oral consent in open court entered upon the record.

Source: R.S.1867, Code § 296, p. 444; R.S.1913, § 7864; C.S.1922, § 8809; C.S.1929, § 20-1126; R.S.1943, § 25-1126; Laws 2018, LB193, § 14.

(e) TRIAL BY REFEREE

25-1129 Reference by consent; when allowed.

All or any of the issues in the action, whether of fact or law or both, may be referred to a referee upon the written consent of the parties or upon their oral consent in court entered upon the record.

Source: R.S.1867, Code § 298, p. 444; R.S.1913, § 7867; C.S.1922, § 8812; C.S.1929, § 20-1129; R.S.1943, § 25-1129; Laws 2008, LB1014, § 10; Laws 2018, LB193, § 15.

(f) EXCEPTIONS

25-1140.09 Bill of exceptions; preparation; court reporter; fees; procedure for preparation; taxation of cost.

On the application of the county attorney or any party to a suit in which a record of the proceedings has been made, upon receipt of the notice provided in section 29-2525, or upon the filing of a praecipe for a bill of exceptions by an appealing party in the office of the clerk of the district court as provided in section 25-1140, the court reporter shall prepare a transcribed copy of the proceedings so recorded or any part thereof. The reporter shall be entitled to receive, in addition to his or her salary, a per-page fee as prescribed by the Supreme Court for the original copy and each additional copy, to be paid by the party requesting the same except as otherwise provided in this section.

When the transcribed copy of the proceedings is required by the county attorney, the fee therefor shall be paid by the county in the same manner as other claims are paid. When the defendant in a criminal case, after conviction, makes an affidavit that he or she is unable by reason of his or her poverty to pay for such copy, the court or judge thereof may, by order endorsed on such affidavit, direct delivery of such transcribed copy to such defendant, and the fee shall be paid by the county in the same manner as other claims are allowed and paid. When such copy is prepared in any criminal case in which the sentence adjudged is capital, the fees therefor shall be paid by the county in the same manner as other claims are allowed or paid.

The fee for preparation of a bill of exceptions and the procedure for preparation, settlement, signature, allowance, certification, filing, and amendment of a bill of exceptions shall be regulated and governed by rules of practice prescribed by the Supreme Court. The fee paid shall be taxed, by the clerk of the district court, to the party against whom the judgment or decree is rendered except as otherwise ordered by the presiding district judge.

Source: Laws 1879, § 49, p. 93; Laws 1907, c. 43, § 1, p. 182; R.S.1913, § 1200; C.S.1922, § 1123; Laws 1925, c. 67, § 1, p. 225; C.S. 1929, § 27-339; R.S.1943, § 24-342; Laws 1949, c. 45, § 1, p. 150; Laws 1957, c. 107, § 5, p. 380; Laws 1961, c. 104, § 1, p.

336; Laws 1961, c. 105, § 1, p. 337; Laws 1961, c. 106, § 1, p. 338; Laws 1971, LB 357, § 1; Laws 1973, LB 146, § 1; Laws 1973, LB 268, § 2; Laws 1974, LB 647, § 2; Laws 1978, LB 271, § 1; Laws 1982, LB 722, § 1; R.S.1943, (1985), § 24-342; Laws 1991, LB 37, § 1; Laws 2005, LB 348, § 3; Laws 2015, LB268, § 4; Referendum 2016, No. 426.

Note: The changes made to section 25-1140.09 by Laws 2015, LB 268, section 4, have been omitted because of the vote on the referendum at the November 2016 general election.

(h) GENERAL PROVISIONS

25-1149 Issues; order in which tried; time of hearing.

The trial of an issue of fact and the assessment of damages in any case shall be in the order in which they are placed on the trial docket, unless by consent of parties or the order of the court they are continued, placed at the heel of the trial docket, or temporarily postponed. The time of hearing all other cases shall be in the order in which they are placed on the trial docket, unless the court shall otherwise direct. The court may in its discretion hear at any time a motion, may by rule prescribe the time for hearing motions, and may provide for dismissing actions without prejudice for want of prosecution.

Source: R.S.1867, Code § 324, p. 448; Laws 1887, c. 94, § 2, p. 648; Laws 1899, c. 83, § 2, p. 339; R.S.1913, § 7890; C.S.1922, § 8832; C.S.1929, § 20-1149; R.S.1943, § 25-1149; Laws 2018, LB193, § 16.

ARTICLE 12

EVIDENCE

(c) MEANS OF PRODUCING WITNESSES

Section
25-1223. Trial subpoena; deposition subpoena; issuance; statement required; by whom served; forms.
25-1224. Subpoena; to whom directed; production of documents, information, or tangible things; Supreme Court; powers.
25-1225. Repealed. Laws 2017, LB509, § 8.
25-1226. Subpoena; manner of service; time.
25-1228. Trial subpoena; witness fee; return; cost.
25-1236. Repealed. Laws 2017, LB509, § 8.
25-1237. Foreign jurisdiction; civil action; subpoena for discovery in Nebraska; powers.

(e) DOCUMENTARY EVIDENCE

25-1274. Legal notices; proof of publication.

(c) MEANS OF PRODUCING WITNESSES

25-1223 Trial subpoena; deposition subpoena; issuance; statement required; by whom served; forms.

(1) Upon the request of a party to a civil action or proceeding, a subpoena may be issued to command a person to testify at a trial or deposition. The term trial in reference to a subpoena includes a hearing at which testimony may be taken.

(2) The clerk or a judge of the court in which the action or proceeding is pending shall issue a trial subpoena upon the request of a party. An attorney, as

an officer of the court, may issue and sign a trial subpoena on behalf of the court if the attorney is authorized to practice in the court. An attorney who issues a subpoena must file a copy of the subpoena with the court on the day the subpoena is issued.

(3) A person before whom a deposition may be taken may issue a deposition subpoena on behalf of the court in which the action or proceeding is pending. An attorney, as an officer of the court, may issue and sign a deposition subpoena on behalf of the court if the attorney is authorized to practice in the court.

(4) A subpoena shall state the name of the court from which it is issued, the title of the action, and the case number and shall command each person to whom it is directed to appear and testify at the time and place specified in the subpoena.

(5) Except as provided in subsection (6) of this section, a trial subpoena that is issued in a civil action or proceeding (a) at the request of an agency of state government or (b) pursuant to section 25-2304 shall contain the following statement: As a witness in [insert name of court], you are entitled to receive a witness fee in the amount of [insert amount from section 33-139] for each day that you are required to be in court and, if you live more than one mile from the courthouse, you are also entitled to receive mileage at the rate that state employees receive. Ask the lawyer or party who subpoenaed you or the clerk of the court for information about what you should do to receive the fees and mileage to which you are entitled.

(6) A trial subpoena in a civil action or proceeding that commands testimony by an employee of the State of Nebraska or a political subdivision thereof or a privately employed security guard, under the circumstances described in section 33-139.01, shall contain the following statement: As a witness in [insert name of court], you are entitled to be compensated for your actual and necessary expenses if you are required to travel outside of your county of residence to testify. Ask the lawyer or party who subpoenaed you or the clerk of the court for information about what you should do to receive compensation, if any, to which you are entitled.

(7) Any other trial subpoena in a civil action or proceeding shall contain the following statement: As a witness in [insert name of court], you are entitled to receive a witness fee in the amount of [insert amount from section 33-139] for each day that you are required to be in court and, if you live more than one mile from the courthouse, you are also eligible to receive mileage at the rate that state employees receive. You should have received your witness fee for one day with this subpoena. Ask the lawyer or party who subpoenaed you or the clerk of the court for information about what you should do to receive the additional fees, if any, and mileage to which you are entitled.

(8) The Supreme Court may promulgate forms for subpoenas for use in civil and criminal actions and proceedings. Any such forms shall not be in conflict with the laws governing such matters.

(9) A subpoena may be served by a sheriff or constable. It may also be served by a person who is twenty-one years of age or older and who is not a party to the action or proceeding.

Source: R.S.1867, Code § 350, p. 452; R.S.1913, § 7915; C.S.1922, § 8857; C.S.1929, § 20-1223; R.S.1943, § 25-1223; Laws 2017, LB509, § 1; Laws 2020, LB912, § 12.

25-1224 Subpoena; to whom directed; production of documents, information, or tangible things; Supreme Court; powers.

(1) A subpoena commanding a person to appear and testify at a trial or deposition may command that at the same time and place specified in the subpoena for the person to appear and testify, the person must produce designated documents, electronically stored information, or tangible things in the person's possession, custody, or control. The scope of a command to produce documents, electronically stored information, or tangible things pursuant to this section is governed by the rules of discovery in civil cases.

(2) The Supreme Court may promulgate a rule for discovery in civil cases that specifies the procedures to be followed when a party seeks to serve a deposition subpoena that commands the person to produce designated documents, electronically stored information, or tangible things in the person's possession, custody, or control. Any such rule shall not conflict with the laws governing such matters.

Source: R.S.1867, Code § 351, p. 452; R.S.1913, § 7916; C.S.1922, § 8858; C.S.1929, § 20-1224; R.S.1943, § 25-1224; Laws 2017, LB509, § 2; Laws 2020, LB912, § 13.

25-1225 Repealed. Laws 2017, LB509, § 8.

25-1226 Subpoena; manner of service; time.

(1) A subpoena for a trial or deposition may be served by personal service, which is made by leaving the subpoena with the person to be served, or by certified mail service, which is made by sending the subpoena by certified mail with a return receipt requested showing to whom and where delivered and the date of delivery. Service by certified mail is made on the date of delivery shown on the signed receipt.

(2) A subpoena for a trial must be served at least two days before the day on which the person is commanded to appear and testify. A court may shorten the period for service for good cause shown. In determining whether good cause exists, a court may consider all relevant circumstances, including, but not limited to, the need for the testimony, the burden on the person, and the reason why the person was not subpoenaed earlier.

Source: R.S.1867, Code § 353, p. 452; R.S.1913, § 7918; Laws 1915, c. 148, § 2, p. 318; C.S.1922, § 8860; C.S.1929, § 20-1226; R.S.1943, § 25-1226; Laws 1953, c. 69, § 1, p. 220; Laws 1957, c. 242, § 16, p. 830; Laws 2017, LB509, § 3; Laws 2020, LB912, § 14.

25-1228 Trial subpoena; witness fee; return; cost.

(1) The witness fee for one day's attendance must be served with a trial subpoena except when the subpoena is issued (a) at the request of an agency of state government or (b) pursuant to section 25-2304.

(2) The person serving the subpoena shall make a return of service stating the name of the person served, the date and method of service, and, if applicable, that the required witness fee was served with the subpoena. The return of service must be by affidavit unless the subpoena was served by a sheriff or

constable. If service was made by certified mail, the signed receipt must be attached to the return of service.

(3) The cost of service of a subpoena is taxable as a court cost, and when service of a subpoena is made by a person other than a sheriff or constable, the cost taxable as a court cost is the lesser of the actual amount incurred for service of process or the statutory fee set for sheriffs in section 33-117.

(4) Except as provided in section 25-2304, the party at whose request a trial subpoena is issued in a civil action or proceeding must pay the witness the fees and mileage to which the witness is entitled under section 33-139. Any fees and mileage that were not paid to the witness before the witness testified must be paid to the witness within a reasonable time after the witness testified.

Source: R.S.1867, Code § 355, p. 453; R.S.1913, § 7920; C.S.1922, § 8862; C.S.1929, § 20-1228; R.S.1943, § 25-1228; Laws 1976, LB 750, § 1; Laws 2017, LB509, § 4; Laws 2020, LB912, § 15.

25-1236 Repealed. Laws 2017, LB509, § 8.

25-1237 Foreign jurisdiction; civil action; subpoena for discovery in Nebraska; powers.

(1) When authorized by rules promulgated by the Supreme Court, the clerk of the district court may issue a subpoena for discovery in Nebraska for a civil proceeding pending in a foreign jurisdiction. Such a subpoena may command a person to testify at a deposition or command a nonparty to provide discovery without a deposition.

(2) The Supreme Court may promulgate rules for subpoenas under this section. The rules may specify the amount of a fee, if any, that must be paid to the clerk of the district court for the issuance of such subpoenas. Any such rules shall not conflict with laws governing such matters.

Source: Laws 2020, LB912, § 11.

(e) DOCUMENTARY EVIDENCE

25-1274 Legal notices; proof of publication.

Publications required by law to be made in a newspaper or on a statewide website established and maintained as a repository of public notices by a majority of Nebraska newspapers, may be proved by affidavit of any person having knowledge of the fact, specifying the time when and the paper in which or the website whereon the publication was made, and, if made by publication in a newspaper, that such newspaper is a legal newspaper under the statutes of the State of Nebraska, but such affidavit must, for the purposes now contemplated, be made within six months after the last day of publication, in the office where the original affidavit of publication is required to be filed.

Source: R.S.1867, Code § 403, p. 461; R.S.1913, § 7967; Laws 1922, Spec. Sess., c. 11, § 1, p. 80; C.S.1922, § 8908; C.S.1929, § 20-1274; R.S.1943, § 25-1274; Laws 2024, LB287, § 5. Operative date April 17, 2024.

ARTICLE 13
JUDGMENTS

(a) JUDGMENTS IN GENERAL

(b) LIENS

(e) MANNER OF ENTERING JUDGMENT

(h) SUMMARY JUDGMENTS

(i) UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT

(j) UNIFORM REGISTRATION OF CANADIAN MONEY JUDGMENTS ACT

(a) JUDGMENTS IN GENERAL

25-1301 Judgment, rendition of judgment, entry of judgment, decree, or final order, defined; records; clerk; duties.

(1) A judgment is the final determination of the rights of the parties in an action.

(2) Rendition of a judgment is the act of the court, or a judge thereof, in signing a single written document stating all of the relief granted or denied in an action.

(3) The entry of a judgment, decree, or final order occurs when the clerk of the court places the file stamp and date upon the judgment, decree, or final order. For purposes of determining the time for appeal, the date stamped on the judgment, decree, or final order shall be the date of entry.

(4) The clerk shall prepare and maintain the records of judgments, decrees, and final orders that are required by statute and rule of the Supreme Court. Whenever any judgment is paid and discharged or when a satisfaction of judgment is filed, the clerk shall enter such fact upon the judgment index.

Source: R.S.1867, Code § 428, p. 465; R.S.1913, § 7994; C.S.1922, § 8935; C.S.1929, § 20-1301; R.S.1943, § 25-1301; Laws 1961, c. 111, § 1, p. 350; Laws 1999, LB 43, § 3; Laws 2018, LB193, § 17; Laws 2020, LB1028, § 3.

Cross References

For rate of interest on judgment, see section 45-103.

25-1301.01 Civil judgment or final order; duty of clerk; exception.

Within three working days after the entry of any civil judgment or final order, except judgments by default when service has been obtained by publication or interlocutory orders styled as judgments, the clerk of the court shall send the judgment or final order by United States mail or by service through the court's electronic case management system to each party whose address appears in the records of the action or to the party's attorney or attorneys of record.

Source: Laws 1961, c. 111, § 2, p. 350; Laws 1969, c. 186, § 1, p. 778; Laws 1977, LB 124, § 1; Laws 1999, LB 43, § 4; Laws 2018, LB193, § 18; Laws 2020, LB1028, § 4.

(b) LIENS

25-1303 Transcript of judgment to other county; effect.

The transcript of a judgment of any district court in this state may be filed in the office of the clerk of the district court in any county. Such transcript, when so filed and entered on the judgment index, shall be a lien on the property of the debtor in any county in which such transcript is so filed, in the same manner and under the same conditions only as in the county where such judgment was rendered, and execution may be issued on such transcript in the same manner as on the original judgment. Such transcript shall at no time have any greater validity or effect than the original judgment.

Source: Laws 1869, § 1, p. 158; R.S.1913, § 7796; C.S.1922, § 8937; Laws 1929, c. 83, § 1, p. 332; C.S.1929, § 20-1303; R.S.1943, § 25-1303; Laws 2018, LB193, § 19.

Cross References

County court judgment, transcript to district court for lien, see section 25-2721.

25-1305 Federal court judgment; transcript to other county; effect.

A transcript of any judgment or decree rendered in a circuit or district court of the United States within the State of Nebraska, may be filed in the office of the clerk of the district court in any county in this state. Such transcript, when so filed and entered on the judgment index, shall be a lien on the property of the debtor in any county in which such transcript is so filed, in the same

manner and under the same conditions only as if such judgment or decree had been rendered by the district court of such county. Such transcript shall at no time have a greater validity or effect than the original judgment. The lands and tenements of the debtor within the county where the judgment is entered shall be bound for the satisfaction thereof from the day on which such judgment is rendered without the filing of a transcript. Orders reviving dormant judgments shall become liens upon the lands and tenements of the judgment debtor only when such order is entered on the judgment index in the same manner as an original judgment.

Source: Laws 1889, c. 30, § 1, p. 377; R.S.1913, § 7998; C.S.1922, § 8939; Laws 1929, c. 83, § 1, p. 332; C.S.1929, § 20-1305; R.S.1943, § 25-1305; Laws 2018, LB193, § 20.

(e) MANNER OF ENTERING JUDGMENT

25-1313 Jury trial; judgment by court; entry of order.

When a trial by jury has been had, judgment must be ordered by the court and entered upon the record in conformity to the verdict, unless it is special, or the court orders the case to be reserved for future argument or consideration.

Source: R.S.1867, Code § 438, p. 467; R.S.1913, § 8006; C.S.1922, § 8947; C.S.1929, § 20-1313; R.S.1943, § 25-1313; Laws 1961, c. 111, § 3, p. 350; Laws 2020, LB387, § 39.

25-1318 Judgments and orders; record.

All judgments and orders must be entered on the record of the court and specify clearly the relief granted or order made in the action.

Source: R.S.1867, Code § 443, p. 467; R.S.1913, § 8011; C.S.1922, § 8952; C.S.1929, § 20-1318; R.S.1943, § 25-1318; Laws 2018, LB193, § 21.

25-1319 Repealed. Laws 2018, LB193, § 97.

25-1320 Repealed. Laws 2018, LB193, § 97.

25-1321 Repealed. Laws 2018, LB193, § 97.

25-1322 Repealed. Laws 2018, LB193, § 97.

(h) SUMMARY JUDGMENTS

25-1332 Motion for summary judgment; proceedings.

(1) The motion shall be served at least ten days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings and the evidence admitted at the hearing show that there is no genuine dispute as to any material fact and that the moving party is entitled to a judgment as a matter of law. The evidence that may be received on a motion for summary judgment includes depositions, answers to interrogatories, admissions, stipulations, and affidavits. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine dispute as to the amount of damages.

(2) A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(a) Citing to particular parts of materials in the record, including depositions, answers to interrogatories, admissions, stipulations, affidavits, or other materials; or

(b) Showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(3) If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by subsection (2) of this section, the court may:

(a) Give an opportunity to properly support or address the fact;

(b) Consider the fact undisputed for purposes of the motion;

(c) Grant summary judgment if the motion and supporting materials, including the facts considered undisputed, show that the movant is entitled to summary judgment; or

(d) Issue any other appropriate order.

Source: Laws 1951, c. 65, § 3, p. 199; Laws 2001, LB 489, § 3; Laws 2017, LB204, § 3.

(i) UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT

25-1337 Short title.

Sections 25-1337 to 25-1348 shall be known and may be cited as the Uniform Foreign-Country Money Judgments Recognition Act.

Source: Laws 2021, LB501, § 1.

25-1338 Definitions.

In the Uniform Foreign-Country Money Judgments Recognition Act:

(1) Foreign country means a government other than:

(A) the United States;

(B) a state, district, commonwealth, territory, or insular possession of the United States; or

(C) any other government with regard to which the decision in this state as to whether to recognize a judgment of that government's courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

(2) Foreign-country judgment means a judgment of a court of a foreign country.

Source: Laws 2021, LB501, § 2.

25-1339 Applicability.

(a) Except as otherwise provided in subsection (b) of this section, the Uniform Foreign-Country Money Judgments Recognition Act applies to a foreign-country judgment to the extent that the judgment:

(1) grants or denies recovery of a sum of money; and

(2) under the law of the foreign country where rendered, is final, conclusive, and enforceable.

(b) The Uniform Foreign-Country Money Judgments Recognition Act does not apply to a foreign-country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent that the judgment is:

(1) a judgment for taxes;

(2) a fine or other penalty; or

(3) a judgment for divorce, support, or maintenance, or other judgment rendered in connection with domestic relations.

(c) A party seeking recognition of a foreign-country judgment has the burden of establishing that the Uniform Foreign-Country Money Judgments Recognition Act applies to the foreign-country judgment.

Source: Laws 2021, LB501, § 3.

25-1340 Standards for recognition of foreign-country judgment.

(a) Except as otherwise provided in subsections (b) and (c) of this section, a court of this state shall recognize a foreign-country judgment to which the Uniform Foreign-Country Money Judgments Recognition Act applies.

(b) A court of this state may not recognize a foreign-country judgment if:

(1) the judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(2) the foreign court did not have personal jurisdiction over the defendant; or

(3) the foreign court did not have jurisdiction over the subject matter.

(c) A court of this state need not recognize a foreign-country judgment if:

(1) the defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend;

(2) the judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case;

(3) the judgment or the cause of action or claim for relief on which the judgment is based is repugnant to the public policy of this state or of the United States;

(4) the judgment conflicts with another final and conclusive judgment;

(5) the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court;

(6) in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action;

(7) the judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment; or

(8) the specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

(d) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (b) or (c) of this section exists.

Source: Laws 2021, LB501, § 4.

25-1341 Personal jurisdiction.

(a) A foreign-country judgment may not be refused recognition for lack of personal jurisdiction if:

(1) the defendant was served with process personally in the foreign country;

(2) the defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant;

(3) the defendant, before the commencement of the proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;

(4) the defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country;

(5) the defendant had a business office in the foreign country and the proceeding in the foreign court involved a cause of action or claim for relief arising out of business done by the defendant through that office in the foreign country; or

(6) the defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a cause of action or claim for relief arising out of that operation.

(b) The list of bases for personal jurisdiction in subsection (a) of this section is not exclusive. The courts of this state may recognize bases of personal jurisdiction other than those listed in subsection (a) of this section as sufficient to support a foreign-country judgment.

Source: Laws 2021, LB501, § 5.

25-1342 Procedure for recognition of foreign-country judgment.

(a) If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition shall be raised by filing an action seeking recognition of the foreign-country judgment.

(b) If recognition of a foreign-country judgment is sought in a pending action, the issue of recognition may be raised by counterclaim, cross-claim, or affirmative defense.

Source: Laws 2021, LB501, § 6.

25-1343 Effect of recognition of foreign-country judgment.

If the court in a proceeding under section 25-1342 finds that the foreign-country judgment is entitled to recognition under the Uniform Foreign-Country Money Judgments Recognition Act then, to the extent that the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is:

(1) conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this state would be conclusive; and

(2) enforceable in the same manner and to the same extent as a judgment rendered in this state.

Source: Laws 2021, LB501, § 7.

25-1344 Stay of proceedings pending appeal of foreign-country judgment.

If a party establishes that an appeal from a foreign-country judgment is pending or will be taken, the court may stay any proceedings with regard to the foreign-country judgment until the appeal is concluded, the time for appeal expires, or the appellant has had sufficient time to prosecute the appeal and has failed to do so.

Source: Laws 2021, LB501, § 8.

25-1345 Statute of limitations.

An action to recognize a foreign-country judgment must be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or fifteen years from the date that the foreign-country judgment became effective in the foreign country.

Source: Laws 2021, LB501, § 9.

25-1346 Uniformity of interpretation.

In applying and construing the Uniform Foreign-Country Money Judgments Recognition Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Source: Laws 2021, LB501, § 10.

25-1347 Saving clause.

The Uniform Foreign-Country Money Judgments Recognition Act does not prevent the recognition under principles of comity or otherwise of a foreign-country judgment not within the scope of the Uniform Foreign-Country Money Judgments Recognition Act.

Source: Laws 2021, LB501, § 11.

25-1348 Act; applicability.

The Uniform Foreign-Country Money Judgments Recognition Act applies to all actions commenced on or after August 28, 2021, in which the issue of recognition of a foreign-country judgment is raised.

Source: Laws 2021, LB501, § 12.

(j) UNIFORM REGISTRATION OF CANADIAN MONEY JUDGMENTS ACT

25-1349 Short title.

Sections 25-1349 to 25-1359 shall be known and may be cited as the Uniform Registration of Canadian Money Judgments Act.

Source: Laws 2021, LB501, § 13.

25-1350 Definitions.

In the Uniform Registration of Canadian Money Judgments Act:

(1) Canada means the sovereign nation of Canada and its provinces and territories. Canadian has a corresponding meaning.

(2) Canadian judgment means a judgment of a court of Canada, other than a judgment that recognizes the judgment of another foreign country.

Source: Laws 2021, LB501, § 14.

25-1351 Applicability.

(a) The Uniform Registration of Canadian Money Judgments Act applies to a Canadian judgment to the extent the judgment is within the scope of section 25-1339, if recognition of the judgment is sought to enforce the judgment.

(b) A Canadian judgment that grants both recovery of a sum of money and other relief may be registered under the Uniform Registration of Canadian Money Judgments Act, but only to the extent of the grant of recovery of a sum of money.

(c) A Canadian judgment regarding subject matter both within and not within the scope of the Uniform Registration of Canadian Money Judgments Act may be registered under the act, but only to the extent the judgment is with regard to subject matter within the scope of the act.

Source: Laws 2021, LB501, § 15.

25-1352 Registration of Canadian judgment.

(a) A person seeking recognition of a Canadian judgment described in section 25-1351 to enforce the judgment may register the judgment in the office of the clerk of a court in which an action for recognition of the judgment could be filed under section 25-1342.

(b) A registration under subsection (a) of this section must be executed by the person registering the judgment or the person's attorney and include:

(1) a copy of the Canadian judgment authenticated in the same manner as a copy of a foreign judgment is authenticated in an action under section 25-1342 as an accurate copy by the court that entered the judgment;

(2) the name and address of the person registering the judgment;

(3) if the person registering the judgment is not the person in whose favor the judgment was rendered, a statement describing the interest the person registering the judgment has in the judgment which entitles the person to seek its recognition and enforcement;

(4) the name and last-known address of the person against whom the judgment is being registered;

(5) if the judgment is of the type described in subsection (b) or (c) of section 25-1351, a description of the part of the judgment being registered;

(6) the amount of the judgment or part of the judgment being registered, identifying:

(A) the amount of interest accrued as of the date of registration on the judgment or part of the judgment being registered, the rate of interest, the part of the judgment to which interest applies, and the date when interest began to accrue;

(B) costs and expenses included in the judgment or part of the judgment being registered, other than an amount awarded for attorney's fees; and

(C) the amount of an award of attorney's fees included in the judgment or part of the judgment being registered;

(7) the amount, as of the date of registration, of postjudgment costs, expenses, and attorney's fees claimed by the person registering the judgment or part of the judgment;

(8) the amount of the judgment or part of the judgment being registered which has been satisfied as of the date of registration;

(9) a statement that:

(A) the judgment is final, conclusive, and enforceable under the law of the Canadian jurisdiction in which it was rendered;

(B) the judgment or part of the judgment being registered is within the scope of the Uniform Registration of Canadian Money Judgments Act; and

(C) if a part of the judgment is being registered, the amounts stated in the registration under subdivisions (6), (7), and (8) of this subsection relate to the part;

(10) if the judgment is not in English, a certified translation of the judgment into English; and

(11) a registration fee determined by the Supreme Court.

(c) On receipt of a registration that includes the documents, information, and registration fee required by subsection (b) of this section, the clerk shall file the registration, assign a docket number, and enter the Canadian judgment in the court's docket.

(d) A registration substantially in the following form complies with the registration requirements under subsection (b) of this section if the registration includes the attachments specified in the form:

REGISTRATION OF CANADIAN MONEY JUDGMENT

Complete and file this form, together with the documents required by Part V of this form, with the Clerk of Court. When stating an amount of money, identify the currency in which the amount is stated.

PART I. IDENTIFICATION OF CANADIAN JUDGMENT

Canadian Court Rendering the Judgment: . . . . . .

Case/Docket Number in Canadian Court: . . . . . .

Name of Plaintiff(s): . . . . . .

Name of Defendant(s): . . . . . .

The Canadian Court entered the judgment on . . . . . [Date] in . . . . . [City] in . . . . . [Province or Territory]. The judgment includes an award for the payment of money in favor of . . . . . in the amount of . . . . . .

If only part of the Canadian judgment is subject to registration (see subsections (b) and (c) of section 25-1351), describe the part of the judgment being registered: . . . . . .

PART II. IDENTIFICATION OF PERSON REGISTERING JUDGMENT AND PERSON AGAINST WHOM JUDGMENT IS BEING REGISTERED

Provide the following information for all persons seeking to register the judgment under this registration and all persons against whom the judgment is being registered under this registration.

Name of Person(s) Registering Judgment: . . . . . .

If a person registering the judgment is not the person in whose favor the judgment was rendered, describe the interest the person registering the judg-

ment has in the judgment which entitles the person to seek its recognition and enforcement: . . . . . .

Address of Person(s) Registering Judgment: . . . . . .

Additional Contact Information for Person(s) Registering Judgment (Optional): . . . . . .

Telephone Number: . . . . . .

FAX Number: . . . . . .

Email Address: . . . . . .

Name of Attorney for Person(s) Registering Judgment, if any: . . . . . .

Address: . . . . . .

Telephone Number: . . . . . .

FAX Number: . . . . . .

Email Address: . . . . . .

Name of Person(s) Against Whom Judgment is Being Registered: . . . . . .

Address of Person(s) Against Whom Judgment is Being Registered: . . . . . (provide the most recent address known)

Additional Contact Information for Person(s) Against Whom Judgment is Being Registered (Optional) (provide most recent information known):

Telephone Number: . . . . . .

FAX Number: . . . . . .

Email Address: . . . . . .

PART III. CALCULATION OF AMOUNT FOR WHICH ENFORCEMENT IS SOUGHT

Identify the currency or currencies in which each amount is stated.

The amount of the Canadian judgment or part of the judgment being registered is . . . . . .

The amount of interest accrued as of the date of registration on the part of the judgment being registered is . . . . . .

The applicable rate of interest is . . . . . .

The date when interest began to accrue is . . . . . .

The part of the judgment to which the interest applies is . . . . . .

The Canadian Court awarded costs and expenses relating to the part of the judgment being registered in the amount of . . . . . (exclude any amount included in the award of costs and expenses which represents an award of attorney's fees).

The person registering the Canadian judgment claims postjudgment costs and expenses in the amount of . . . . . and postjudgment attorney's fees in the amount of . . . . . relating to the part of the judgment being registered (include only costs, expenses, and attorney's fees incurred before registration).

The Canadian Court awarded attorney's fees relating to the part of the judgment being registered in the amount of . . . . . .

The amount of the part of the judgment being registered which has been satisfied as of the date of registration is . . . . . .

The total amount for which enforcement of the part of the judgment being registered is sought is . . . . . .

PART IV. STATEMENT OF PERSON REGISTERING JUDGMENT

I, ... [Person Registering Judgment or Attorney for Person Registering Judgment] state:

1. The Canadian judgment is final, conclusive, and enforceable under the law of the Canadian jurisdiction in which it was rendered.

2. The Canadian judgment or part of the judgment being registered is within the scope of the Uniform Registration of Canadian Money Judgments Act.

3. If only a part of the Canadian judgment is being registered, the amounts stated in Part III of this form relate to that part.

PART V. ITEMS REQUIRED TO BE INCLUDED WITH REGISTRATION

Attached are (check to signify required items are included):

. . . . . A copy of the Canadian judgment authenticated in the same manner a copy of a foreign judgment is authenticated in an action under section 25-1342 as an accurate copy by the Canadian court that entered the judgment.

. . . . . If the Canadian judgment is not in English, a certified translation of the judgment into English.

. . . . . A registration fee determined by the Supreme Court.

I declare that the information provided on this form is true and correct to the best of my knowledge and belief.

Submitted by: . . . . . .

Signature of [Person Registering Judgment]

[Attorney for Person Registering Judgment]

[specify whether signer is the person registering the judgment or that person's attorney]

Date of submission: . . . . . .

Source: Laws 2021, LB501, § 16.

25-1353 Effect of registration.

(a) Subject to subsection (b) of this section, a Canadian judgment registered under section 25-1352 has the same effect provided in section 25-1343 for a judgment a court determines to be entitled to recognition.

(b) A Canadian judgment registered under section 25-1352 may not be enforced by sale or other disposition of property, or by seizure of property or garnishment, until thirty-one days after notice under section 25-1354 of registration is served. The court for cause may provide for a shorter or longer time. This subsection does not preclude use of relief available under law of this state other than the Uniform Registration of Canadian Money Judgments Act to prevent dissipation, disposition, or removal of property.

Source: Laws 2021, LB501, § 17.

25-1354 Notice of registration.

(a) A person that registers a Canadian judgment under section 25-1352 shall cause notice of registration to be served on the person against whom the judgment has been registered.

(b) Notice under this section must be served in the same manner that a summons and complaint must be served in an action seeking recognition under section 25-1342 of a foreign-country money judgment.

(c) Notice under this section must include:

(1) the date of registration and court in which the judgment was registered;

(2) the docket number assigned to the registration;

(3) the name and address of:

(A) the person registering the judgment; and

(B) the person's attorney, if any;

(4) a copy of the registration, including the documents required under subsection (b) of section 25-1352; and

(5) a statement that:

(A) the person against whom the judgment has been registered, not later than thirty days after the date of service of notice, may motion the court to vacate the registration; and

(B) the court for cause may provide for a shorter or longer time.

(d) Proof of service of notice under this section must be filed with the clerk of the court.

Source: Laws 2021, LB501, § 18.

25-1355 Motion to vacate registration.

(a) Not later than thirty days after notice under section 25-1354 is served, the person against whom the judgment was registered may motion the court to vacate the registration. The court for cause may provide for a shorter or longer time for filing the motion.

(b) A motion under this section may assert only:

(1) a ground that could be asserted to deny recognition of the judgment under the Uniform Foreign-Country Money Judgments Recognition Act; or

(2) a failure to comply with a requirement of the Uniform Registration of Canadian Money Judgments Act for registration of the judgment.

(c) A motion filed under this section does not itself stay enforcement of the registered judgment.

(d) If the court grants a motion under this section, the registration is vacated, and any act under the registration to enforce the registered judgment is void.

(e) If the court grants a motion under this section on a ground under subdivision (b)(1) of this section, the court also shall render a judgment denying recognition of the Canadian judgment. A judgment rendered under this subsection has the same effect as a judgment denying recognition to a judgment on the same ground under the Uniform Foreign-Country Money Judgments Recognition Act.

Source: Laws 2021, LB501, § 19.

Cross References

Uniform Foreign-Country Money Judgments Recognition Act, see section 25-1337.

25-1356 Stay of enforcement of judgment pending determination of motion.

A person that files a motion under subsection (a) of section 25-1355 to vacate registration of a Canadian judgment may request the court to stay enforcement of the judgment pending determination of the motion. The court shall grant the stay if the person establishes a likelihood of success on the merits with regard to a ground listed in subsection (b) of section 25-1355 for vacating a registration. The court may require the person to provide security in an amount determined by the court as a condition of granting the stay.

Source: Laws 2021, LB501, § 20.

25-1357 Relationship to Uniform Foreign-Country Money Judgments Recognition Act.

(a) The Uniform Registration of Canadian Money Judgments Act supplements the Uniform Foreign-Country Money Judgments Recognition Act and that act, other than section 25-1342, applies to a registration under the Uniform Registration of Canadian Money Judgments Act.

(b) A person may seek recognition of a Canadian judgment described in section 25-1351 either:

(1) by registration under the Uniform Registration of Canadian Money Judgments Act; or

(2) under section 25-1342.

(c) Subject to subsection (d) of this section, a person may not seek recognition in this state of the same judgment or part of a judgment described in subsection (b) or (c) of section 25-1351 with regard to the same person under both the Uniform Registration of Canadian Money Judgments Act and section 25-1342.

(d) If the court grants a motion to vacate a registration solely on a ground under subdivision (b)(2) of section 25-1355, the person seeking registration may:

(1) if the defect in the registration can be cured, file a new registration under the Uniform Registration of Canadian Money Judgments Act; or

(2) seek recognition of the judgment under section 25-1342.

Source: Laws 2021, LB501, § 21.

Cross References

Uniform Foreign-Country Money Judgments Recognition Act, see section 25-1337.

25-1358 Uniformity of application and interpretation.

In applying and construing the Uniform Registration of Canadian Money Judgments Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Source: Laws 2021, LB501, § 22.

25-1359 Act; applicability.

The Uniform Registration of Canadian Money Judgments Act applies to the registration of a Canadian judgment entered in a proceeding that is commenced in Canada on or after August 28, 2021.

Source: Laws 2021, LB501, § 23.

ARTICLE 14
ABATEMENT AND REVIVOR

(b) REVIVOR OF ACTION

(b) REVIVOR OF ACTION

25-1415 Abatement of actions by death or cessation of powers of representative; duty of court.

When it appears to the court by affidavit that either party to an action has been dead, or where a party sues or is sued as a personal representative, that his or her powers have ceased for a period so long that the action cannot be revived in the names of his or her representatives or successor, without the consent of both parties, it shall order the action to be stricken from the trial docket.

Source: R.S.1867, Code § 468, p. 471; R.S.1913, § 8036; C.S.1922, § 8977; C.S.1929, § 20-1415; R.S.1943, § 25-1415; Laws 2018, LB193, § 22.

25-1416 Death of plaintiff; right of defendant to compel revivor.

At any term of the court succeeding the death of the plaintiff, while the action remains on the trial docket, the defendant, having given to the plaintiff's proper representatives in whose names the action might be revived ten days' notice of the application therefor, may have an order to strike the action from the trial docket and for costs against the estate of the plaintiff, unless the action is forthwith revived.

Source: R.S.1867, Code § 469, p. 471; R.S.1913, § 8037; C.S.1922, § 8978; C.S.1929, § 20-1416; R.S.1943, § 25-1416; Laws 2018, LB193, § 23.

ARTICLE 15
EXECUTIONS AND EXEMPTIONS

(a) EXECUTIONS

(b) EXEMPTIONS

(a) EXECUTIONS

25-1504 Lien of judgment; when attaches; lands within county where entered; other lands; chattels.

The lands and tenements of the debtor within the county where the judgment is entered shall be bound for the satisfaction thereof only from the day on which such judgments are rendered. All other lands, as well as goods and chattels of the debtor, shall be bound from the time they shall be seized in execution. A judgment shall be considered as rendered when such judgment has been entered on the judgment index.

Source: R.S.1867, Code § 477, p. 473; R.S.1913, § 8045; C.S.1922, § 8986; Laws 1927, c. 59, § 1, p. 221; Laws 1929, c. 83, § 3, p. 333; C.S.1929, § 20-1504; R.S.1943, § 25-1504; Laws 2018, LB193, § 24.

25-1510 Stay of execution; sureties; approval; bond tantamount to judgment confessed.

The sureties for the stay of execution may be taken and approved by the clerk, the bond shall be recorded on the register of actions and have the force and effect of a judgment confessed from the date thereof against the property of the sureties, and the clerk shall enter such sureties on the judgment index, as in the case of other judgments.

Source: Laws 1875, § 6, p. 50; R.S.1913, § 8051; C.S.1922, § 8992; C.S.1929, § 20-1510; R.S.1943, § 25-1510; Laws 2018, LB193, § 25.

25-1521 Intervening claimants; proceedings to ascertain title.

If the officer, by virtue of any writ of execution issued from any court of record in this state, shall levy the same on any goods and chattels claimed by any person other than the defendant, such officer shall give notice in writing to the court, in which shall be set forth the names of the plaintiff and defendant, together with the name of the claimant. At the same time such officer shall furnish the court with a schedule of the property claimed. Immediately upon the filing of such notice and schedule, the court shall determine the right of the claimant to the property in controversy.

Source: R.S.1867, Code § 486, p. 474; R.S.1913, § 8062; C.S.1922, § 9003; C.S.1929, § 20-1521; R.S.1943, § 25-1521; Laws 1972, LB 1032, § 131; Laws 1973, LB 226, § 13; Laws 2018, LB193, § 26.

25-1531 Mortgage foreclosure; confirmation of sale; grounds for refusing to confirm; time; motion; notice.

If the court, upon the return of any writ of execution or order of sale for the satisfaction of which any lands and tenements have been sold, after having carefully examined the proceedings of the officer, is satisfied that the sale has in all respects been made in conformity to the provisions of this chapter and that the property was sold for fair value, under the circumstances and conditions of the sale, or that a subsequent sale would not realize a greater amount, the court shall enter upon the record an order that the court is satisfied of the legality of such sale, and an order that the officer make the purchaser a deed of such lands and tenements. Prior to the confirmation of sale pursuant to this section, the party seeking confirmation of sale shall, except in the circumstances described in section 40-103, provide notice to the debtor informing him or her of the homestead exemption procedure available pursuant to Chapter 40, article 1. The notice shall be given by certified mailing at least ten days prior to any hearing on confirmation of sale. The officer on making such sale may retain the purchase money in his or her hands until the court has examined his or her proceedings as aforesaid, when he or she shall pay the same to the person entitled thereto, agreeable to the order of the court. If such sale pertains to mortgaged premises being sold under foreclosure proceedings and the amount of such sale is less than the amount of the decree rendered in such proceedings, the court may refuse to confirm such sale, if, in its opinion, such mortgaged premises have a fair and reasonable value equal to or greater than the amount of the decree. The court shall in any case condition the confirmation of such sale upon such terms or under such conditions as may be just and equitable. The judge of any district court may confirm any sale at any time after such officer has made his or her return, on motion and ten days' notice to the adverse party or his or her attorney of record, if made in vacation, and such notice shall include information on the homestead exemption procedure available pursuant to Chapter 40, article 1. When any sale is confirmed in vacation the judge confirming the same shall cause his or her order to be entered on the record by the clerk. Upon application to the court by the judgment debtor within sixty days after the confirmation of any sale confirmed pursuant to this section, such sale shall be set aside if the court finds that the party seeking confirmation of sale failed to provide notice to the judgment debtor regarding homestead exemption procedures at least ten days prior to the confirmation of sale as required by this section.

Source: R.S.1867, Code § 498, p. 478; Laws 1875, § 1, p. 38; R.S.1913, § 8077; Laws 1915, c. 149, § 3, p. 319; C.S.1922, § 9013; C.S. 1929, § 20-1531; Laws 1933, c. 45, § 1, p. 254; C.S.Supp.,1941, § 20-1531; R.S.1943, § 25-1531; Laws 1983, LB 107, § 1; Laws 1983, LB 447, § 42; Laws 2018, LB193, § 27.

(b) EXEMPTIONS

25-1552 Personal property except wages; debtors; claim of exemption; procedure; adjustment by Department of Revenue.

(1) Each natural person residing in this state shall have exempt from forced sale on execution the sum of five thousand dollars in personal property, except wages. The provisions of this section do not apply to the exemption of wages,

that subject being fully provided for by section 25-1558. In proceedings involving a writ of execution, the exemption from execution under this section shall be claimed in the manner provided by section 25-1516. The debtor desiring to claim an exemption from execution under this section shall, at the time the request for hearing is filed, file a list of the whole of the property owned by the debtor and an indication of the items of property which he or she claims to be exempt from execution pursuant to this section and section 25-1556, along with a value for each item listed. The debtor or his or her authorized agent may select from the list an amount of property not exceeding the value exempt from execution under this section according to the debtor's valuation or the court's valuation if the debtor's valuation is challenged by a creditor.

(2) The dollar limitations in this section shall be adjusted by the Department of Revenue every fifth year beginning with the year 2023 to reflect the cumulative percentage change over the preceding five years in the Consumer Price Index for All Urban Consumers, as prepared by the United States Department of Labor, Bureau of Labor Statistics.

Source: R.S.1867, Code § 521, p. 484; Laws 1913, c. 52, § 1, p. 158; R.S.1913, § 8099; C.S.1922, § 9035; C.S.1929, § 20-1553; R.S.1943, § 25-1552; Laws 1973, LB 16, § 1; Laws 1977, LB 60, § 1; Laws 1980, LB 940, § 2; Laws 1993, LB 458, § 12; Laws 1997, LB 372, § 1; Laws 2018, LB105, § 1.

25-1556 Specific exemptions; personal property; selection by debtor; adjustment by Department of Revenue.

(1) No property hereinafter mentioned shall be liable to attachment, execution, or sale on any final process issued from any court in this state, against any person being a resident of this state: (a) The immediate personal possessions of the debtor and his or her family; (b) all necessary wearing apparel of the debtor and his or her family; (c) the debtor's interest, not to exceed an aggregate fair market value of three thousand dollars, in household furnishings, household goods, household computers, household appliances, books, or musical instruments which are held primarily for personal, family, or household use of such debtor or the dependents of such debtor; (d) the debtor's interest, not to exceed an aggregate fair market value of five thousand dollars, in implements, tools, or professional books or supplies, other than a motor vehicle, held for use in the principal trade or business of such debtor or his or her family; (e) the debtor's interest, not to exceed five thousand dollars, in a motor vehicle; and (f) the debtor's interest in any professionally prescribed health aids for such debtor or the dependents of such debtor. The specific exemptions in this section shall be selected by the debtor or his or her agent, clerk, or legal representative in the manner provided in section 25-1552.

(2) The dollar limitations in this section shall be adjusted by the Department of Revenue every fifth year beginning with the year 2023 to reflect the cumulative percentage change over the preceding five years in the Consumer Price Index for All Urban Consumers, as prepared by the United States Department of Labor, Bureau of Labor Statistics.

Source: R.S.1867, Code § 530, p. 485; R.S.1913, § 8103; C.S.1922, § 9039; C.S.1929, § 20-1557; R.S.1943, § 25-1556; Laws 1969, c. 187, § 1, p. 778; Laws 1973, LB 16, § 2; Laws 1977, LB 60, § 2; Laws 1997, LB 372, § 2; Laws 2018, LB105, § 2.

Cross References

For other provisions for exempting burial lots and mausoleums, see sections 12-517, 12-520, and 12-605.

(c) PROCEEDINGS IN AID OF EXECUTION

25-1577 Discovery of property of debtor; disobedience of order of court; penalty.

(1) Except as provided in subsection (2) of this section, if any person, party, or witness disobeys an order of the judge or referee, duly served, such person, party, or witness may be punished by the judge as for contempt, and if a party, he or she shall be committed to the jail of the county wherein the proceedings are pending until he or she complies with such order; or, in case he or she has, since the service of such order upon him or her, rendered it impossible for him or her to comply therewith, until he or she has restored to the opposite party what such party has lost by such disobedience, or until discharged by due course of law.

(2) No imprisonment related to the debt collection process shall be allowed unless, after a hearing, a judgment debtor is found to be in willful contempt of court. A judgment debtor shall not be committed to jail for failing to appear pursuant to section 25-1565 unless, after service of an order to appear and show cause as to why the judgment debtor should not be found in contempt for failing to appear, the judgment debtor is found to be in willful contempt.

Source: R.S.1867, Code § 546, p. 489; Laws 1875, § 1, p. 39; R.S.1913, § 8125; C.S.1922, § 9061; C.S.1929, § 20-1579; R.S.1943, § 25-1577; Laws 2017, LB259, § 1.

25-1578 Discovery of property of debtor; orders to judgment debtors and witnesses; service; filing; record.

The orders to judgment debtors and witnesses provided for in sections 25-1564 to 25-1580 shall be signed and filed by the judge making the same and shall be served in the same manner as a summons in other cases. The judge shall sign all such orders. Such orders shall be filed with the clerk of the court of the county in which the judgment is rendered or the transcript of the judgment filed, and the clerk shall enter on the record the date and time of filing the same.

Source: R.S.1867, Code § 547, p. 489; R.S.1913, § 8126; C.S.1922, § 9062; C.S.1929, § 20-1580; R.S.1943, § 25-1578; Laws 2018, LB193, § 28.

(f) NEBRASKA UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT

25-1587.04 Notice of filing.

(a) At the time of the filing of the foreign judgment, the judgment creditor or his or her lawyer shall make and file with the clerk of the court an affidavit setting forth the name and last-known post office address of the judgment debtor and the judgment creditor.

(b) Promptly upon the filing of the foreign judgment and the affidavit, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall file notice of the mailing on the record.

The notice shall include the name and address of the judgment creditor and the judgment creditor's lawyer, if any, in this state. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

Source: Laws 1993, LB 458, § 4; Laws 2018, LB193, § 29.

25-1587.06 Fees.

Any person filing a foreign judgment or a judgment from another court in this state shall pay to the clerk of the district or county court a fee as provided in section 33-106 or 33-123 for filing a transcript of judgment. Fees for filing, transcription, or other enforcement proceedings shall be as provided for judgments of the courts of this state.

Source: Laws 1993, LB 458, § 6; Laws 1995, LB 270, § 1; Laws 2018, LB193, § 30.

ARTICLE 16

JURY

Section

25-1601. Transferred to section 25-1650.
25-1601.03. Transferred to section 25-1645.
25-1602. Transferred to section 25-1651.
25-1603. Transferred to section 25-1649.
25-1606. Transferred to section 25-1660.
25-1607. Transferred to section 25-1661.
25-1609. Repealed. Laws 2020, LB387, § 49.
25-1611. Transferred to section 25-1675.
25-1612. Transferred to section 25-1677.
25-1625. Transferred to section 25-1647.
25-1626. Transferred to section 25-1648.
25-1626.02. Repealed. Laws 2020, LB387, § 49.
25-1627. Transferred to section 25-1653.
25-1627.01. Repealed. Laws 2020, LB387, § 49.
25-1628. Transferred to section 25-1654.
25-1629. Transferred to section 25-1659.
25-1629.01. Transferred to section 25-1657.
25-1629.02. Transferred to section 25-1658.
25-1629.03. Repealed. Laws 2020, LB387, § 49.
25-1629.04. Repealed. Laws 2020, LB387, § 49.
25-1630. Transferred to section 25-1676.
25-1631. Transferred to section 25-1671.
25-1631.03. Transferred to section 25-1663.
25-1632. Transferred to section 25-1662.
25-1632.01. Transferred to section 25-1664.
25-1633. Transferred to section 25-1669.
25-1633.01. Repealed. Laws 2020, LB387, § 49.
25-1634. Transferred to section 25-1665.
25-1634.01. Transferred to section 25-1667.
25-1634.02. Transferred to section 25-1666.
25-1634.03. Repealed. Laws 2020, LB387, § 49.
25-1635. Transferred to section 25-1673.
25-1636. Transferred to section 25-1652.
25-1637. Transferred to section 25-1678.
25-1639. Transferred to section 25-1670.
25-1640. Transferred to section 25-1674.

Section

25-1601 Transferred to section 25-1650.

25-1601.03 Transferred to section 25-1645.

25-1602 Transferred to section 25-1651.

25-1603 Transferred to section 25-1649.

25-1606 Transferred to section 25-1660.

25-1607 Transferred to section 25-1661.

25-1609 Repealed. Laws 2020, LB387, § 49.

25-1611 Transferred to section 25-1675.

25-1612 Transferred to section 25-1677.

25-1625 Transferred to section 25-1647.

25-1626 Transferred to section 25-1648.

25-1626.02 Repealed. Laws 2020, LB387, § 49.

25-1627 Transferred to section 25-1653.

25-1627.01 Repealed. Laws 2020, LB387, § 49.

25-1628 Transferred to section 25-1654.

25-1629 Transferred to section 25-1659.

25-1629.01 Transferred to section 25-1657.

25-1629.02 Transferred to section 25-1658.

25-1629.03 Repealed. Laws 2020, LB387, § 49.

25-1629.04 Repealed. Laws 2020, LB387, § 49.

25-1630 Transferred to section 25-1676.

25-1631 Transferred to section 25-1671.

25-1631.03 Transferred to section 25-1663.

25-1632 Transferred to section 25-1662.

25-1632.01 Transferred to section 25-1664.

25-1633 Transferred to section 25-1669.

25-1633.01 Repealed. Laws 2020, LB387, § 49.

25-1634 Transferred to section 25-1665.

25-1634.01 Transferred to section 25-1667.

25-1634.02 Transferred to section 25-1666.

25-1634.03 Repealed. Laws 2020, LB387, § 49.

25-1635 Transferred to section 25-1673.

25-1636 Transferred to section 25-1652.

25-1637 Transferred to section 25-1678.

25-1639 Transferred to section 25-1670.

25-1640 Transferred to section 25-1674.

25-1641 Transferred to section 25-1656.

25-1642 Repealed. Laws 2020, LB387, § 49.

25-1643 Repealed. Laws 2020, LB387, § 49.

25-1644 Act, how cited.

Sections 25-1644 to 25-1678 shall be known and may be cited as the Jury Selection Act.

Source: Laws 2020, LB387, § 1.

25-1645 Act; intent and purpose.

The Legislature hereby declares that it is the intent and purpose of the Jury Selection Act to create a jury system which will ensure that:

(1) All persons selected for jury service are selected at random from a fair cross section of the population of the area served by the court;

(2) All qualified citizens have the opportunity to be considered for jury service;

(3) All qualified citizens fulfill their obligation to serve as jurors when summoned for that purpose; and

(4) No citizen is excluded from jury service in this state as a result of discrimination based upon race, color, religion, sex, national origin, or economic status.

Source: Laws 1979, LB 234, § 1; R.S.1943, (2016), § 25-1601.03; Laws 2020, LB387, § 2.

25-1646 Terms, defined.

For purposes of the Jury Selection Act:

(1) Combined list means the list created pursuant to section 25-1654 by merging the lists of names from the Department of Motor Vehicles and from election records into one list;

(2) Grand jury means a body of people who are chosen to sit permanently for at least a month and up to a year and who, in ex parte proceedings, decide whether to issue indictments in criminal cases;

(3) Jury commissioner means the person designated in section 25-1647;

(4) Jury list means a list or lists of names of potential jurors drawn from the master key list for possible service on grand and petit juries;

(5) Jury management system means an electronic process in which individuals are randomly selected to serve as grand or petit jurors and for which the presence of a district court judge or other designated official is not required. A jury management system may also provide an electronic process for a potential juror to complete and submit a juror qualification form and to receive summonses and notifications regarding jury service;

(6) Jury panel means the persons summoned to serve as grand or petit jurors for such period of a jury term as determined by the judge or judges;

(7) Jury term means a month, calendar quarter, year, or other period of time as determined by the judge or judges during which grand or petit jurors are selected for service from a master key list. A jury term shall not extend beyond the time by which a new combined list is required to be prepared pursuant to section 25-1654, except by order of the court;

(8) Manual jury selection process means a process in which individuals are randomly selected to serve on a grand or petit jury by drawing names from a

wheel or box while in the presence of a district court judge or other official designated by the judge;

(9) Master key list means the list of names selected using the key number pursuant to section 25-1654;

(10) One-step qualifying and summoning system means a process for selecting and summoning grand or petit jurors in which a juror qualification form and summons, or instructions to complete a jury qualification form through a jury management system and a summons, are sent to a potential juror at the same time;

(11) Petit jury means a group of jurors who may be summoned and empaneled in the trial of a specific case;

(12) Tales juror means a person selected from among the bystanders in court or the people of the county to serve as a juror when the original jury panel has become deficient in number; and

(13) Two-step qualifying and summoning system means a process for selecting and summoning grand or petit jurors in which a juror qualification form, or instructions to complete a jury qualification form through a jury management system, is sent to a potential juror and, if the juror is qualified and drawn for jury service, a summons is sent.

Source: Laws 2020, LB387, § 3.

25-1647 Jury commissioner; designation; salary; expenses; duties; salary increase, when effective.

(1) In each county of the State of Nebraska, the clerk of the district court shall serve as the jury commissioner.

(2) In counties having a population in excess of one hundred seventy-five thousand inhabitants, the judges of the district court within such counties shall determine whether the clerk of the district court will receive additional compensation to perform the duties of jury commissioner. The amount of any such additional compensation shall be fixed by the judges of the district court in an amount not to exceed three thousand dollars per annum.

(3) In all counties the necessary expenses incurred in the performance of the duties of jury commissioner shall be paid by the county board of the county out of the general fund, upon proper claims approved by one of the district judges in the judicial district and duly filed with the county board.

(4) In all counties the jury commissioner shall prepare and file the annual inventory statement with the county board of the county of all county personal property in his or her custody or possession, as provided in sections 23-346 to 23-350.

(5) This section shall be so interpreted as to effectuate its general purpose, to provide, in the public interest, adequate compensation for the jury commissioner and to permit a change in such salary as soon as the change may become operative under the Constitution of Nebraska.

Source: Laws 1915, c. 248, § 1, p. 568; C.S.1922, § 9095; C.S.1929, § 20-1625; Laws 1931, c. 65, § 5, p. 178; Laws 1939, c. 28, § 20, p. 159; C.S.Supp.,1941, § 20-1625; R.S.1943, § 25-1625; Laws 1947, c. 62, § 9, p. 202; Laws 1953, c. 72, § 6, p. 227; Laws 1961, c. 113, § 1, p. 352; Laws 1971, LB 547, § 1; Laws 1975,

LB 527, § 1; Laws 1979, LB 234, § 6; Laws 2003, LB 19, § 4; Laws 2010, LB712, § 2; Laws 2013, LB169, § 1; R.S.1943, (2016), § 25-1625; Laws 2020, LB387, § 4; Laws 2022, LB922, § 2.

25-1648 Jury commissioner; deputy; appointment; powers.

(1) The jury commissioner shall appoint a deputy jury commissioner from the regular employees of his or her office who shall serve ex officio and who shall hold office during the pleasure of the jury commissioner. The deputy jury commissioner shall be approved by the judge or judges of the district court before taking office. The deputy jury commissioner, during the absence of the jury commissioner from the county or during the sickness or disability of the jury commissioner, with the consent of such judge or judges, may perform any or all of the duties of the jury commissioner.

(2) If there are no regular employees of the office of jury commissioner, he or she may appoint some other county officer or employee thereof as deputy jury commissioner.

Source: Laws 1915, c. 248, § 1, p. 568; C.S.1922, § 9096; C.S.1929, § 20-1626; R.S.1943, § 25-1626; Laws 1951, c. 69, § 1, p. 224; Laws 1953, c. 72, § 7, p. 227; Laws 1955, c. 90, § 2, p. 265; Laws 1955, c. 91, § 1, p. 268; Laws 1965, c. 123, § 1, p. 460; R.S.1943, (2016), § 25-1626; Laws 2020, LB387, § 5; Laws 2022, LB922, § 3.

25-1649 Jurors; selection.

In each of the county and district courts of this state, the lists of grand and petit jurors shall be made up and jurors selected for jury duty in the manner prescribed in the Jury Selection Act.

Source: R.S.1867, Code § 658, p. 510; R.S.1913, § 8137; C.S.1922, § 9073; C.S.1929, § 20-1603; Laws 1931, c. 36, § 1, p. 129; Laws 1939, c. 18, § 23, p. 113; C.S.Supp.,1941, § 20-1603; R.S.1943, § 25-1603; Laws 1953, c. 72, § 2, p. 225; Laws 1979, LB 234, § 3; Laws 1980, LB 733, § 2; R.S.1943, (2016), § 25-1603; Laws 2020, LB387, § 6.

25-1650 Jurors; qualifications; disqualifications; excused or exempt, when.

(1) All citizens of the United States residing in any of the counties of this state who are over the age of nineteen years, able to read, speak, and understand the English language, and free from all disqualifications set forth under this section and from all other legal exceptions are qualified to serve on all grand and petit juries in their respective counties. Persons disqualified to serve as either grand or petit jurors are: (a) Judges of any court, (b) clerks of the Supreme or district courts, (c) sheriffs, (d) jailers, (e) persons, or the spouse of any such persons, who are parties to suits pending in the county of his, her, or their residence for trial to that jury panel, (f) persons who have been convicted of a felony when such conviction has not been set aside or a pardon issued, and (g) persons who are subject to liability for the commission of any offense which by special provision of law disqualifies them. Spouses shall not serve as jurors on the same panel. Persons who are incapable, by reason of physical or mental disability, of rendering satisfactory jury service shall not be qualified to serve on

a jury, but a person claiming this disqualification shall be required to submit a physician's certificate as to the disability and the certifying physician is subject to inquiry by the court at its discretion. A nursing mother who requests to be excused shall be excused from jury service until she is no longer nursing her child, but the mother shall be required to submit a physician's certificate in support of her request. A person who is serving on active duty as a member of the United States Armed Forces who requests to be exempt shall be exempt from jury service, but such person shall be required to submit documentation of his or her active-duty status in support of his or her request.

(2) The district court or any judge thereof may exercise the power of excusing any grand or petit juror or any person summoned for grand or petit jury service upon a showing of undue hardship, extreme inconvenience, or public necessity for such period as the court deems necessary. At the conclusion of such period the person shall reappear for jury service in accordance with the court's direction. All excuses and the grounds for such excuses shall be entered upon the record of the court. In districts having more than one judge of the district court, the court may by rule or order assign or delegate to the presiding judge or any one or more judges the sole authority to grant such excuses.

(3) No qualified potential juror is exempt from jury service, except that any person seventy years of age or older who makes a request to be exempt to the court at the time the juror qualification form is filed with the jury commissioner or who makes such a request in writing after being qualified and summoned shall be exempt from serving on grand and petit juries.

(4) A physician's certificate or other documentation or information submitted by a person in support of a claim of disqualification by reason of physical or mental disability or due to such person's status as a nursing mother is not a public record as defined in section 84-712.01 and is not subject to disclosure under sections 84-712 to 84-712.09.

Source: R.S.1867, Code § 657, p. 509; Laws 1911, c. 171, § 1, p. 548; R.S.1913, § 8135; Laws 1917, c. 139, § 1, p. 325; C.S.1922, § 9071; C.S.1929, § 20-1601; Laws 1939, c. 18, § 1, p. 98; C.S.Supp.,1941, § 20-1601; Laws 1943, c. 45, § 1, p. 191; R.S. 1943, § 25-1601; Laws 1953, c. 72, § 1, p. 224; Laws 1955, c. 90, § 1, p. 264; Laws 1959, c. 106, § 1, p. 433; Laws 1959, c. 143, § 1, p. 551; Laws 1969, c. 189, § 1, p. 780; Laws 1979, LB 234, § 2; Laws 1980, LB 733, § 1; Laws 1985, LB 113, § 1; Laws 1993, LB 31, § 2; Laws 2003, LB 19, § 3; R.S.1943, (2016), § 25-1601; Laws 2020, LB387, § 7.

Cross References

For exemption of National Guard, see section 55-173.

25-1651 Jurors; actions to which county or other municipal corporation a party; inhabitants and taxpayers; serve, when.

On the trial of any suit in which a county or any other municipal corporation is a party, the inhabitants and taxpayers of such county or municipal corporation shall be qualified to serve as jurors if otherwise qualified according to law.

Source: Laws 1877, § 1, p. 16; R.S.1913, § 8136; C.S.1922, § 9072; C.S.1929, § 20-1602; R.S.1943, (2016), § 25-1602; Laws 2020, LB387, § 8.

25-1652 Jurors; challenge for cause; grounds.

(1) It shall be ground for challenge for cause that any potential juror: (a) Does not possess the qualifications of a juror as set forth in section 25-1650 or is excluded by the terms of section 25-1650; (b) has requested or solicited any officer of the court or officer charged in any manner with the duty of selecting the jury to place such juror upon the jury panel; or (c) otherwise lacks any of the qualifications provided by law.

(2) It shall not be a ground for challenge for cause that a potential juror has read, heard, or watched in news media an account of the commission of a crime with which a defendant is charged, if such juror states under oath that he or she can render an impartial verdict according to the law and the evidence and the court is satisfied as to the truth of such statement. In the trial of any criminal cause, the fact that a person called as a juror has formed an opinion based upon rumor or statements or reports in news media, and as to the truth of which the person has formed no opinion, shall not disqualify the person to serve as a juror on such cause, if the person states under oath that he or she can fully and impartially render a verdict in accordance with the law and the evidence and the court is satisfied as to the truth of such statement.

Source: Laws 1915, c. 248, § 12, p. 573; Laws 1921, c. 113, § 2, p. 394; C.S.1922, § 9106; C.S.1929, § 20-1636; Laws 1939, c. 18, § 18, p. 110; C.S.Supp.,1941, § 20-1636; Laws 1943, c. 45, § 3, p. 193; R.S.1943, § 25-1636; Laws 1953, c. 72, § 15, p. 236; R.S.1943, (2016), § 25-1636; Laws 2020, LB387, § 9.

25-1653 Jury list; key number; determination; record.

(1) The jury commissioner, at such times as may be necessary or as he or she may be ordered to do so by the district judge, shall draw a number to be known as a key number. The drawing of a key number shall be done in a manner which will ensure that the number drawn is the result of chance. The key number shall be drawn from among the numbers one to ten. Except as otherwise provided in this section, only one key number need be drawn.

(2) In a county with a population of less than three thousand inhabitants, the jury commissioner shall draw two key numbers or such larger number of key numbers as the district judge or judges may order instead of only one.

(3) In a county with a population of three thousand inhabitants or more, where experience demonstrates that the use of only one key number does not produce a list of names of sufficient number to make the system of practical use, the district judge or judges may, in their discretion, order the selecting of two key numbers.

(4) The jury commissioner shall make a record of the manner in which the key number or numbers were drawn and the date and the hour of the drawing, the same to be certified by the jury commissioner, and such records shall be entered upon the record of the court.

Source: Laws 1915, c. 248, § 3, p. 569; C.S.1922, § 9097; C.S.1929, § 20-1627; R.S.1943, § 25-1627; Laws 1953, c. 72, § 8(1), p. 228; Laws 1977, LB 283, § 1; Laws 1979, LB 234, § 7; R.S.1943, (2016), § 25-1627; Laws 2020, LB387, § 10.

25-1654 Combined list; master key list; how produced.

(1) Each December, the Department of Motor Vehicles shall make available to each jury commissioner a list in magnetic, optical, digital, or other electronic format mutually agreed to by the jury commissioner and the department containing the names, dates of birth, addresses, and motor vehicle operator license numbers or state identification card numbers of all licensed motor vehicle operators and state identification card holders nineteen years of age or older in the county. If a jury commissioner requests similar lists at other times from the department, the cost of processing such lists shall be paid by the county which the requesting jury commissioner serves. Upon request of the jury commissioner, the election commissioner or county clerk having charge of the election records shall furnish to the jury commissioner a complete list of the names, dates of birth, addresses, and motor vehicle operator license numbers or state identification card numbers of all registered voters nineteen years of age or older in the county.

(2) When required pursuant to subsection (3) of this section or when otherwise necessary or as directed by the judge or judges, the jury commissioner shall create a combined list by merging the separate lists described in subsection (1) of this section and reducing any duplication to the best of his or her ability.

(3) In counties having a population of seven thousand inhabitants or more, the jury commissioner shall produce a combined list at least once each calendar year. In counties having a population of three thousand inhabitants but less than seven thousand inhabitants, the jury commissioner shall produce a combined list at least once every two calendar years. In counties having a population of less than three thousand inhabitants, the jury commissioner shall produce a combined list at least once every five calendar years.

(4) The jury commissioner shall then create a master key list by selecting from the combined list the name of the person whose numerical order on such list corresponds with the key number and each successive tenth name thereafter. The jury commissioner shall certify that the master key list has been made in accordance with the Jury Selection Act.

(5) Any unintentional duplication of names on a combined list or master key list shall not be grounds for quashing any panel or jury list pursuant to section 25-1678 or for the disqualification of any juror.

Source: Laws 1915, c. 248, § 4, p. 569; C.S.1922, § 9098; C.S.1929, § 20-1628; R.S.1943, § 25-1628; Laws 1957, c. 88, § 1, p. 337; Laws 1971, LB 11, § 1; Laws 1985, LB 113, § 2; Laws 1988, LB 111, § 1; Laws 1989, LB 82, § 1; Laws 2003, LB 19, § 5; Laws 2005, LB 402, § 1; Laws 2009, LB35, § 10; Laws 2010, LB712, § 3; R.S.1943, (2016), § 25-1628; Laws 2020, LB387, § 11.

25-1655 Potential jurors; how selected.

(1) Prior to the jury term or at any time during the jury term, the jury commissioner may draw potential jurors from the master key list for service on petit jury panels that will be needed throughout the jury term. The jury commissioner shall draw such number of potential jurors from the master key list as the judge or judges direct.

(2) In drawing the names of potential jurors, the jury commissioner may use a manual jury selection process or a jury management system. The jury commissioner shall investigate the potential jurors so drawn pursuant to the

two-step qualifying and summoning system or the one-step qualifying and summoning system.

(3)(a) If the jury commissioner uses the two-step qualifying and summoning system, he or she shall deliver to each potential juror a juror qualification form pursuant to section 25-1657.

(b) If the jury commissioner uses the one-step qualifying and summoning system, he or she shall deliver to each potential juror a juror qualification form pursuant to section 25-1657 and shall serve the potential juror with a summons pursuant to section 25-1660.

Source: Laws 2020, LB387, § 12.

25-1656 Petit jurors; how selected; summons or notice to report.

(1) Unless the judge or judges order that no jury be drawn, the jury commissioner shall draw petit jurors for a regular jury panel pursuant to this section.

(2) If the jury commissioner has previously drawn and investigated potential jurors for service during the jury term as provided in section 25-1655, the jury commissioner shall draw by chance the names of thirty such qualified jurors, or such other number as the judge or judges may otherwise direct, for each judge sitting with a jury, as petit jurors for such regular jury panel.

(3) If the jury commissioner has not previously drawn and investigated potential jurors for service during the jury term as provided in section 25-1655, the jury commissioner shall draw and investigate potential jurors from the master key list in the same manner as provided in section 25-1655. The jury commissioner shall draw and investigate such number of potential jurors as the jury commissioner deems necessary to arrive at a list of thirty qualified jurors or such other number of qualified jurors as the judge or judges shall direct for each judge sitting with a jury.

(4) After drawing the names pursuant to subsection (2) or (3) of this section, the jury commissioner shall:

(a) Serve a summons pursuant to section 25-1660 on each person whose name was drawn if the jury commissioner uses the two-step qualifying and summoning system; or

(b) If the jury commissioner has not already done so in the summons or by another method of notification, notify each person whose name was drawn of the date and time to report for jury service if the jury commissioner uses the one-step qualifying and summoning system.

Source: Laws 1980, LB 733, § 5; Laws 1983, LB 329, § 1; Laws 1984, LB 13, § 39; R.S.1943, (2016), § 25-1641; Laws 2020, LB387, § 13.

25-1657 Juror qualification form; potential juror; complete; return; when.

(1) Except as provided in subsection (2) of this section, the jury commissioner shall deliver a juror qualification form to each potential juror drawn for jury service. The delivery may be by first-class mail or personal service or through a jury management system. The jury commissioner shall include instructions to complete and return the form to the jury commissioner within ten days after its receipt. The form may be returned to the jury commissioner by mail or through a jury management system.

(2)(a) In lieu of the juror qualification form delivery process described in subsection (1) of this section, a jury commissioner may send to a potential juror a notice or summons which includes instructions to complete a juror qualification form through a jury management system. The notice or summons may be sent by first-class mail or personal service or through a jury management system. The jury commissioner shall include instructions to complete and submit the juror qualification form within ten days after receipt of the notice or summons.

(b) If a potential juror fails to complete the qualification form as instructed within such ten days, the jury commissioner shall deliver to such potential juror, by first-class mail or personal service, a revised notice or summons and juror qualification form with instructions to complete and return the form to the jury commissioner within ten days after its receipt.

(3) The juror qualification form shall be in the form prescribed by the Supreme Court. Notarization of the juror qualification form shall not be required. If the potential juror is unable to complete the form, another person may do it for the potential juror and shall indicate that such other person has done so and the reason therefor.

(4) If it appears that there is an omission, ambiguity, or error in a returned form, the jury commissioner shall again send the form with instructions to the potential juror to make the necessary addition, clarification, or correction and to return the form to the jury commissioner within ten days after its second receipt.

Source: Laws 1979, LB 234, § 12; Laws 2005, LB 105, § 1; R.S.1943, (2016), § 25-1629.01; Laws 2020, LB387, § 14.

25-1658 Juror qualification form; failure to return; effect; contempt of court.

(1) Any potential juror who fails to return a completed juror qualification form as instructed shall be directed by the jury commissioner to appear before him or her to fill out the juror qualification form. At the time of the potential juror's appearance for jury service or at the time of any interview before the court or jury commissioner, any potential juror may be required to fill out another juror qualification form, at which time the potential juror may be questioned with regard to his or her responses to questions contained on the form and grounds for his or her excuse or disqualification. Any information thus acquired by the court or jury commissioner shall be noted on the juror qualification form.

(2) Any person who knowingly fails to complete and return or who willfully misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror shall be guilty of contempt of court.

Source: Laws 1979, LB 234, § 13; R.S.1943, (2016), § 25-1629.02; Laws 2020, LB387, § 15.

25-1659 Master key list; juror qualification form; review; names stricken.

(1) If the jury commissioner finds, after reviewing a completed juror qualification form, that a potential juror does not possess the qualifications of a juror as set forth in section 25-1650 or is excluded by the terms of section 25-1650, the jury commissioner shall strike such potential juror's name from the master key list and make a record of each name stricken, which record shall be kept in

the jury commissioner's office subject to inspection by the court and attorneys of record in cases triable to a jury pending before the court, under such rules as the court may prescribe.

(2) Any person entitled to access to the list of names stricken may make a request to the judge of the district court, in accordance with section 25-1673, for an explanation of the reasons a name has been stricken. If the judge is satisfied that such request is made in good faith and in accordance with section 25-1673, the judge shall direct the jury commissioner to appear before the judge at chambers and, in the presence of the requesting person, state his or her reasons for striking such name.

Source: Laws 1915, c. 248, § 5, p. 570; C.S.1922, § 9099; C.S.1929, § 20-1629; Laws 1939, c. 18, § 14, p. 106; C.S.Supp.,1941, § 20-1629; R.S.1943, § 25-1629; Laws 1953, c. 7, § 1, p. 221; Laws 1953, c. 72, § 9, p. 229; Laws 1955, c. 9, § 4, p. 266; Laws 1977, LB 283, § 2; Laws 1979, LB 234, § 9; Laws 1985, LB 113, § 3; R.S.1943, (2016), § 25-1629; Laws 2020, LB387, § 16.

25-1660 Jurors; how summoned; notice; deadlines, applicability.

(1) The summons of grand and petit jurors for the courts of this state shall be served by the jury commissioner, the clerk of such court, or any other person authorized by the court by delivering such summons by first-class mail or personal service or through a jury management system to the person whose name has been drawn.

(2)(a) If the jury commissioner uses the two-step qualifying and summoning system, the summons shall be delivered not less than ten days before the day such juror is to appear as a juror in such court.

(b) If the jury commissioner uses the one-step qualifying and summoning system, the summons shall be delivered:

(i) Not less than ten days before the first day of the jury term, if the jury commissioner is summoning jurors for service throughout the jury term; or

(ii) Not less than ten days before the day such juror is to appear as a juror in such court, if the jury commissioner is summoning a juror for service on a specific jury panel.

(c) The deadlines in this subsection shall not apply to summons delivered to extra jurors pursuant to section 25-1665 or tales jurors pursuant to section 25-1666. Summons to such jurors shall be delivered at the earliest possible time under the circumstances and as directed by the judge or judges.

(3)(a) If the jury commissioner uses the two-step qualifying and summoning system, a summons sent under this section shall include the day, time, place, and name of the court where the juror is to report for jury service.

(b) If the jury commissioner uses the one-step qualifying and summoning system, a summons sent under this section shall include such details as to the day, time, place, and name of the court where the juror is to report for jury service as are known at the time the summons is sent along with additional instructions regarding the manner in which the juror shall contact the court or will be notified by the court of any additional details.

Source: R.S.1867, Code §§ 661, 662, p. 510; Laws 1885, c. 97, § 1, p. 381; R.S.1913, § 8141; Laws 1915, c. 148, § 1, p. 318; C.S.1922,

§ 9076; C.S.1929, § 20-1606; R.S.1943, § 25-1606; Laws 1953, c. 72, § 3, p. 225; Laws 1957, c. 242, § 18, p. 831; Laws 1982, LB 677, § 1; R.S.1943, (2016), § 25-1606; Laws 2020, LB387, § 17.

25-1661 Jurors; appearance; failure to appear or serve without good cause; contempt of court.

(1) Each grand juror and petit juror summoned shall appear before the court on the day and at the hour specified in the summons or as further directed by the court.

(2) Any person summoned for jury service who fails to appear or to complete jury service as directed may be ordered by the court to appear forthwith and show cause for such failure to comply with the summons. If such person fails to show good cause for noncompliance with the summons, he or she shall be guilty of contempt of court.

(3) No person shall be guilty of contempt of court under this section for failing to respond to a summons sent:

(a) By first-class mail, if sent pursuant to a one-step qualifying and summoning system, and if the person has (i) returned a juror qualification form and the jury commissioner has determined that such person is not qualified; (ii) been excused from jury service; or (iii) had his or her jury service postponed; or

(b) Through a jury management system.

Source: R.S.1867, Code § 663, p. 511; R.S.1913, § 8142; C.S.1922, § 9077; C.S.1929, § 20-1607; R.S.1943, (2016), § 25-1607; Laws 2020, LB387, § 18.

25-1662 Petit jury for subsequent periods; how drawn; how notified.

Subsequent panels of petit jurors shall be called as the judge or judges may determine during the jury term. If it is determined that a subsequent panel or panels are necessary, the judge or judges, as the case may be, shall order the jury commissioner to draw by chance such number of potential jurors as such judge or judges shall direct as petit jurors for such subsequent jury panel. The persons so drawn shall be notified or summoned the same as those drawn for the regular jury panel under section 25-1656.

Source: Laws 1915, c. 248, § 8, p. 571; C.S.1922, § 9102; C.S.1929, § 20-1632; R.S.1943, § 25-1632; Laws 1953, c. 71, § 1, p. 222; Laws 1953, c. 72, § 11(1), p. 231; R.S.1943, (2016), § 25-1632; Laws 2020, LB387, § 19.

25-1663 Petit jury; examination by judge; excess jurors.

The judge shall examine all jurors who appear for jury service. If, after all excuses have been allowed, there remain more than twenty-four petit jurors for each judge sitting with a jury who are qualified and not excluded by the terms of section 25-1650, the court may excuse by lot such number in excess of twenty-four as the court may see fit. Those jurors who have been discharged in excess of twenty-four for each judge, but are qualified, shall not be discharged permanently, but shall remain subject to be resummoned for jury service upon the same jury panel.

Source: Laws 1915, c. 248, § 7, p. 570; C.S.1922, § 9101; C.S.1929, § 20-1631; Laws 1939, c. 18, § 16, p. 107; C.S.Supp.,1941,

§ 20-1631; R.S.1943, § 25-1631; Laws 1953, c. 72, § 10(4), p. 231; Laws 1979, LB 234, § 10; R.S.1943, (2016), § 25-1631.03; Laws 2020, LB387, § 20.

25-1664 Petit jury; special jury panel in criminal cases.

Whenever there is pending in the criminal court any case in which the defendant is charged with a felony and the judge holding the court is convinced from the circumstances of the case that a jury cannot be obtained from the regular jury panel to try the case, the judge may, in his or her discretion, prior to the day fixed for the trial of the case, direct the jury commissioner to draw, in the same manner as described in section 25-1656, such number of names as the judge or judges may direct as a special jury panel from which a jury may be selected to try such case, which jury panel shall be summoned for such day in the same manner as the regular jury panel.

Source: Laws 1915, c. 248, § 8, p. 571; C.S.1922, § 9102; C.S.1929, § 20-1632; R.S.1943, § 25-1632; Laws 1953, c. 72, § 11(2), p. 232; R.S.1943, (2016), § 25-1632.01; Laws 2020, LB387, § 21.

25-1665 Petit jury; extra jurors to complete jury panel; tales jurors.

(1) If for any reason it appears to the judge that the jury panel of petit jurors will not be adequate at any time during the jury term, the jury commissioner shall, when ordered by the judge, draw, in the same manner as the drawing of a regular jury panel under section 25-1656, such number of potential jurors as the judge directs to fill such jury panel or as extra jurors, and those drawn shall be notified and summoned in the same manner as described in section 25-1656 or as the court may direct. This shall also apply to the selection of tales jurors for particular causes after the regular jury panel is exhausted.

(2) Each person summoned under subsection (1) of this section shall forthwith appear before the court and if qualified shall serve on the jury panel unless such person is excused from service or lawfully challenged. If necessary, jurors shall continue to be so drawn from time to time until the jury panel is filled.

Source: Laws 1915, c. 248, § 10, p. 572; C.S.1922, § 9104; C.S.1929, § 20-1634; R.S.1943, § 25-1634; Laws 1953, c. 72, § 13(1), p. 234; R.S.1943, (2016), § 25-1634; Laws 2020, LB387, § 22.

25-1666 Petit jury; tales jurors; how chosen.

(1) When it is deemed necessary, the judge shall direct the jury commissioner or the sheriff of the county or such other person as may be designated by the judge to summon from the bystanders or the body of the county a sufficient number of persons having the qualifications of jurors, as provided in section 25-1650, to serve as tales jurors to fill the jury panel, in order that a jury may be obtained.

(2) The persons summoned under subsection (1) of this section who are not chosen to serve on the jury shall be discharged from the jury panel as soon as the judge so determines. Such persons shall not thereafter be disqualified from service as jurors when regularly drawn from the jury list pursuant to the Jury Selection Act unless excused by the judge.

Source: Laws 1915, c. 248, § 10, p. 572; C.S.1922, § 9104; C.S.1929, § 20-1634; R.S.1943, § 25-1634; Laws 1953, c. 72, § 13(3), p. 235; R.S.1943, (2016), § 25-1634.02; Laws 2020, LB387, § 23.

25-1667 Petit jury; postponement of service.

The court may postpone service of a petit juror from one jury panel to a specific future jury panel. A written form may be completed for each such juror, giving the juror's name and address and the reason for the postponement and bearing the signature of the district judge. Such form shall be entered upon the record of the court. The names of jurors transferred from one jury panel to another shall be added to the names drawn for a particular jury panel as drawn under section 25-1662.

Source: Laws 1915, c. 248, § 10, p. 572; C.S.1922, § 9104; C.S.1929, § 20-1634; R.S.1943, § 25-1634; Laws 1953, c. 72, § 13(2), p. 235; Laws 1965, c. 124, § 1, p. 461; R.S.1943, (2016), § 25-1634.01; Laws 2020, LB387, § 24.

25-1668 Grand jury; potential jurors; how and when drawn; juror qualification form.

(1) Unless the judge or judges order that no grand jury be drawn, after creating the master key list under section 25-1654, the jury commissioner shall draw potential jurors from the master key list for service on grand juries for the jury term in the manner and number provided in this section or as the judge or judges otherwise direct. In drawing names, the jury commissioner may use a manual jury selection process or a jury management system.

(2) If the judge or judges initially order that no grand jury be drawn, such judge or judges may at any time thereafter order the drawing of a grand jury.

(3) The jury commissioner shall draw such number of potential jurors for grand jury service:

(a) As the jury commissioner deems necessary to arrive at a list of eighty persons who possess the qualifications of jurors set forth in section 25-1650; or

(b) As the judge or judges may otherwise direct.

(4)(a) If the jury commissioner uses the two-step qualifying and summoning system, he or she shall deliver to each potential juror a juror qualification form pursuant to section 25-1657.

(b) If the jury commissioner uses the one-step qualifying and summoning system, he or she shall deliver to each potential juror a juror qualification form pursuant to section 25-1657 and shall serve the potential juror with a summons pursuant to section 25-1660.

Source: Laws 2020, LB387, § 25.

25-1669 Grand jury; how drawn; alternate jurors.

(1) When the law requires that a grand jury be empaneled or when ordered by the judge or judges, the jury commissioner shall draw grand jurors pursuant to this section.

(2) The jury commissioner shall draw by chance forty names, or such other number as directed by the judge or judges, of persons the jury commissioner has investigated and determined to be qualified pursuant to section 25-1668. The jury commissioner shall then prepare a list of such names. Such list shall also contain the place of residence and occupation of each person on the list.

(3) The jury commissioner shall notify or summon persons selected under subsection (2) of this section as directed by the judge or judges.

(4) The list of names drawn pursuant to subsection (2) of this section shall then be turned over by the jury commissioner to a board to consist of the jury commissioner, the presiding judge of the district court, and one other person whom the presiding judge shall designate. The presiding judge shall be the chairperson. Such board shall select from such list the names of sixteen persons to serve as grand jurors and the names of three additional persons to serve as alternate jurors.

(5) The alternate jurors shall sit with the grand jury and participate in all investigative proceedings to the same extent as the regular grand jurors. Alternate grand jurors shall be permitted to question witnesses, review evidence, and participate in all discussions of the grand jury which occur prior to the conclusion of presentation of evidence. When the grand jury has determined that no additional evidence is necessary for its investigation, the alternate grand jurors shall be separated from the regular grand jurors and shall not participate in any further discussions, deliberations, or voting of the grand jury unless one or more of the regular grand jurors is or are excused because of illness or other sufficient reason. Such alternate jurors shall fill vacancies in the order of their selection.

Source: Laws 1915, c. 248, § 9, p. 572; Laws 1921, c. 113, § 1, p. 393; C.S.1922, § 9103; C.S.1929, § 20-1633; Laws 1939, c. 18, § 17, p. 108; C.S.Supp.,1941, § 20-1633; R.S.1943, § 25-1633; Laws 1953, c. 72, § 12(1), p. 232; Laws 1999, LB 72, § 1; R.S.1943, (2016), § 25-1633; Laws 2020, LB387, § 26.

25-1670 Juror; serve; limitations.

In any five-year period no person shall be required to:

(1) Serve as a petit juror for more than four calendar weeks, except if necessary to complete service in a particular case;

(2) Serve on more than one grand jury; or

(3) Serve as both a grand and petit juror.

Source: Laws 1979, LB 234, § 16; Laws 1980, LB 733, § 3; R.S.1943, (2016), § 25-1639; Laws 2020, LB387, § 27.

25-1671 County court; advance jury selection; when authorized.

All parties to an action which is filed with a county court of this state may agree that the jury may be selected up to thirty-one days prior to the date of trial. The stipulation must be unanimous among all parties and evidenced by a joint stipulation to the court.

Source: Laws 1996, LB 1249, § 1; R.S.1943, (2016), § 25-1631; Laws 2020, LB387, § 28.

25-1672 Jury trial; notice to jury commissioner; waiver.

The clerk magistrate shall provide written notice of a jury trial to the jury commissioner not less than thirty days prior to trial. The notice shall set forth the number of petit jurors to be summoned and the day and hour the petit jurors are to appear before the court. The requirements of this section may be waived upon an agreement between the jury commissioner and the clerk magistrate or judicial administrator.

Source: Laws 2020, LB387, § 29.

25-1673 Jurors; disclosing names; when permissible; penalty; access to juror qualification forms.

(1) It shall be unlawful for a jury commissioner, any clerk or deputy thereof, or any person who may obtain access to any record showing the names of persons drawn to serve as grand or petit jurors to disclose to any person, except to other officers in carrying out official duties or as provided in the Jury Selection Act, the name of any person so drawn or to permit any person to examine such record or to make a list of such names, except under order of the court. The application for such an order shall be filed in the form of a motion in the office of the clerk of the district court, containing the signature and residence of the applicant or his or her attorney and stating all the grounds on which the request for such order is based. Such order shall not be made except for good cause shown in open court and it shall be spread upon the record of the court. Any person violating any of the provisions of this section shall be guilty of a Class IV felony. Notwithstanding the foregoing provisions of this section, the judge or judges in any district may, in his, her, or their discretion, provide by express order for the disclosure of the names of persons drawn for actual service as grand or petit jurors.

(2) Notwithstanding subsection (1) of this section, the Supreme Court or an agent of the Supreme Court acting under the direction and supervision of the Chief Justice shall have access to juror qualification forms for research purposes. The Supreme Court and its agent shall treat such information as confidential, and nothing identifying any individual shall be released.

Source: Laws 1915, c. 248, § 11, p. 573; C.S.1922, § 9105; C.S.1929, § 20-1635; R.S.1943, § 25-1635; Laws 1949, c. 56, § 1, p. 167; Laws 1953, c. 72, § 14, p. 235; Laws 1977, LB 40, § 102; Laws 2005, LB 105, § 2; Laws 2018, LB193, § 31; R.S.Supp.,2018, § 25-1635; Laws 2020, LB387, § 30.

25-1674 Employee; penalized due to jury service; prohibited; penalty.

Any person who is summoned to serve on jury duty shall not be subject to discharge from employment, loss of pay, loss of sick leave, loss of vacation time, or any other form of penalty as a result of his or her absence from employment due to such jury duty upon giving reasonable notice to his or her employer of such summons. Any person who is summoned to serve on jury duty shall be excused upon request from any shift work for those days required to serve as a juror without loss of pay. No employer shall subject an employee to discharge, loss of pay, loss of sick leave, loss of vacation time, or any other form of penalty on account of his or her absence from employment by reason of jury duty, except that an employer may reduce the pay of an employee by an amount equal to any compensation, other than expenses, paid by the court for jury duty. Any person violating this section shall be guilty of a Class IV misdemeanor.

Source: Laws 1979, LB 234, § 17; Laws 1980, LB 733, § 4; R.S.1943, (2016), § 25-1640; Laws 2020, LB387, § 31.

25-1675 Act; neglect or failure by officers; contempt of court.

If any jury commissioner or deputy jury commissioner, sheriff or deputy sheriff, or person having charge of election records neglects or fails to perform

the duties imposed by the Jury Selection Act, the person so offending shall be guilty of contempt of court.

Source: R.S.1867, Code § 667, p. 511; R.S.1913, § 8146; C.S.1922, § 9081; C.S.1929, § 20-1611; R.S.1943, § 25-1611; Laws 1953, c. 72, § 5, p. 226; Laws 1979, LB 234, § 5; R.S.1943, (2016), § 25-1611; Laws 2020, LB387, § 32.

25-1676 Jury list; tampering; solicitation; penalty.

If any person places a name or asks to have a name placed on any list of potential jurors for service on any grand or petit jury in a manner not authorized by the Jury Selection Act, such person shall be guilty of a Class IV felony.

Source: Laws 1915, c. 248, § 6, p. 570; C.S.1922, § 1900; C.S.1929, § 20-1630; Laws 1939, c. 18, § 15, p. 107; C.S.Supp.,1941, § 20-1630; R.S.1943, § 25-1630; Laws 1977, LB 40, § 101; R.S. 1943, (2016), § 25-1630; Laws 2020, LB387, § 33.

25-1677 Packing juries; solicitation of jury service; penalties.

(1) If a sheriff or other officer corruptly or through favor or ill will summons a juror with the intent that such juror shall find a verdict for or against either party, or summons a grand juror from like motives with the intent that such grand juror shall or shall not find an indictment or presentment against any particular individual, the sheriff or other officer shall be fined not exceeding five hundred dollars, shall forfeit his or her office, and shall be forever disqualified from holding any office in this state.

(2) Any person who seeks the position of juror or who asks any attorney or other officer of the court or any other person or officer in any manner charged with the duty of selecting the jury to secure or procure his or her selection as a juror shall be guilty of contempt of court, shall be fined not exceeding twenty dollars, and shall thereby be disqualified from serving as a juror for that jury term.

(3) Any attorney or party to a suit pending for trial at that jury term who requests or solicits the placing of any person upon a jury, or upon any list of potential jurors for service on any grand or petit jury, shall be guilty of contempt of court and be fined not exceeding one hundred dollars, and the person so sought to be put upon the jury or list shall be disqualified to serve as a juror for that jury term.

Source: R.S.1867, Code § 668, p. 512; Laws 1901, c. 83, § 2, p. 477; R.S.1913, § 8147; C.S.1922, § 9082; C.S.1929, § 20-1612; R.S. 1943, § 25-1612; R.S.1943, (2016), § 25-1612; Laws 2020, LB387, § 34.

25-1678 Juries; proceedings stayed; jury panel or list quashed; grounds; procedures; new list, order for.

(1) A party may move to stay the proceedings, to quash the entire jury panel or jury list, or for other appropriate relief on the ground of substantial failure to comply with the Jury Selection Act in selecting the grand or petit jury. Such motion shall be made within seven days after the moving party discovered or by

the exercise of diligence could have discovered the grounds for such motion, and in any event before the petit jury is sworn to try the case.

(2) Upon a motion filed under subsection (1) of this section containing a sworn statement of facts which, if true, would constitute a substantial failure to comply with the Jury Selection Act, the moving party is entitled to present, in support of the motion, the testimony of the jury commissioner, any relevant records and papers not public or otherwise available which were used by the jury commissioner, and any other relevant evidence. If the court determines that in selecting either a grand jury or a petit jury there has been a substantial failure to comply with the Jury Selection Act, the court shall stay the proceedings pending the selection of the jury in conformity with the act, quash an entire jury panel or jury list, or grant other appropriate relief.

(3) The procedures prescribed by this section are the exclusive means by which the state, a person accused of a crime, or a party in a civil case may challenge a jury on the ground that the jury was not selected in conformity with the Jury Selection Act.

(4) The contents of any records or papers used by the jury commissioner in connection with the selection process and not made public under the Jury Selection Act shall not be disclosed, except in connection with the preparation or presentation of a motion under subsection (1) of this section, until after all persons on the jury list have been discharged. The parties in a case may inspect, reproduce, and copy the records or papers at all reasonable times during the preparation and pendency of a motion under subsection (1) of this section.

(5) Whenever the entire jury list is quashed, the court shall make an order directing the jury commissioner to draw a new key number in the manner provided in section 25-1653 and prepare a new master key list in the manner provided in section 25-1654. The jury commissioner shall qualify and summon jurors from the new master key list as provided in the Jury Selection Act.

Source: Laws 1915, c. 248, § 13, p. 577; C.S.1922, § 9108; C.S.1929, § 20-1637; R.S.1943, § 25-1637; Laws 1959, c. 102, § 3, p. 425; Laws 1979, LB 234, § 11; Laws 1985, LB 113, § 4; R.S.1943, (2016), § 25-1637; Laws 2020, LB387, § 35; Laws 2022, LB922, § 4.

ARTICLE 18

EXPENSES AND ATTORNEY'S FEES

Section
25-1801. Lawsuit of four thousand dollars or less; recovery; costs; interest; attorney's fees.
25-1810. Civil action or proceeding; appeal; award of attorney's fees by appellate court, when.

25-1801 Lawsuit of four thousand dollars or less; recovery; costs; interest; attorney's fees.

(1) On any lawsuit of four thousand dollars or less, regardless of whether the claims are liquidated or assigned, the plaintiff may recover costs, interest, and attorney's fees in connection with each claim as provided in this section. If, at the expiration of ninety days after each claim accrued, the claim or claims have not been paid or satisfied, the plaintiff may file a lawsuit for payment of the claim or claims. If full payment of each claim is made to the plaintiff by or on

behalf of the defendant after the filing of the lawsuit, but before judgment is taken, except as otherwise agreed in writing by the plaintiff, the plaintiff shall be entitled to receive the costs of the lawsuit whether by voluntary payment or judgment. If the plaintiff secures a judgment thereon, the plaintiff shall be entitled to recover:

(a) The full amount of such judgment and all costs of the lawsuit thereon;

(b) Interest at the rate of six percent per annum. Such interest shall apply to the amount of the total claim beginning thirty days after the date each claim accrued, regardless of assignment, until paid in full; and

(c) If the plaintiff has an attorney retained, employed, or otherwise working in connection with the case, an amount for attorney's fees as provided in this section.

(2) If the cause is taken to an appellate court and the plaintiff recovers a judgment thereon, the appellate court shall tax as costs in the action, to be paid to the plaintiff, an additional amount for attorney's fees in such appellate court as provided in this section, except that if the plaintiff fails to recover a judgment in excess of the amount that may have been tendered by the defendant, then the plaintiff shall not recover the attorney's fees provided by this section.

(3) Attorney's fees shall be assessed by the court in a reasonable amount, but shall in no event be less than ten dollars when the judgment is fifty dollars or less, and when the judgment is over fifty dollars up to four thousand dollars, the attorney's fee shall be ten dollars plus ten percent of the judgment in excess of fifty dollars.

(4) For purposes of this section, the date that each claim accrued means the date the services, goods, materials, labor, or money were provided, or the date the charges were incurred by the debtor, unless some different time period is expressly set forth in a written agreement between the parties.

(5) This section shall apply to original creditors as well as their assignees and successors.

(6) This section does not apply to a cause of action alleging personal injury, regardless of the legal theory asserted.

Source: Laws 1919, c. 191, § 1, p. 865; C.S.1922, § 9126; C.S.1929, § 20-1801; R.S.1943, § 25-1801; Laws 1951, c. 70, § 1, p. 225; Laws 1955, c. 92, § 1, p. 269; Laws 1967, c. 150, § 1, p. 446; Laws 1993, LB 121, § 171; Laws 2009, LB35, § 13; Laws 2018, LB710, § 1.

Cross References

For interest on unsettled accounts, see section 45-104.

25-1810 Civil action or proceeding; appeal; award of attorney's fees by appellate court, when.

A statute that authorizes the award of attorney's fees to a party in a civil action or proceeding also authorizes an appellate court to award attorney's fees if the party prevails on an appeal from a judgment or order in the action or proceeding. This section does not apply if another section of law specifically authorizes or prohibits the award of attorney's fees on an appeal from such a judgment or order.

Source: Laws 2023, LB157, § 1.

ARTICLE 19

REVERSAL OR MODIFICATION OF JUDGMENTS AND ORDERS BY APPELLATE COURTS

(a) REVIEW ON PETITION IN ERROR

(b) REVIEW ON APPEAL

(a) REVIEW ON PETITION IN ERROR

25-1902 Final order, defined; appeal.

(1) The following are final orders which may be vacated, modified, or reversed:

(a) An order affecting a substantial right in an action, when such order in effect determines the action and prevents a judgment;

(b) An order affecting a substantial right made during a special proceeding;

(c) An order affecting a substantial right made on summary application in an action after a judgment is entered; and

(d) An order denying a motion for summary judgment when such motion is based on the assertion of sovereign immunity or the immunity of a government official.

(2) An order under subdivision (1)(d) of this section may be appealed pursuant to section 25-1912 within thirty days after the entry of such order or within thirty days after the entry of judgment.

Source: R.S.1867, Code § 581, p. 496; R.S.1913, § 8176; C.S.1922, § 9128; C.S.1929, § 20-1902; R.S.1943, § 25-1902; Laws 2019, LB179, § 1.

(b) REVIEW ON APPEAL

25-1912 Appeal; civil and criminal actions; procedure; notice of appeal; docketing fee; filing of transcript.

(1) The proceedings to obtain a reversal, vacation, or modification of judgments and decrees rendered or final orders made by the district court, including judgments and sentences upon convictions for felonies and misdemeanors, shall be by filing in the office of the clerk of the district court in which such judgment, decree, or final order was rendered, within thirty days after the entry of such judgment, decree, or final order, a notice of intention to prosecute such appeal signed by the appellant or appellants or his, her, or their attorney of record and, except as otherwise provided in sections 25-2301 to 25-2310 and 29-2306 and subsection (4) of section 48-638, by depositing with the clerk of the district court the docket fee required by section 33-103.

(2) A notice of appeal or docket fee filed or deposited after the announcement of a decision or final order but before the entry of the judgment, decree, or final order shall be treated as filed or deposited after the entry of the judgment, decree, or final order and on the date of entry.

(3) The running of the time for filing a notice of appeal shall be terminated as to all parties (a) by a timely motion for a new trial under section 25-1144.01, (b) by a timely motion to alter or amend a judgment under section 25-1329, or (c) by a timely motion to set aside the verdict or judgment under section 25-1315.02, and the full time for appeal fixed in subsection (1) of this section commences to run from the entry of the order ruling upon the motion filed pursuant to subdivision (a), (b), or (c) of this subsection. When any motion terminating the time for filing a notice of appeal is timely filed by any party, a notice of appeal filed before the court announces its decision upon the terminating motion shall have no effect, whether filed before or after the timely filing of the terminating motion. A new notice of appeal shall be filed within the prescribed time after the entry of the order ruling on the motion. No additional fees are required for such filing. A notice of appeal filed after the court announces its decision or order on the terminating motion but before the entry of the order is treated as filed on the date of and after the entry of the order.

(4) Except as otherwise provided in subsection (3) of this section, sections 25-2301 to 25-2310 and 29-2306, and subsection (4) of section 48-638, an appeal shall be deemed perfected and the appellate court shall have jurisdiction of the cause when such notice of appeal has been filed and such docket fee deposited in the office of the clerk of the district court. After being perfected no appeal shall be dismissed without notice, and no step other than the filing of such notice of appeal and the depositing of such docket fee shall be deemed jurisdictional.

(5) The clerk of the district court shall forward such docket fee and a certified copy of such notice of appeal to the Clerk of the Supreme Court, and the Clerk of the Supreme Court shall file such appeal.

(6) Within thirty days after the date of filing of notice of appeal, the clerk of the district court shall prepare and file with the Clerk of the Supreme Court a transcript certified as a true copy of the proceedings contained therein. The Supreme Court shall, by rule, specify the method of ordering the transcript and the form and content of the transcript. Neither the form nor substance of such transcript shall affect the jurisdiction of the Court of Appeals or Supreme Court.

(7) Nothing in this section shall prevent any person from giving supersedeas bond in the district court in the time and manner provided in section 25-1916 nor affect the right of a defendant in a criminal case to be admitted to bail pending the review of such case in the Court of Appeals or Supreme Court.

Source: Laws 1907, c. 162, § 1, p. 495; R.S.1913, § 8186; Laws 1917, c. 140, § 1, p. 326; C.S.1922, § 9138; C.S.1929, § 20-1912; Laws 1941, c. 32, § 1, p. 141; C.S.Supp.,1941, § 20-1912; R.S.1943, § 25-1912; Laws 1947, c. 87, § 1, p. 265; Laws 1961, c. 135, § 1, p. 388; Laws 1981, LB 411, § 5; Laws 1982, LB 720, § 2; Laws 1982, LB 722, § 2; Laws 1986, LB 530, § 2; Laws 1986, LB 529, § 25; Laws 1991, LB 732, § 52; Laws 1995, LB 127, § 1; Laws 1997, LB 398, § 1; Laws 1999, LB 43, § 8; Laws 1999, LB 689, § 1; Laws 2000, LB 921, § 15; Laws 2017, LB172, § 2; Laws 2018, LB193, § 32.

Cross References

For amount of docket fee, see section 33-103.

ARTICLE 21

ACTIONS AND PROCEEDINGS IN PARTICULAR CASES

(e) FORECLOSURE OF MORTGAGES

25-2154 Satisfaction or payment; certificate; delivery to register of deeds; duties of clerk of district court; fee of register of deeds.

In all cases of foreclosure of mortgages in the several counties in the state, it shall be the duty of the clerk of the district court, on the satisfaction or payment of the amount of the decree, to forward to the register of deeds a certificate setting forth the names of parties, plaintiff and defendant, descriptions of the premises mentioned in the decree, and the book and page where the mortgage foreclosed is recorded. For such certificate the clerk of the district court shall collect the fee required pursuant to section 33-109 for recording the certificate. Such amount shall be taxed as part of the costs in the case, and such sum shall be paid to the register of deeds as the fee for recording the certificate.

Source: Laws 1887, c. 63, § 1, p. 564; R.S.1913, § 5614; C.S.1922, § 4933; C.S.1929, § 26-1010; R.S.1943, § 25-2154; Laws 1951, c. 106, § 1, p. 512; Laws 1959, c. 140, § 3, p. 546; Laws 1971, LB 495, § 1; Laws 2012, LB14, § 3; Laws 2017, LB152, § 1; Laws 2017, LB268, § 2.

(p) MISCELLANEOUS

25-21,186 Emergency care at scene of emergency; persons relieved of civil liability, when.

(1) No person who renders emergency care at the scene of an accident or other emergency gratuitously, shall be held liable for any civil damages as a result of any act or omission by such person in rendering the emergency care or as a result of any act or failure to act to provide or arrange for medical treatment or care for the injured person.

(2) For purposes of this section, rendering emergency care at the scene of an accident or other emergency includes entering a motor vehicle to remove a child when entering the vehicle and removing the child is necessary to avoid immediate harm to the child.

Source: Laws 1961, c. 110, § 1, p. 349; Laws 1971, LB 458, § 1; R.S.1943, (1979), § 25-1152; Laws 2020, LB832, § 1.

(s) SHOPLIFTING

25-21,194 Repealed. Laws 2019, LB71, § 3.

(v) ACTIONS IN WHICH THE STATE OR A STATE AGENCY IS A PARTY

25-21,212 Judgment against claimant; transmitted to other counties; how collected.

In any action in which a judgment is rendered in any sum, or for costs, against the claimant, the clerk of the court in which such judgment is rendered shall make and transmit a certified copy thereof on application of the Attorney General or other counsel on behalf of the state, to the clerk of the district court of any county within the state and the same shall thereupon be filed and recorded in such court and become and be a judgment thereof. All judgments against the claimant or plaintiff shall be collected by execution as other judgments in the district courts.

Source: Laws 1877, § 13, p. 23; R.S.1913, § 1189; C.S.1922, § 1111; C.S.1929, § 27-330; R.S.1943, § 24-330; R.S.1943, (1985), § 24-330; Laws 2018, LB193, § 33.

(w) FORCIBLE ENTRY AND DETAINER

25-21,219 Forcible entry and detainer; jurisdiction; exceptions.

The district and county courts shall have jurisdiction over complaints of unlawful and forcible entry into lands and tenements and the detention of the same and of complaints against those who, having a lawful and peaceable entry into lands or tenements, unlawfully and by force hold the same. If the court finds that an unlawful and forcible entry has been made and that the same lands or tenements are held by force or that the same, after a lawful entry, are held unlawfully, the court shall cause the party complaining to have restitution thereof. The court or the jury, as the situation warrants, shall inquire into the matters between the two litigants such as the amount of rent owing the plaintiff and the amount of damage caused by the defendant to the premises while they were occupied by him or her and render a judgment or verdict accordingly. This section shall not apply to actions for possession of any premises subject to the provisions of the Uniform Residential Landlord and Tenant Act or the Mobile Home Landlord and Tenant Act.

Source: Laws 1929, c. 82, § 117, p. 309; C.S.1929, § 22-1201; R.S.1943, § 26-1,118; Laws 1965, c. 129, § 1, p. 468; R.R.S.1943,

§ 26-1,118; Laws 1972, LB 1032, § 68; Laws 1974, LB 293, § 48; Laws 1984, LB 13, § 27; Laws 1984, LB 1113, § 1; R.S.1943, (1985), § 24-568; Laws 2021, LB320, § 1.

Cross References

Mobile Home Landlord and Tenant Act, see section 76-1450.
Uniform Residential Landlord and Tenant Act, see section 76-1401.

25-21,228 Forcible entry and detainer; verdict; entry; judgment.

The court shall enter the verdict upon the record and shall render such judgment in the action as if the facts authorizing the finding of such verdict had been found to be true by the court.

Source: Laws 1929, c. 82, § 127, p. 311; C.S.1929, § 22-1211; R.S.1943, § 26-1,128; Laws 1972, LB 1032, § 78; R.S.1943, (1985), § 24-578; Laws 2018, LB193, § 34.

(hh) CHANGE OF NAME

25-21,271 Change of name; persons; procedure; clerk of the district court; duty.

(1) Any person desiring to change his or her name shall file a petition in the district court of the county in which such person may be a resident, setting forth (a) that the petitioner has been a bona fide citizen of such county for at least one year prior to the filing of the petition, (b) the address of the petitioner, (c) the date of birth of the petitioner, (d) the cause for which the change of petitioner's name is sought, and (e) the name asked for.

(2)(a) Except as provided in subdivision (2)(b) of this section, notice of the filing of the petition shall be published in a newspaper in the county, and if no newspaper is printed in the county, then in a newspaper of general circulation therein. The notice shall be published (i) once a week for four consecutive weeks if the petitioner is nineteen years of age or older at the time the action is filed and (ii) once a week for two consecutive weeks if the petitioner is under nineteen years of age at the time the action is filed.

(b) The court may waive the notice requirement of subdivision (2)(a) of this section upon a showing by the petitioner that such notice would endanger the petitioner.

(3) In an action involving a petitioner under nineteen years of age who has a noncustodial parent, notice of the filing of the petition shall be sent by certified mail within five days after publication to the noncustodial parent at the address provided to the clerk of the district court pursuant to subsection (1) of section 42-364.13 for the noncustodial parent if he or she has provided an address. The clerk of the district court shall provide the petitioner with the address upon request.

(4) It shall be the duty of the district court, upon being duly satisfied by proof in open court of the truth of the allegations set forth in the petition, that there exists proper and reasonable cause for changing the name of the petitioner, and that notice of the filing of the petition has been given as required by this section, to order and direct a change of name of such petitioner and that an order for the purpose be entered by the court.

(5) The clerk of the district court shall deliver a copy of any name-change order issued by the court pursuant to this section to the Department of Health and Human Services for use pursuant to sections 28-376 and 28-718 and to the sex offender registration and community notification division of the Nebraska State Patrol for use pursuant to section 29-4004.

Source: Laws 1871, p. 62; R.S.1913, § 5316; C.S.1922, § 4609; C.S.1929, § 61-102; R.S.1943, § 61-102; Laws 1963, c. 367, § 1, p. 1184; Laws 1994, LB 892, § 1; Laws 1995, LB 161, § 1; R.S.1943, (1996), § 61-102; Laws 2010, LB147, § 1; Laws 2018, LB193, § 35; Laws 2022, LB519, § 1.

25-21,273 Change of name; effect; costs; how taxed; exception.

(1) Unless the petitioner is allowed to proceed in forma pauperis in accordance with sections 25-2301 to 25-2310, all proceedings under sections 25-21,270 to 25-21,272 shall be at the cost of the petitioner, for which fee-bill or execution may issue as in civil cases.

(2) Any change of names under such sections shall not in any manner affect or alter any right of action, legal process, or property.

Source: Laws 1871, p. 63; R.S.1913, § 5318; C.S.1922, § 4611; C.S.1929, § 61-104; R.S.1943, § 61-104; R.S.1943, (1996), § 61-104; Laws 2023, LB157, § 4.

(ll) EMERGENCY RESPONSE TO ASTHMA OR ALLERGIC REACTIONS

25-21,280 School, educational service unit, early childhood education program, school nurse, medication aide, and nonmedical staff person; physician; health care professional; pharmacist; immunity; when.

(1) Any person employed by a school approved or accredited by the State Department of Education, employed by an educational service unit and working in a school approved or accredited by the department, or employed by an early childhood education program approved by the department who serves as a school nurse or medication aide or who has been designated and trained by the school, educational service unit, or program as a nonmedical staff person to implement the emergency response to life-threatening asthma or systemic allergic reactions protocols adopted by the school, educational service unit, or program shall be immune from civil liability for any act or omission in rendering emergency care for a person experiencing a potentially life-threatening asthma or allergic reaction event on school grounds, in a vehicle being used for school purposes, in a vehicle being used for educational service unit purposes, at a school-sponsored activity or athletic event, at a facility used by the early childhood education program, in a vehicle being used for early childhood education program purposes, or at an activity sponsored by the early childhood education program which results in damage or injury unless such damage or injury was caused by the willful or wanton act or omission of such employee.

(2) The individual immunity granted by subsection (1) of this section shall not extend to the school district, educational service unit, or early childhood education program and shall not extend to any act or omission of such employee which results in damage or injury if the damage or injury is caused

by such employee while impaired by alcohol or any controlled substance enumerated in section 28-405.

(3) Any school nurse, such nurse's designee, or other designated adult described in section 79-224 shall be immune from civil liability for any act or omission described in such section which results in damage or injury unless such damage or injury was caused by the willful or wanton act or omission of such school nurse, nurse's designee, or designated adult.

(4) A physician or other health care professional may issue a non-patient-specific prescription for medication for response to life-threatening asthma or anaphylaxis to a school, an educational service unit, or an early childhood education program as described in subsection (1) of this section. The physician or other health care professional shall be immune from liability for issuing such prescription unless he or she does not exercise reasonable care under the circumstances in signing the prescription. In no circumstance shall a physician or other health care professional be liable for the act or omission of another who provides or in any way administers the medication prescribed by the physician or other health care professional.

(5) A pharmacist may dispense medication pursuant to a non-patient-specific prescription for response to life-threatening asthma or anaphylaxis to a school, an educational service unit, or an early childhood education program as described in subsection (1) of this section. The pharmacist shall be immune from liability for dispensing medication pursuant to a non-patient-specific prescription unless the pharmacist does not exercise reasonable care under the circumstances in dispensing the medication. In no circumstance shall a pharmacist be liable for the act or omission of another who provides or in any way administers the medication dispensed by the pharmacist.

(6) For purposes of this section, the name of the school, educational service unit, or early childhood education program shall serve as the patient name on the non-patient-specific prescription.

Source: Laws 2004, LB 868, § 2; Laws 2005, LB 361, § 30; Laws 2006, LB 1148, § 2; Laws 2017, LB487, § 1.

(qq) HUMAN TRAFFICKING VICTIMS CIVIL REMEDY ACT

25-21,299 Civil action authorized; recovery; attorney's fees and costs; order of attachment.

(1) Any trafficking victim, his or her parent or legal guardian, or personal representative in the event of such victim's death, who suffered or continues to suffer personal or mental injury, death, or any other damages proximately caused by such human trafficking may bring a civil action against any person who knowingly (a) engaged in human trafficking of such victim within this state or (b) aided or assisted in the human trafficking of such victim within this state.

(2) A plaintiff who prevails in a civil action brought pursuant to the Human Trafficking Victims Civil Remedy Act may recover his or her damages proximately caused by the actions of the defendant plus any and all attorney's fees and costs reasonably associated with the civil action.

(3) Damages recoverable pursuant to subsection (2) of this section include all damages otherwise recoverable under the law and include, but are not limited to:

(a) The physical pain and mental suffering the plaintiff has experienced and is reasonably certain to experience in the future;

(b) The reasonable value of the medical, hospital, nursing, and care and supplies reasonably needed by and actually provided to the plaintiff and reasonably certain to be needed and provided in the future;

(c) The reasonable value of transportation, housing, and child care reasonably needed and actually incurred by the plaintiff;

(d) The reasonable value of the plaintiff's labor and services the plaintiff has lost because he or she was a trafficking victim;

(e) The reasonable monetary value of the harm caused by the documentation and circulation of the human trafficking;

(f) The reasonable costs incurred by the plaintiff to relocate away from the defendant or the defendant's associates;

(g) In the event of death, damages available as in other actions for wrongful death; and

(h) The reasonable costs incurred by the plaintiff to participate in the criminal investigation or prosecution or attend criminal proceedings related to trafficking the plaintiff.

(4) In addition to all remedies available under this section, the court may enter an order of attachment pursuant to sections 25-1001 to 25-1010.

Source: Laws 2015, LB294, § 3; Laws 2019, LB519, § 1.

ARTICLE 22
GENERAL PROVISIONS

(b) CLERKS OF COURTS; DUTIES

(b) CLERKS OF COURTS; DUTIES

25-2205 Case file and record; preservation.

The clerk of each of the courts shall maintain and preserve a case file and a record of all documents delivered to him or her for that purpose in every action or special proceeding. Retention and disposition of the records shall be determined by the State Records Administrator pursuant to the Records Management Act.

Source: R.S.1867, Code § 884, p. 547; R.S.1913, § 8553; C.S.1922, § 9504; C.S.1929, § 20-2205; R.S.1943, § 25-2205; Laws 2018, LB193, § 36.

Cross References

Records Management Act, see section 84-1220.

25-2207 Record of service of summons; entry as evidence.

The clerk of the court shall, upon the return of every summons served, enter upon the record the name of the defendant or defendants summoned and the day of the service upon each one. The entry shall be evidence of the service of the summons in case of the loss thereof.

Source: R.S.1867, Code § 886, p. 548; R.S.1913, § 8555; C.S.1922, § 9506; C.S.1929, § 20-2207; R.S.1943, § 25-2207; Laws 2018, LB193, § 37.

25-2209 Clerk of district court; required records enumerated.

(1) The clerk of the district court shall keep records, to be maintained on the court's electronic case management system, called the register of actions, the trial docket, the judge's docket notes, the financial record, the general index, the judgment index, and the case file. Retention and disposition of the records shall be determined by the State Records Administrator pursuant to the Records Management Act.

(2) The case file, numbered in chronological order, shall contain the complaint or petition and subsequent pleadings in the case file. The case file may be maintained as an electronic document through the court's electronic case management system, on microfilm, or in a paper volume and disposed of when determined by the State Records Administrator pursuant to the Records Management Act.

(3) For purposes of this section:

(a) Financial record means the financial accounting of the court, including the recording of all money receipted and disbursed by the court and the receipts and disbursements of all money held as an investment;

(b) General index means the alphabetical listing of the names of the parties to the suit, both direct and inverse, with the case number where all proceedings in such action may be found;

(c) Judge's docket notes means the notations of the judge detailing the actions in a court proceeding and the entering of orders and judgments;

(d) Judgment index means the alphabetical listing of all judgment debtors and judgment creditors;

(e) Register of actions means the official court record and summary of the case; and

(f) Trial docket means a list of pending cases as provided in section 25-2211.

Source: R.S.1867, Code § 321, p. 448; G.S.1873, c. 57, § 321, p. 579; R.S.1913, § 8557; C.S.1922, § 9508; C.S.1929, § 20-2209; R.S.1943, § 25-2209; Laws 1971, LB 128, § 1; Laws 1992, LB 1059, § 13; Laws 2011, LB17, § 4; Laws 2018, LB193, § 38.

Cross References

Records Management Act, see section 84-1220.

25-2210 Repealed. Laws 2018, LB193, § 97.

25-2211 Trial docket.

The trial docket shall be available for the court on the first day of each month setting forth each case pending in the order of filing of the complaint to be called for trial. For the purpose of arranging the trial docket, an issue shall be considered as made up when either party is in default of a pleading. If the defendant fails to answer, the cause for the purpose of this section shall be deemed to be at issue upon questions of fact, but in every such case the plaintiff may move for and take such judgment as he or she is entitled to, on the defendant's default, on or after the day on which the action is set for trial. No witnesses shall be subpoenaed in any case while the cause stands upon issue of law. Whenever the court regards the answer in any case as frivolous and put in for delay only, no leave to answer or reply shall be given unless upon payment of all costs then accrued in the action. When the number of actions filed exceeds three hundred, the judge or judges of the district court for the county may, by rule or order, classify them in such manner as they may deem expedient and cause them to be placed according to such classifications upon different trial dockets and the respective trial dockets may be proceeded with and causes thereon tried, heard, or otherwise disposed of, concurrently by one or more of the judges. Provision may be made by rule of court that issues of fact shall not be for trial at any term when the number of pending actions exceeds three hundred, except upon such previous notice of trial as may be prescribed thereby.

Source: R.S.1867, Code § 323, p. 448; Laws 1887, c. 94, § 1, p. 647; Laws 1899, c. 83, § 1, p. 338; R.S.1913, § 8559; C.S.1922, § 9510; C.S.1929, § 20-2211; R.S.1943, § 25-2211; Laws 1951, c. 74, § 2(1), p. 230; Laws 2002, LB 876, § 54; Laws 2018, LB193, § 39.

25-2211.01 Repealed. Laws 2018, LB193, § 97.

25-2211.02 Repealed. Laws 2018, LB193, § 97.

25-2213 Clerks of courts of record other than district courts; duties.

The provisions of sections 25-2204 to 25-2211 shall, as far as applicable, apply to clerks of other courts of record.

Source: R.S.1867, Code § 888, p. 548; R.S.1913, § 8562; C.S.1922, § 9513; C.S.1929, § 20-2214; R.S.1943, § 25-2213; Laws 1992, LB 1059, § 14; Laws 2018, LB193, § 40.

(d) MISCELLANEOUS

25-2221 Time; how computed; offices may be closed, when; federal holiday schedule observed; exceptions.

Except as may be otherwise more specifically provided, the period of time within which an act is to be done in any action or proceeding shall be computed by excluding the day of the act, event, or default after which the designated period of time begins to run. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a day during which the offices of courts of record may be legally closed as provided in this section, in which event the period shall run until the end of the next day on which the office will be open.

All courts and their offices may be closed on Saturdays, Sundays, days on which a specifically designated court is closed by order of the Chief Justice of

the Supreme Court, and these holidays: New Year's Day, January 1; Birthday of Martin Luther King, Jr., the third Monday in January; President's Day, the third Monday in February; Arbor Day, the last Friday in April; Memorial Day, the last Monday in May; Juneteenth National Independence Day, June 19; Independence Day, July 4; Labor Day, the first Monday in September; Indigenous Peoples' Day and Columbus Day, the second Monday in October; Veterans Day, November 11; Thanksgiving Day, the fourth Thursday in November; the day after Thanksgiving; Christmas Day, December 25; and all days declared by law or proclamation of the Governor to be holidays. Such days shall be designated as nonjudicial days. 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. Court services shall be available on all other days. If the date designated by the state for observance of any legal holiday pursuant to this section, except Veterans Day, is different from the date of observance of such holiday pursuant to a federal holiday schedule, the federal holiday schedule shall be observed.

Source: R.S.1867, Code § 895, p. 549; R.S.1913, § 8570; C.S.1922, § 9521; C.S.1929, § 20-2222; R.S.1943, § 25-2221; Laws 1959, c. 108, § 1, p. 437; Laws 1967, c. 151, § 1, p. 448; Laws 1969, c. 844, § 1, p. 3179; Laws 1973, LB 34, § 1; Laws 1975, LB 218, § 1; Laws 1978, LB 855, § 1; Laws 1988, LB 821, § 1; Laws 1988, LB 909, § 1; Laws 2002, LB 876, § 55; Laws 2003, LB 760, § 6; Laws 2011, LB669, § 17; Laws 2020, LB848, § 2; Laws 2022, LB29, § 1.

25-2228 Legal notices; how published.

(1) All legal publications and notices of whatever kind or character that may by law be required to be published a certain number of days or a certain number of weeks shall be legally published when they have been published in one issue in each week in a daily, semiweekly, or triweekly newspaper, such publication in such daily, semiweekly, or triweekly paper or papers to be made upon any one day of the week upon which such paper is published. Nothing in this section shall be construed as preventing the publication of such legal notices and publications in weekly newspapers. Any newspaper publishing such legal notices or publications as provided in this section shall be otherwise qualified under existing law to publish such notices or publications. All legal publications and all notices of whatever kind or character that may be required by law to be published a certain number of days or a certain number of weeks, shall be and hereby are declared to be legally published when they shall have been published once a week in a weekly, semiweekly, triweekly, or daily newspaper for the number of weeks, covering the period of publication. For the purpose of this section, when a newspaper is published regularly four or more times each week, it shall be deemed a daily newspaper.

(2) Beginning October 1, 2022, all legal publications and notices of whatever kind or character that may by law be required to be published a certain number of days or a certain number of weeks shall also be posted by the newspaper publishing such legal publications or notices on a statewide website established and maintained as a repository for such notices by a majority of Nebraska newspapers. A website posting or a failure to make such website posting under

this subsection shall not affect the validity of the publication or notice published under subsection (1) of this section.

Source: Laws 1917, c. 202, § 1, p. 481; C.S.1922, § 9528; Laws 1923, c. 100, § 1, p. 255; Laws 1927, c. 63, § 1, p. 225; C.S.1929, § 20-2229; R.S.1943, § 25-2228; Laws 1943, c. 47, § 1, p. 198; Laws 1996, LB 299, § 21; Laws 2022, LB840, § 1.

(e) CONSTABLES AND SHERIFFS

25-2234 Sheriff; return of process.

It shall be the duty of every sheriff to make due return of all legal process to him or her directed and by him or her delivered or served by certified or registered mail, at the proper office and on the proper return day thereof, or if the judgment is recorded in the district court, appealed, or stayed, upon which he or she has an execution, on notice thereof, to return the execution, stating thereon such facts.

Source: Laws 1929, c. 82, art. XV, § 173, p. 324; C.S.1929, § 22-1503; Laws 1933, c. 44, § 4, p. 253; C.S.Supp.,1941, § 22-1503; R.S. 1943, § 26-1,174; R.S.1943, (1979), § 26-1,174; Laws 1987, LB 93, § 7; R.S.Supp.,1988, § 24-597; Laws 1992, LB 1059, § 18; Laws 2018, LB193, § 41.

ARTICLE 25

UNIFORM PROCEDURE FOR ACQUIRING PRIVATE PROPERTY FOR PUBLIC USE

Section
25-2501. Intent and purpose.

25-2501 Intent and purpose.

It is the intent and purpose of sections 25-2501 to 25-2506 to establish a uniform procedure to be used in acquiring private property for a public purpose by the State of Nebraska and its political subdivisions and by all privately owned public utility corporations and common carriers which have been granted the power of eminent domain. Such sections shall not apply to:

(1) Water transmission and distribution pipelines and their appurtenances and common carrier pipelines and their appurtenances;

(2) Public utilities and cities of all classes and villages when acquiring property for a proposed project involving the acquisition of rights or interests in ten or fewer separately owned tracts or when the acquisition is within the corporate limits of any city or village;

(3) Sanitary and improvement districts organized under sections 31-727 to 31-762 when acquiring easements for a proposed project involving the acquisition of rights or interests in ten or fewer separately owned tracts;

(4) Counties and municipalities which acquire property through the process of platting or subdivision or for street or highway construction or improvements;

(5) Common carriers subject to regulation by the Federal Railroad Administration of the United States Department of Transportation; or

(6) The Nebraska Department of Transportation when acquiring property for highway construction or improvements.

Source: Laws 1973, LB 187, § 1; Laws 1978, LB 917, § 1; Laws 1994, LB 441, § 2; Laws 2002, LB 176, § 1; Laws 2017, LB339, § 81.

ARTICLE 26

ARBITRATION

Section
25-2616. Repealed. Laws 2018, LB193, § 97.

25-2616 Repealed. Laws 2018, LB193, § 97.

ARTICLE 27

PROVISIONS APPLICABLE TO COUNTY COURTS

(a) MISCELLANEOUS PROCEDURAL PROVISIONS

Section
25-2704. Summons; pleadings; time for filings; trial date; telephonic or videoconference hearing; authorized.
25-2706. County court; certify proceedings to district court; when; avoidance of county court jurisdiction; recovery of costs prohibited.
25-2707. Garnishment; amount in excess of jurisdiction of county court; transfer to district court; proceedings certified.

(c) UNCLAIMED FUNDS

25-2717. Unclaimed funds; payment to State Treasurer; disposition.

(d) JUDGMENTS

25-2721. Judgment; execution; lien on real estate; conditions.

(f) APPEALS

25-2728. Appeals; parties; applicability of sections.
25-2729. Appeals; procedure.
25-2731. Appeal; transcript; contents; clerk; duties.

(g) DOMESTIC RELATIONS MATTERS

25-2740. Domestic relations matters; district, county, and separate juvenile courts; jurisdiction; procedure.

(h) EXPEDITED CIVIL ACTIONS

25-2741. Act, how cited.
25-2742. Civil actions; applicability of act.
25-2743. Plaintiffs; certification of relief sought; applicability of laws and rules; jurisdictional amount; restriction on judgment; termination of proceedings; conditions; counterclaim.
25-2744. Discovery; expert; limitations; motion to modify.
25-2745. Motions.
25-2746. Action; time limitations.
25-2747. Evidence; stipulation; document; objections; Nebraska Evidence Rules; applicability; health care provider report; form.
25-2748. Rules and forms; Supreme Court; powers.
25-2749. Act; applicability.

(a) MISCELLANEOUS PROCEDURAL PROVISIONS

25-2704 Summons; pleadings; time for filings; trial date; telephonic or videoconference hearing; authorized.

(1) In any civil action in county court, the summons, pleadings, and time for filings shall be the same as provided for civil actions in district court. A case

shall stand for trial at the earliest available time on the trial docket after the issues therein are or, according to the times fixed for pleading, should have been made up.

(2) All nonevidentiary hearings, and any evidentiary hearings approved by the county court and by stipulation of all parties that have filed an appearance, may be heard by the court telephonically or by videoconferencing or similar equipment at any location within the judicial district as ordered by the court and in a manner that ensures the preservation of an accurate record. Such hearings shall not include trials before a jury. Hearings conducted in this manner shall be consistent with the public's access to the courts.

Source: Laws 1972, LB 1032, § 35; R.S.1943, (1985), § 24-535; Laws 1997, LB 363, § 1; Laws 1998, LB 234, § 9; Laws 2002, LB 876, § 57; Laws 2008, LB1014, § 12; Laws 2018, LB193, § 42.

25-2706 County court; certify proceedings to district court; when; avoidance of county court jurisdiction; recovery of costs prohibited.

The county court shall certify proceedings to the district court of the county in which an action is pending (1) when the pleadings or discovery proceedings indicate that the amount in controversy is greater than the jurisdictional amount in subdivision (5) of section 24-517 and a party to the action requests the transfer or (2) when the relief requested is exclusively within the jurisdiction of the district court. The county court shall file a certification of the case file and costs with the district court within ten days after entry of the transfer order. The action shall then be tried and determined by the district court as if the proceedings were originally brought in such district court, except that no new pleadings need be filed unless ordered by the district court.

If it is determined, upon adjudication, that the allegations of either party to such action are asserted with the intention solely of avoiding the jurisdiction of the county court, the offending party shall not recover any costs in the county court or the district court.

Source: Laws 1983, LB 137, § 3; Laws 1986, LB 750, § 2; R.S.Supp.,1988, § 24-302.01; Laws 1991, LB 422, § 2; Laws 1993, LB 69, § 1; Laws 2001, LB 269, § 2; Laws 2018, LB193, § 43.

25-2707 Garnishment; amount in excess of jurisdiction of county court; transfer to district court; proceedings certified.

Whenever proceedings under sections 25-1011 and 25-1026 to 25-1031.01, or under section 25-1056, are had in any county court and it shall appear by the pleadings or other answers to interrogatories filed by the garnishee that there is an amount in excess of the jurisdictional dollar amount specified in section 24-517, or property with a value of more than such amount, the title or ownership of which is in dispute, or when at any time during such proceedings it shall appear from the evidence or other pleadings that there is property of the value of more than the jurisdictional dollar amount specified in section 24-517, the title or ownership of which is in dispute, such court shall proceed no further. Within ten days after entry of the transfer order, the county court shall file with the district court of the county in which the action is pending a certification of the case file and costs. The matter shall be tried and determined by the district court as if the proceedings were originally had in district court,

except that no new pleadings need be filed except as ordered by the district court.

Source: Laws 1961, c. 116, § 1, p. 358; R.S.1943, § 24-502.01; Laws 1972, LB 1032, § 40; Laws 1986, LB 749, § 1; R.S.Supp.,1988, § 24-540; Laws 2018, LB193, § 44.

(c) UNCLAIMED FUNDS

25-2717 Unclaimed funds; payment to State Treasurer; disposition.

If any fees, money, condemnation awards, legacies, devises, sums due creditors, or costs due or belonging to any heir, legatee, or other person or persons have not been paid to or demanded by the person or persons entitled to the funds within three years from the date the funds were paid to the county judge or his or her predecessors in office, it shall be the duty of the county judge to notify the State Treasurer of the fees, money, condemnation awards, legacies, devises, sums due creditors, or costs remaining. When directed by the State Treasurer, the county judge shall remit the fees, money, condemnation awards, legacies, devises, sums due creditors, or costs to the State Treasurer for deposit in the Unclaimed Property Trust Fund pursuant to section 69-1317. Such payment shall release the bond of the county judge making such payment of all liability for such fees, money, condemnation awards, legacies, devises, sums due creditors, and costs due to heirs, legatees, or other persons paid in compliance with this section.

Source: Laws 1909, c. 40, § 2, p. 227; R.S.1913, § 1243; Laws 1921, c. 105, § 1, p. 376; C.S.1922, § 1166; C.S.1929, § 27-546; R.S.1943, § 24-553; Laws 1949, c. 49, § 1, p. 157; Laws 1967, c. 139, § 4, p. 427; R.R.S.1943, § 24-553; Laws 1972, LB 1032, § 63; Laws 1978, LB 860, § 1; R.S.1943, (1985), § 24-563; Laws 1992, Third Spec. Sess., LB 26, § 2; Laws 2019, LB406, § 2; Laws 2021, LB532, § 2.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

(d) JUDGMENTS

25-2721 Judgment; execution; lien on real estate; conditions.

(1) Any person having a judgment rendered by a county court may request the clerk of such court to issue execution on the judgment in the same manner as execution is issued upon other judgments rendered in the county court and direct the execution on the judgment to any county in the state. Such person may request that garnishment, attachment, or any other aid to execution be directed to any county without the necessity of filing a transcript of the judgment in the receiving county, and any hearing or proceeding with regard to such execution or aid in execution shall be heard in the court in which the judgment was originally rendered.

(2) Any person having a judgment rendered by a county court may cause a transcript thereof to be filed in the office of the clerk of the district court in any county of this state. When the transcript is so filed and entered upon the judgment index, such judgment shall be a lien on real estate in the county where the transcript is filed, and when the transcript is so filed and entered

upon such judgment index, the clerk of such court may issue execution thereupon in like manner as execution is issued upon judgments rendered in the district court.

Source: G.S.1873, c. 14, § 18, p. 267; R.S.1913, § 1221; C.S.1922, § 1144; C.S.1929, § 27-532; R.S.1943, § 24-532; Laws 1972, LB 1032, § 39; R.S.1943, (1985), § 24-539; Laws 1991, LB 422, § 3; Laws 2009, LB35, § 15; Laws 2018, LB193, § 45.

(f) APPEALS

25-2728 Appeals; parties; applicability of sections.

(1) Any party in a civil case and any defendant in a criminal case may appeal from the final judgment or final order of the county court to the district court of the county where the county court is located. In a criminal case, a prosecuting attorney may obtain review by exception proceedings pursuant to sections 29-2317 to 29-2319.

(2) Sections 25-2728 to 25-2738 shall not apply to:

(a) Appeals in eminent domain proceedings as provided in sections 76-715 to 76-723;

(b) Appeals in proceedings in the county court sitting as a juvenile court as provided in sections 43-2,106 and 43-2,106.01;

(c) Appeals in matters arising under the Nebraska Probate Code as provided in section 30-1601;

(d) Appeals in matters arising under the Nebraska Uniform Trust Code;

(e) Appeals in matters arising under the Health Care Surrogacy Act as provided in section 30-1601;

(f) Appeals in adoption proceedings as provided in section 43-112;

(g) Appeals in inheritance tax proceedings as provided in section 77-2023; and

(h) Appeals in domestic relations matters as provided in section 25-2739.

Source: Laws 1981, LB 42, § 1; Laws 1984, LB 13, § 19; Laws 1986, LB 529, § 11; Laws 1989, LB 182, § 8; R.S.Supp.,1989, § 24-541.01; Laws 1991, LB 732, § 69; Laws 1994, LB 1106, § 2; Laws 1995, LB 538, § 2; Laws 2000, LB 921, § 25; Laws 2003, LB 130, § 118; Laws 2010, LB800, § 3; Laws 2018, LB104, § 20.

Cross References

Health Care Surrogacy Act, see section 30-601.
Nebraska Probate Code, see section 30-2201.
Nebraska Uniform Trust Code, see section 30-3801.

25-2729 Appeals; procedure.

(1) In order to perfect an appeal from the county court, the appealing party shall within thirty days after the entry of the judgment or final order complained of:

(a) File with the clerk of the county court a notice of appeal; and

(b) Deposit with the clerk of the county court a docket fee of the district court for cases originally commenced in district court.

(2) Satisfaction of the requirements of subsection (1) of this section shall perfect the appeal and give the district court jurisdiction of the matter appealed.

(3) The entry of a judgment or final order occurs when the clerk of the court places the file stamp and date upon the judgment or final order. For purposes of determining the time for appeal, the date stamped on the judgment or final order shall be the date of entry.

(4) In appeals from the Small Claims Court only, the appealing party shall also, within the time fixed by subsection (1) of this section, deposit with the clerk of the county court a cash bond or undertaking, with at least one good and sufficient surety approved by the court, in the amount of fifty dollars conditioned that the appellant will satisfy any judgment and costs that may be adjudged against him or her.

(5) A notice of appeal or docket fee filed or deposited after the announcement of a decision or final order but before the entry of the judgment or final order shall be treated as filed or deposited after the entry of the judgment or final order and on the day of entry.

(6) The running of the time for filing a notice of appeal shall be terminated as to all parties (a) by a timely motion for a new trial under section 25-1144.01, (b) by a timely motion to alter or amend a judgment under section 25-1329, or (c) by a timely motion to set aside the verdict or judgment under section 25-1315.02, and the full time for appeal fixed in subsection (1) of this section commences to run from the entry of the order ruling upon the motion filed pursuant to subdivision (a), (b), or (c) of this subsection. When any motion terminating the time for filing a notice of appeal is timely filed by any party, a notice of appeal filed before the court announces its decision upon the terminating motion shall have no effect, whether filed before or after the timely filing of the terminating motion. A new notice of appeal shall be filed within the prescribed time from the entry of the order ruling on the motion. No additional fees are required for such filing. A notice of appeal filed after the court announces its decision or order on the terminating motion but before the entry of the order is treated as filed on the date of and after the entry of the order.

(7) The party appealing shall serve a copy of the notice of appeal upon all parties who have appeared in the action or upon their attorney of record. Proof of service shall be filed with the notice of appeal.

(8) If an appellant fails to comply with any provision of subsection (4) or (7) of this section, the district court on motion and notice may take such action, including dismissal of the appeal, as is just.

Source: Laws 1981, LB 42, § 2; Laws 1984, LB 13, § 20; Laws 1986, LB 529, § 12; R.S.Supp.,1988, § 24-541.02; Laws 1994, LB 1106, § 3; Laws 1995, LB 538, § 3; Laws 1995, LB 598, § 1; Laws 1999, LB 43, § 15; Laws 2000, LB 921, § 26; Laws 2018, LB193, § 46.

25-2731 Appeal; transcript; contents; clerk; duties.

(1) Upon perfection of the appeal, the clerk of the county court shall transmit within ten days to the clerk of the district court a certified copy of the transcript and the docket fee, whereupon the clerk of the district court shall file the

appeal. A copy of any bond or undertaking shall be transmitted to the clerk of the district court within ten days of filing.

(2) The Supreme Court shall, by rule and regulation, specify the method of ordering the transcript and the form and content of the transcript.

Source: Laws 1981, LB 42, § 4; Laws 1984, LB 13, § 22; Laws 1986, LB 529, § 14; Laws 1988, LB 352, § 24; R.S.Supp.,1988, § 24-541.04; Laws 2018, LB193, § 47.

(g) DOMESTIC RELATIONS MATTERS

25-2740 Domestic relations matters; district, county, and separate juvenile courts; jurisdiction; procedure.

(1) For purposes of this section:

(a) Domestic relations matters means proceedings under sections 28-311.09 and 28-311.10 (including harassment protection orders and valid foreign harassment protection orders), sections 28-311.11 and 28-311.12 (including sexual assault protection orders and valid foreign sexual assault protection orders), the Conciliation Court Law and sections 42-347 to 42-381 (including dissolution, separation, annulment, custody, and support), section 43-512.04 (including child support or medical support), section 42-924 (including domestic protection orders), sections 43-1401 to 43-1418 (including paternity determinations and parental support), and sections 43-1801 to 43-1803 (including grandparent visitation); and

(b) Paternity or custody determinations means proceedings to establish the paternity of a child under sections 43-1411 to 43-1418 or proceedings to determine custody of a child under section 42-364.

(2) Except as provided in subsection (3) of this section, in domestic relations matters, a party shall file his or her petition or complaint and all other court filings with the clerk of the district court. The party shall state in the petition or complaint whether such party requests that the proceeding be heard by a county court judge or by a district court judge. If the party requests the case be heard by a county court judge, the county court judge assigned to hear cases in the county in which the matter is filed at the time of the hearing is deemed appointed by the district court and the consent of the county court judge is not required. Such proceeding is considered a district court proceeding, even if heard by a county court judge, and an order or judgment of the county court in a domestic relations matter has the force and effect of a district court judgment. The testimony in a domestic relations matter heard before a county court judge shall be preserved as provided in section 25-2732.

(3) In addition to the jurisdiction provided for paternity or custody determinations under subsection (2) of this section, a county court or separate juvenile court which already has jurisdiction over the child whose paternity or custody is to be determined has jurisdiction over such paternity or custody determination.

Source: Laws 1997, LB 229, § 2; Laws 1998, LB 218, § 1; Laws 1998, LB 1041, § 2; Laws 2004, LB 1207, § 16; Laws 2008, LB280, § 2; Laws 2008, LB1014, § 14; Laws 2017, LB289, § 1.

Cross References

Conciliation Court Law, see section 42-802.

(h) EXPEDITED CIVIL ACTIONS

25-2741 Act, how cited.

Sections 25-2741 to 25-2749 shall be known and may be cited as the County Court Expedited Civil Actions Act.

Source: Laws 2020, LB912, § 1.

25-2742 Civil actions; applicability of act.

(1) The County Court Expedited Civil Actions Act applies to civil actions in county court in which the sole relief sought is a money judgment and in which the claim of each plaintiff is less than or equal to the county court jurisdictional amount set forth in subdivision (5) of section 24-517, including damages of any kind, penalties, interest accrued before the filing date, and attorney's fees, but excluding prejudgment interest accrued after the filing date, postjudgment interest, and costs.

(2) The act does not apply to Small Claims Court actions or domestic relations matters or paternity or custody determinations as defined in section 25-2740.

(3) For the purposes of the act, side means all litigants with generally common interests in the litigation.

Source: Laws 2020, LB912, § 2.

25-2743 Plaintiffs; certification of relief sought; applicability of laws and rules; jurisdictional amount; restriction on judgment; termination of proceedings; conditions; counterclaim.

(1) Eligible plaintiffs may elect to proceed under the County Court Expedited Civil Actions Act by certifying that the relief sought meets the requirements of section 25-2742. The certification must be on a form approved by the Supreme Court, signed by all plaintiffs and their attorneys, if represented, and filed with the complaint. The certification is not admissible to prove a plaintiff's damages in any proceeding.

(2) Except as otherwise specifically provided, the Nebraska laws and court rules that are applicable to civil actions are applicable to actions under the act.

(3) A party proceeding under the act may not recover a judgment in excess of the county court jurisdictional amount set forth in subdivision (5) of section 24-517, nor may a judgment be entered against a party in excess of such amount, excluding prejudgment interest that accrues after the filing date, postjudgment interest, and costs. The jury, if any, must not be informed of the county court jurisdictional amount. If the jury returns a verdict for damages in excess of the county court jurisdictional amount for or against a party, the court shall not enter judgment on that verdict in excess of such amount, exclusive of the prejudgment interest that accrues after the filing date, postjudgment interest, and costs.

(4) Upon timely application of any party, the county court may terminate application of the act and enter such orders as are appropriate under the circumstances if:

(a) The moving party makes a specific showing of substantially changed circumstances sufficient to render the application of the act unfair; or

(b) A party has in good faith filed a counterclaim that seeks relief other than that allowed under the act.

(5) A party may assert a counterclaim only if the counterclaim arises out of the same transaction or occurrence as the opposing party's claim. Any such counterclaim is subject to the county court jurisdictional limit on damages under the act, unless the court severs the counterclaim or certifies the action to district court pursuant to section 25-2706 on the grounds that the amount in controversy exceeds the county court jurisdictional limit.

Source: Laws 2020, LB912, § 3.

25-2744 Discovery; expert; limitations; motion to modify.

(1) Except upon agreement of the parties or leave of court granted upon a showing of good cause, all discovery under the County Court Expedited Civil Actions Act must be completed no later than sixty days before trial.

(2) Except upon agreement of the parties or leave of court granted upon a showing of good cause, discovery under the act is subject to the following additional limitations:

(a) Each side shall serve no more than ten interrogatories on any other side;

(b) Each side shall serve no more than ten requests for production on any other side;

(c) Each side shall serve no more than ten requests for admission on any other side. This limit does not apply to requests for admission of the genuineness of documents that a party intends to offer into evidence at trial;

(d) One deposition of each party may be taken. With regard to corporations, partnerships, voluntary associations, or any other groups or entities named as a party, the entity or one officer, member, or employee of such entity may be deposed; and

(e) Each side may take the deposition of up to two nonparties.

(3) Each side is entitled to one expert, except upon agreement of the parties or leave of court granted upon a showing of good cause. A treating health care provider is counted as an expert for purposes of this subsection.

(4) A motion for leave of court to modify the limitations set forth in this section must be in writing and must set forth the proposed additional discovery or expert and the reasons establishing good cause.

Source: Laws 2020, LB912, § 4.

25-2745 Motions.

(1) Any party may file any motion permitted under rules adopted by the Supreme Court for pre-answer motions.

(2) A motion for summary judgment must be filed no later than ninety days before trial.

Source: Laws 2020, LB912, § 5.

25-2746 Action; time limitations.

An action under the County Court Expedited Civil Actions Act should ordinarily be submitted to the jury or the court within two business days from the commencement of trial. Unless the court allows additional time for good cause

shown, each side shall be allowed no more than six hours to complete jury selection, opening statements, presentation of evidence, examination and cross-examination of witnesses, and closing arguments. Time spent on objections, bench conferences, and challenges for cause to a juror are not included in the time limit.

Source: Laws 2020, LB912, § 6.

25-2747 Evidence; stipulation; document; objections; Nebraska Evidence Rules; applicability; health care provider report; form.

(1) Parties to an action under the County Court Expedited Civil Actions Act should stipulate to factual and evidentiary matters to the greatest extent possible.

(2) For purposes of the act, the court may overrule objections based on authenticity and hearsay to the admission of a document, notwithstanding the absence of testimony or certification from a custodian or other qualified witness, if:

(a) The party offering the document gives notice to all other parties of the party's intention to offer the document into evidence at least ninety days in advance of trial. The notice must be given to all parties together with a copy of any document intended to be offered;

(b) The document on its face appears to be what the proponent claims it is;

(c) The document on its face appears not to be hearsay or appears to fall within a hearsay exception set forth in Nebraska law; and

(d) The objecting party has not raised a substantial question as to the authenticity or trustworthiness of the document.

(3) Except as otherwise specifically provided by the act, the Nebraska Evidence Rules are applicable to actions under the act.

(4) Nothing in subsection (2) of this section authorizes admission of a document that contains hearsay within hearsay, unless the court determines from the face of the document that each part of the combined statements conforms with a hearsay exception set forth in Nebraska law.

(5) Any authenticity or hearsay objections to a document as to which notice has been provided under subdivision (2)(a) of this section must be made within thirty days after receipt of the notice.

(6)(a) The report of any treating health care provider concerning the plaintiff may be used in lieu of deposition or in-court testimony of the health care provider, so long as the report offered into evidence is on a form adopted for such purpose by the Supreme Court and is signed by the health care provider making the report.

(b) The Supreme Court shall adopt a form for the purposes of subdivision (6)(a) of this section.

(c) Unless otherwise stipulated or ordered by the court, a copy of any completed health care provider report under subdivision (6)(a) of this section must be served on all parties at least ninety days in advance of trial. Any objections to the health care provider statement, including an objection that the statement is incomplete or does not otherwise comply with this subsection, must be made within thirty days after receipt of the statement. For good cause shown, the court may issue such orders regarding the health care provider

report as justice may require, including an order permitting a health care provider to supplement the report.

(d) Any party against whom a health care provider report may be used has the right, at the party's own initial expense, to cross-examine by deposition the health care provider signing the report, and the deposition may be used at trial.

(e) The deposition of the health care provider and the discovery of facts or opinions held by an expert are not counted for purposes of the numerical limits of section 25-2744.

Source: Laws 2020, LB912, § 7.

Cross References

Nebraska Evidence Rules, see section 27-1103.

25-2748 Rules and forms; Supreme Court; powers.

The Supreme Court may promulgate rules and forms for actions governed by the County Court Expedited Civil Actions Act, and such rules and forms shall not be in conflict with the act.

Source: Laws 2020, LB912, § 8.

25-2749 Act; applicability.

The County Court Expedited Civil Actions Act applies to civil actions filed on or after January 1, 2022.

Source: Laws 2020, LB912, § 9.

ARTICLE 28

SMALL CLAIMS COURT

Section
25-2802. Jurisdiction.
25-2803. Parties; representation.
25-2804. Actions; how commenced; fee; hearing; notice; setoff or counterclaim; limitations; default judgment; actions authorized.

25-2802 Jurisdiction.

(1) The Small Claims Court shall have subject matter jurisdiction in all civil actions of any type when the amount of money or damages or the value of the personal property claimed does not exceed the jurisdictional amount specified in subsection (4) of this section, exclusive of interest and costs.

(2) The Small Claims Court shall have subject matter jurisdiction in civil matters when the plaintiff seeks to disaffirm, avoid, or rescind a contract or agreement for the purchase of goods or services not in excess of the jurisdictional amount specified in subsection (4) of this section, exclusive of interest and costs.

(3) The Small Claims Court shall have jurisdiction when the party defendant or his or her agent resides or is doing business within the county or when the cause of action arose within the county.

(4) The jurisdictional amount is six thousand dollars from July 1, 2024, through June 30, 2025. The jurisdictional amount is seven thousand five hundred dollars beginning July 1, 2025.

Source: Laws 1972, LB 1032, § 22; Laws 1976, LB 629, § 1; Laws 1979, LB 117, § 1; Laws 1985, LB 373, § 2; R.S.1943, (1985), § 24-522;

Laws 1997, LB 3, § 1; Laws 2001, LB 9, § 1; Laws 2010, LB695, § 1; Laws 2024, LB139, § 1.
Operative date July 1, 2024.

25-2803 Parties; representation.

(1) Parties in the Small Claims Court may be individuals, partnerships, limited liability companies, corporations, unions, associations, or any other kind of organization or entity.

(2) No party shall be represented by an attorney in the Small Claims Court except as provided in sections 25-2804 and 25-2805.

(3) An individual shall represent himself or herself in the Small Claims Court. A partnership shall be represented by a partner or one of its employees. A limited liability company shall be represented by a member, a manager, or one of its employees. A union shall be represented by a union member or union employee. A corporation shall be represented by one of its employees. An association shall be represented by one of its members or by an employee of the association. Any other kind of organization or entity shall be represented by one of its members or employees.

(4) Only a party, natural or otherwise, who has been a party to the transaction with the defendant for which the claim is brought may file and prosecute a claim in the Small Claims Court.

(5) No party may file an assigned claim in the Small Claims Court.

(6) No party shall file more than two claims within any calendar week nor more than ten claims in any calendar year in the Small Claims Court.

(7) Notwithstanding any other provision of this section, a personal representative of a decedent's estate, a guardian, or a conservator may be a party in the Small Claims Court.

Source: Laws 1972, LB 1032, § 23; Laws 1987, LB 77, § 1; Laws 1987, LB 536, § 2; R.S.Supp.,1988, § 24-523; Laws 1993, LB 121, § 174; Laws 2010, LB712, § 5; Laws 2019, LB71, § 1.

25-2804 Actions; how commenced; fee; hearing; notice; setoff or counterclaim; limitations; default judgment; actions authorized.

(1) Actions in the Small Claims Court shall be commenced by the plaintiff by filing a claim personally, by mail, or by another method established by Supreme Court rules.

(2) At the time of the filing of the claim, the plaintiff shall pay a fee of six dollars and twenty-five cents to the clerk. One dollar and twenty-five cents of such fee shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges through June 30, 2021. Beginning July 1, 2021, two dollars of such fee shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges.

(3) Upon filing of a claim in the Small Claims Court, the court shall set a time for hearing and shall cause notice to be served upon the defendant. Notice shall be served not less than five days before the time set for hearing. Notice shall consist of a copy of the complaint and a summons directing the defendant to appear at the time set for hearing and informing the defendant that if he or she fails to appear, judgment will be entered against him or her. Notice shall be served in the manner provided for service of a summons in a civil action. If the

notice is to be served by certified mail, the clerk shall provide the plaintiff with written instructions, prepared and provided by the State Court Administrator, regarding the proper procedure for service by certified mail. The cost of service shall be paid by the plaintiff, but such cost and filing fee shall be added to any judgment given the plaintiff.

(4) The defendant may file a setoff or counterclaim. Any setoff or counterclaim shall be filed and a copy delivered to the plaintiff at least two days prior to the time of trial. If the setoff or counterclaim exceeds the jurisdictional limits of the Small Claims Court as established pursuant to section 25-2802, the court shall cause the entire matter to be transferred to the regular county court docket and set for trial.

(5) No prejudgment actions for attachment, garnishment, replevin, or other provisional remedy may be filed in the Small Claims Court.

(6) All forms that may be required by this section shall be prescribed by the Supreme Court.

(7) For a default judgment rendered by a Small Claims Court (a) the default judgment may be appealed as provided in section 25-2807, (b) if a motion for a new trial, by the procedure provided in sections 25-1142, 25-1144, and 25-1144.01, is filed ten days or less after entry of the default judgment, the court may act upon the motion without a hearing, or (c) if more than ten days have passed since the entry of the default judgment, the court may set aside, vacate, or modify the default judgment as provided in section 25-2720.01. Parties may be represented by attorneys for the purpose of filing a motion for a new trial or to set aside, vacate, or modify a default judgment.

Source: Laws 1972, LB 1032, § 24; Laws 1973, LB 226, § 7; Laws 1975, LB 283, § 1; Laws 1979, LB 117, § 2; Laws 1980, LB 892, § 1; Laws 1982, LB 928, § 17; Laws 1983, LB 447, § 14; Laws 1984, LB 13, § 14; Laws 1985, LB 373, § 3; Laws 1986, LB 125, § 1; Laws 1987, LB 77, § 2; R.S.Supp.,1988, § 24-524; Laws 2000, LB 921, § 28; Laws 2005, LB 348, § 4; Laws 2010, LB712, § 6; Laws 2020, LB1028, § 5; Laws 2021, LB17, § 4; Laws 2021, LB355, § 3.

ARTICLE 29

DISPUTE RESOLUTION

(a) DISPUTE RESOLUTION ACT

Section
25-2901. Act, how cited.
25-2902. Legislative findings.
25-2903. Terms, defined.
25-2904. Office of Dispute Resolution; established; director; qualifications; duties.
25-2905. Advisory Council on Dispute Resolution; created; members.
25-2906. Council; members; terms; vacancy; officers.
25-2907. Council; powers and duties; members; expenses.
25-2908. Director; duties.
25-2909. Grants; application; contents; approved centers; reports.
25-2911. Restorative justice programs and dispute resolution; types of cases; referral of cases.
25-2912. Restorative justice or dispute resolution process; procedures.
25-2912.01. Restorative justice practices, restorative justice services, or restorative justice programs; activities to repair harm.
25-2912.02. Best practices; policies and procedures.

(a) DISPUTE RESOLUTION ACT

25-2901 Act, how cited.

Sections 25-2901 to 25-2921 shall be known and may be cited as the Dispute Resolution Act.

Source: Laws 1991, LB 90, § 1; Laws 1996, LB 922, § 1; Laws 2019, LB595, § 1.

25-2902 Legislative findings.

The Legislature finds that:

(1) The resolution of certain disputes and offenses can be costly and time consuming in the context of a formal judicial proceeding;

(2) Employing restorative justice and mediation to address disputes can provide an avenue for efficiently reducing the volume of matters which burden the court system in this state;

(3) Restorative justice practices and programs can meet the needs of Nebraska's residents by providing forums in which persons may participate in voluntary or court-ordered resolution of juvenile and adult offenses in an informal and less adversarial atmosphere;

(4) Employing restorative justice can provide an avenue for repair, healing, accountability, and community safety to address the harm experienced by victims as a result of an offense committed by youth or adult individuals;

(5) Restorative justice practices and programs are grounded in a wide body of research and evidence showing individuals who participate in restorative justice practices and programs are less likely to reoffend;

(6) Unresolved disputes of those who do not have the resources for formal resolution may be of small social or economic magnitude individually but are collectively of enormous social and economic consequences;

(7) Many seemingly minor conflicts between individuals may escalate into major social problems unless resolved early in an atmosphere in which the persons involved can discuss the dispute or offense through a private and informal yet structured process;

(8) There is a need in our society to reduce acrimony and improve relationships between people in conflict which has a long-term benefit of a more peaceful community of people;

(9) There is a compelling need in a complex society for dispute resolution and restorative justice whereby people can participate in creating comprehensive, lasting, and realistic resolutions to conflicts and offenses;

(10) Mediation can increase the public's access to dispute resolution and thereby increase public regard and usage of the legal system; and

(11) Office-approved nonprofit dispute resolution centers can make a substantial contribution to the operation and maintenance of the courts of this state by preserving the court's scarce resources for those disputes and offenses which cannot be resolved by means other than litigation.

Source: Laws 1991, LB 90, § 2; Laws 2019, LB595, § 2.

25-2903 Terms, defined.

For purposes of the Dispute Resolution Act:

(1) Approved center means a center that has applied for and received approval from the director under section 25-2909;

(2) Center means a nonprofit organization or a court-established program which makes dispute resolution procedures and restorative justice services available;

(3) Council means the Advisory Council on Dispute Resolution;

(4) Director means the Director of the Office of Dispute Resolution;

(5) Dispute resolution process means a process by which the parties involved in a dispute voluntarily agree to enter into informal discussion and negotiation with the assistance of a mediator;

(6) Mediation means the intervention into a dispute by a third party who has no decisionmaking authority and is impartial to the issues being discussed;

(7) Mediator means a person trained in the process of mediation who assists parties in dispute to reach a mutually acceptable resolution of their conflict;

(8) Office means the Office of Dispute Resolution;

(9) Restorative justice facilitator means a person trained to facilitate restorative justice practices as a staff member or affiliate of an approved center; and

(10) Restorative justice means practices, programs, or services described in section 25-2912.01 that emphasize repairing the harm caused to victims and the community by persons who have caused the harm or committed an offense.

Source: Laws 1991, LB 90, § 3; Laws 2019, LB595, § 3.

25-2904 Office of Dispute Resolution; established; director; qualifications; duties.

The Office of Dispute Resolution is hereby established in the office of the State Court Administrator. The director of the office shall be hired by the Supreme Court. The director may but need not be an attorney and shall be hired on the basis of his or her training and experience in mediation, restorative justice, and dispute resolution. The director shall administer the Dispute Resolution Act and shall serve as staff to the council.

Source: Laws 1991, LB 90, § 4; Laws 2019, LB595, § 4.

25-2905 Advisory Council on Dispute Resolution; created; members.

The Advisory Council on Dispute Resolution is hereby created. The council shall be comprised of individuals from a variety of disciplines who are trained and knowledgeable in mediation, restorative justice, and dispute resolution and selected to be representative of the geographical and cultural diversity of the state and to reflect gender fairness. The council shall consist of fifteen voting members. The membership shall include a district court judge, county court judge, and juvenile court judge and a representative from the Office of Probation Administration, the Nebraska State Bar Association, and the Nebraska County Attorneys Association. Nominations for the remaining members may be solicited from such entities and from the Nebraska Mediation Association, the Public Counsel, social workers, mental health professionals, diversion program administrators, educators, law enforcement entities, crime victim advocates, and former participants in restorative justice programs and related fields. The council shall be appointed by the Supreme Court or its designee. The Supreme Court or its designee shall not be restricted to the solicited list of nominees in making its appointments. Two nonvoting, ex officio members shall be appointed by the council from among the approved centers.

Source: Laws 1991, LB 90, § 5; Laws 1999, LB 315, § 2; Laws 2019, LB595, § 5.

25-2906 Council; members; terms; vacancy; officers.

The initial members of the council and the new members required by the changes to section 25-2905 made by Laws 2019, LB595, shall be appointed for terms of one, two, or three years. All subsequent appointments shall be made for terms of three years. Any vacancy on the council shall be filled and shall last for the duration of the term vacated. Appointments to the council required by changes to section 25-2905 made by Laws 2019, LB595, shall be made within ninety days after September 1, 2019. The council shall select a chairperson, a vice-chairperson, and such other officers as it deems necessary.

Source: Laws 1991, LB 90, § 6; Laws 2019, LB595, § 6.

25-2907 Council; powers and duties; members; expenses.

(1) The council shall advise the director on the administration of the Dispute Resolution Act.

(2) The council shall meet at least four times per year and at other times deemed necessary to perform its functions. Members of the council shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

(3) The council may appoint task forces to carry out its work. Task force members shall have knowledge of, responsibility for, or interest in an area related to the duties of the council.

Source: Laws 1991, LB 90, § 7; Laws 2020, LB381, § 21.

25-2908 Director; duties.

Consistent with the purposes and objectives of the Dispute Resolution Act and in consultation with the council, the director shall:

(1) Approve centers which meet requirements for approval;

(2) Develop and supervise a uniform system of reporting and collecting statistical data from approved centers;

(3) Develop and supervise a uniform system of evaluating approved centers;

(4) Prepare a yearly budget for the implementation of the act and distribute funds to approved centers;

(5) Develop and administer guidelines for a sliding scale of fees to be charged by approved centers;

(6) Develop, initiate, or approve curricula and training sessions for mediators and staff of approved centers and of courts;

(7) Establish volunteer training programs;

(8) Promote public awareness of the restorative justice and dispute resolution process;

(9) Apply for and receive funds from public and private sources for carrying out the purposes and obligations of the act;

(10) Develop and supervise a uniform system to create and maintain a roster of approved centers and victim youth conferencing and other restorative justice facilitators who are affiliated with approved centers. The roster shall be made available to courts and county attorneys;

(11) Enhance the sustainability of approved centers;

(12) Support approved centers in the implementation of restorative justice programs;

(13) Coordinate the development and implementation of new restorative justice programs;

(14) Develop and administer a uniform system for reporting and collecting statistical data regarding restorative justice programs from approved centers;

(15) Develop and administer a uniform system for evaluating restorative justice programs administered by approved centers;

(16) Develop and administer a uniform system for evaluating quality assurance and fidelity to established restorative justice principles;

(17) Coordinate software and data management system quality assurance for the office and the approved centers;

(18) Coordinate restorative justice training sessions for restorative justice facilitators and staff of approved centers and the courts;

(19) Review and provide analyses of state and federal laws and policies and judicial branch policies relating to restorative justice programs for juvenile populations and adult populations;

(20) Promote public awareness of the restorative justice and dispute resolution process under the Dispute Resolution Act; and

(21) Seek and identify funds from public and private sources for carrying out new and ongoing restorative justice programs.

Source: Laws 1991, LB 90, § 8; Laws 1998, LB 1073, § 7; Laws 2019, LB595, § 7.

25-2909 Grants; application; contents; approved centers; reports.

(1) The office shall annually award grants to approved centers. It is the intent of the Legislature that centers be established and grants distributed statewide.

(2) A center or an entity proposing a center may apply to the office for approval to provide services under the Dispute Resolution Act by submitting an application which includes:

(a) A strategic plan for the operation of the center;

(b) The center's objectives;

(c) The areas of population to be served;

(d) The administrative organization;

(e) Record-keeping procedures;

(f) Procedures for intake, for scheduling, and for conducting and terminating restorative justice programs and dispute resolution sessions;

(g) Qualifications for mediators and restorative justice facilitators for the center;

(h) An annual budget for the center;

(i) The results of an audit of the center for a period covering the previous year if the center was in operation for such period; and

(j) Proof of 501(c)(3) status under the Internal Revenue Code or proof of establishment by a court.

(3) The office may specify additional criteria for approval and for grants as it deems necessary.

(4) Annual reports shall be required of each approved center. The reports shall include the number and types of cases handled in the year and a showing of continued compliance with the act.

Source: Laws 1991, LB 90, § 9; Laws 2019, LB595, § 8.

25-2911 Restorative justice programs and dispute resolution; types of cases; referral of cases.

(1) The following types of cases may be accepted for restorative justice programs and dispute resolution at an approved center:

(a) Civil claims and disputes, including, but not limited to, consumer and commercial complaints, disputes between neighbors, disputes between business associates, disputes between landlords and tenants, and disputes within communities;

(b) Disputes concerning child custody, parenting time, visitation, or other access and other areas of domestic relations;

(c) Juvenile offenses and disputes involving juveniles when appropriate, which shall be determined according to the policies and procedures provided for in section 25-2918;

(d) Disputes involving youth that occur in families, in educational settings, and in the community at large;

(e) Adult criminal offenses and disputes involving juvenile, adult, or community victims when appropriate, which shall be determined according to the policies and procedures provided for in section 25-2918; and

(f) Contested guardianship and contested conservatorship proceedings.

(2) Restorative justice practices at an approved center may be used in addition to any other condition, consequence, or sentence imposed by a court, a probation officer, a diversion program, a school, or another community program.

(3) An approved center may accept cases referred by a court, an attorney, a law enforcement officer, a social service agency, a school, or any other

interested person or agency or upon the request of the parties involved. A case may be referred prior to the commencement of formal judicial proceedings or may be referred as a pending court case. If a court refers a case to an approved center, the center shall provide information to the court as to whether an agreement was reached. If the court requests a copy of the agreement, the center shall provide it.

Source: Laws 1991, LB 90, § 11; Laws 2007, LB554, § 25; Laws 2011, LB157, § 2; Laws 2019, LB595, § 9.

25-2912 Restorative justice or dispute resolution process; procedures.

Before the restorative justice or dispute resolution process begins, an approved center shall provide the parties with a written statement setting forth the procedures to be followed.

Source: Laws 1991, LB 90, § 12; Laws 2019, LB595, § 10.

25-2912.01 Restorative justice practices, restorative justice services, or restorative justice programs; activities to repair harm.

Restorative justice practices, restorative justice services, or restorative justice programs include, but are not limited to, victim youth conferences, victim-offender mediation, family group conferences, circles, peer-to-peer mediation, truancy mediation, victim or community panels, and community conferences. Restorative justice programs may involve restorative projects or classes and facilitated meetings attended voluntarily by the victim, the victim's representatives, or a victim surrogate and the victim's supporters, as well as the youth or adult individual who caused harm and that individual's supporters, whether voluntarily or following a referral for assessment by court order. These meetings may also include community members, when appropriate. By engaging the parties to the offense or harm in voluntary dialogue, restorative justice provides an opportunity for healing for the victim and the individual who harmed the victim by:

(1) Holding the individual who caused harm accountable and providing the individual a platform to accept responsibility and gain empathy for the harm he or she caused to the victim and community;

(2) Providing the victim a platform to describe the impact that the harm had upon himself or herself or his or her family and to identify detriments experienced or any losses incurred;

(3) Providing the opportunity to enter into a reparation plan agreement; and

(4) Enabling the victim and the individual who caused harm the opportunity to agree on consequences to repair the harm, to the extent possible. This includes, but is not limited to, apologies, community service, reparation, restitution, restoration, and counseling.

Source: Laws 2019, LB595, § 11.

25-2912.02 Best practices; policies and procedures.

The office and the approved centers shall strive to conduct restorative justice programs in accordance with best practices, including evidence-based programs, and shall adopt policies and procedures to accomplish this goal.

Source: Laws 2019, LB595, § 12.

25-2913 Mediators and restorative justice facilitators; qualifications; compensation; powers and duties.

(1) Mediators and restorative justice facilitators of approved centers shall have completed at least thirty hours of basic mediation training, including conflict resolution techniques, neutrality, agreement writing, and ethics. An initial apprenticeship with an experienced mediator shall be required for at least three sessions for all mediators without prior mediation experience.

(2) In addition to the basic mediation training required under subsection (1) of this section:

(a) For disputes involving marital dissolution, parenting, or child custody, mediators of approved centers shall have additional training in family mediation; and

(b) For disputes involving harm done to others or the community, restorative justice facilitators of approved centers shall have additional restorative justice training that has been approved by the office. Such training should include, but not be limited to, topics such as restorative justice basics, trauma-informed practices, juvenile developmental characteristics, and crime victimization.

(3) An approved center may provide for the compensation of mediators and restorative justice facilitators, utilize the services of volunteer mediators and restorative justice facilitators, or utilize the services of both paid and volunteer mediators and restorative justice facilitators.

(4) The mediator or restorative justice facilitator shall provide an opportunity for the parties to achieve a mutually acceptable resolution of their dispute, in joint or separate sessions, as appropriate, including a reparation plan agreement regarding reparations through dialogue and negotiation. A mediator shall be impartial, neutral, and unbiased and shall make no decisions for the parties.

(5) The mediator or restorative justice facilitator shall officially terminate the process if the parties are unable to agree or if, in the judgment of the mediator, the agreement would be unconscionable. The termination shall be without prejudice to either party in any other proceeding.

(6) The mediator or restorative justice facilitator has no authority to make or impose any adjudicatory sanction or penalty upon the parties.

(7) The mediator or restorative justice facilitator shall be aware of and recommend outside resources to the parties whenever appropriate. The mediator or restorative justice facilitator shall advise participants to obtain legal review of agreements as necessary.

Source: Laws 1991, LB 90, § 13; Laws 2019, LB595, § 13.

25-2914 Confidentiality; exceptions.

(1) Any verbal, written, or electronic communication made in or in connection with matters referred to mediation which relates to the controversy or dispute being mediated and agreements resulting from the mediation, whether made to the mediator, the staff of an approved center, a party, or any other person attending the mediation session, shall be confidential.

(2) Mediation proceedings shall be regarded as settlement negotiations, and no admission, representation, or statement made in mediation, not otherwise discoverable or obtainable, shall be admissible as evidence or subject to discovery.

(3) A mediator shall not be subject to process requiring the disclosure of any matter discussed during mediation proceedings unless all the parties consent to a waiver.

(4) Confidential communications and materials are subject to disclosure when all parties agree in writing to waive confidentiality regarding specific verbal, written, or electronic communications relating to the mediation session or the agreement.

(5) This section shall not apply if a party brings an action against the mediator or center, if the communication was made in furtherance of a crime or fraud, or if this section conflicts with other legal requirements.

Source: Laws 1991, LB 90, § 14; Laws 1994, LB 868, § 1; Laws 2019, LB595, § 14.

25-2914.01 Verbal, written, or electronic communication; confidentiality; privileged; disclosure; when; activities of juvenile; limit on evidence.

(1) Any verbal, written, or electronic communication made in or in connection with matters referred to a restorative justice program which relates to the controversy or dispute undergoing restorative justice and agreements resulting from the restorative justice program, whether made to the restorative justice facilitator, the staff of an approved center, a party, or any other person attending the restorative justice program, shall be confidential and privileged.

(2) No admission, confession, or incriminating information obtained from a juvenile in the course of any restorative justice program that is conducted in conjunction with proceedings under the Dispute Resolution Act or as directed by a court, including, but not limited to, school-based disciplinary proceedings, juvenile diversion, court-ordered detention, or probation, shall be admitted into evidence against such juvenile, except as rebuttal or impeachment evidence, in any future adjudication hearing under the Nebraska Juvenile Code or in any criminal proceeding. Such admission, confession, or incriminating information may be considered by a court at sentencing or by a juvenile court during disposition proceedings.

(3) Confidential communications and materials are subject to disclosure when all parties to the restorative justice program agree in writing to waive confidentiality regarding specific verbal, written, or electronic communications relating to the restorative justice program or the agreement.

(4) This section shall not apply if:

(a) A party brings an action against the restorative justice facilitator or approved center;

(b) The communication was made in furtherance of a crime or fraud;

(c) The communication is required to be reported under section 28-711 and is a new allegation of child abuse or neglect which was not previously known or reported; or

(d) This section conflicts with other legal requirements.

Source: Laws 2019, LB595, § 15.

Cross References

Nebraska Juvenile Code, see section 43-2,129.

25-2915 Immunity; exceptions.

No mediator, restorative justice facilitator, staff member, or member of a governing board of an approved center may be held liable for civil damages for any statement or decision made in the process of restorative justice or dispute resolution unless such person acted in a manner exhibiting willful or wanton misconduct.

Source: Laws 1991, LB 90, § 15; Laws 2019, LB595, § 16.

25-2916 Agreement; contents.

(1) If the parties involved in mediation reach an agreement, the agreement may be reduced to writing and signed by the parties. The agreement shall set forth the settlement of the issues and the future responsibilities of each party. If a court referred the case, the agreement as signed and approved by the parties may be presented to the court as a stipulation and, if approved by the court, shall be enforceable as an order of the court.

(2) If the parties involved in a restorative justice program reach a reparation plan agreement, the agreement may be reduced to writing and signed by the parties. The agreement shall set forth the reparations agreed upon by the parties to repair the specific circumstances of the offense. These may include, but are not limited to, service to the victim, an apology to the victim, financial restitution, services for the individual who caused the harm, community service, or any other reparation agreed upon by the parties. The agreement shall specify the time period during which such individual must comply with the requirements specified therein.

Source: Laws 1991, LB 90, § 16; Laws 2019, LB595, § 17.

25-2917 Tolling of civil statute of limitations; when.

During the period of the restorative justice or dispute resolution process, any applicable civil statute of limitations shall be tolled as to the parties. The tolling shall commence on the date the approved center accepts the case and shall end on the date of the last restorative justice or mediation session. This period shall be no longer than sixty days without consent of all the parties.

Source: Laws 1991, LB 90, § 17; Laws 2019, LB595, § 18.

25-2918 Rules and regulations.

(1) The Supreme Court, upon recommendation by the director in consultation with the council, shall adopt and promulgate rules and regulations to carry out the Dispute Resolution Act.

(2) The office may adopt and promulgate policies and procedures to carry out the Dispute Resolution Act.

Source: Laws 1991, LB 90, § 18; Laws 2019, LB595, § 19.

25-2919 Application of act.

The Dispute Resolution Act shall apply only to approved centers and mediators and restorative justice facilitators of such centers.

Source: Laws 1991, LB 90, § 19; Laws 2019, LB595, § 20.

25-2920 Director; report.

The director shall provide an annual report regarding the implementation of the Dispute Resolution Act. The report shall be available to the public on the Supreme Court's website. The report shall include the number and types of disputes received, the disposition of the disputes, any problems encountered, and any recommendations to address problems.

Source: Laws 1991, LB 90, § 20; Laws 2012, LB782, § 29; Laws 2019, LB595, § 21.

25-2921 Dispute Resolution Cash Fund; created; use; investment.

The Dispute Resolution Cash Fund is created. The State Court Administrator shall administer the fund. The fund shall consist of proceeds received pursuant to subdivision (9) of section 25-2908 and section 33-155. The fund shall be used to supplement the administration of the office and the support of the approved centers. 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 922, § 2; Laws 2003, LB 760, § 8; Laws 2009, First Spec. Sess., LB3, § 12; Laws 2011, LB378, § 18; Laws 2019, LB595, § 22.

Cross References

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

ARTICLE 30
CIVIL LEGAL SERVICES FOR LOW-INCOME PERSONS

(a) LEGAL AID AND SERVICES

Section
25-3003. Commission on Public Advocacy; duties.
25-3004. Service provider; receipt of funds; eligibility; powers and duties; audit.

(a) LEGAL AID AND SERVICES

25-3003 Commission on Public Advocacy; duties.

(1) The Commission on Public Advocacy shall establish eligibility criteria and guidelines to determine on an annual basis (a) the service areas, (b) the legal services to be provided and the priorities for providing the services, which shall be determined in accordance with subsection (1) of section 25-3004, and (c) the service provider or providers for each service area. The commission shall annually certify one or more service providers for each service area. A single service provider may be certified for more than one service area. Such certification entitles the service provider to a distribution of funds as defined and determined by section 25-3004.

(2) The commission shall accept applications for certification on an annual basis from entities interested in providing free civil legal services to eligible low-income persons. In the application, each applicant shall certify to the commission that the applicant intends to provide free civil legal services to eligible low-income persons as determined by the commission.

Source: Laws 1997, LB 729, § 5; Laws 2024, LB1195, § 1.
Effective date July 19, 2024.

25-3004 Service provider; receipt of funds; eligibility; powers and duties; audit.

(1) Each service provider certified by the Commission on Public Advocacy shall be eligible to receive funds from the Legal Aid and Services Fund to provide free civil legal services to eligible low-income persons in the service area for which it is certified. The funds granted to each service provider from the Legal Aid and Services Fund shall be determined by the commission. Grants shall be awarded to legal service providers that provide direct legal representation of eligible low-income persons.

(2) Each service provider is authorized to use funds received from the Legal Aid and Services Fund to provide legal services in civil matters to any eligible low-income person.

(3) A service provider which has received funds from the Legal Aid and Services Fund shall be audited annually. For any service provider receiving funds pursuant to subsection (1) of this section, such audit shall include confirmation of the direct legal representation described in subsection (1) of this section, as shown through an entry of appearance as attorney in a court action, an execution of a retainer agreement, or any similar confirmation of actual legal representation.

Source: Laws 1997, LB 729, § 6; Laws 1999, LB 759, § 2; Laws 2024, LB1195, § 2.
Effective date July 19, 2024.

ARTICLE 33

NONRECOURSE CIVIL LITIGATION ACT

Section
25-3308. Registration fee; renewal fee.

25-3308 Registration fee; renewal fee.

(1) An application for registration or renewal of registration under section 25-3307 shall be accompanied by either an application for registration fee or a renewal of registration fee, as applicable.

(2) The Secretary of State may, by rule and regulation, establish fees for applications for registration and renewals of registration at rates sufficient to cover the costs of administering the Nonrecourse Civil Litigation Act, in the event any such fees are required. Such fees shall be collected by the Secretary of State and remitted to the State Treasurer for credit to the Secretary of State Cash Fund.

Source: Laws 2010, LB1094, § 8; Laws 2020, LB910, § 10.

ARTICLE 34

PRISONER LITIGATION

Section
25-3401. Prisoner; civil actions; in forma pauperis litigation; limitation; finding by court that action was frivolous.

25-3401 Prisoner; civil actions; in forma pauperis litigation; limitation; finding by court that action was frivolous.

(1) For purposes of this section:

(a) Civil action means a legal action seeking monetary damages, injunctive relief, declaratory relief, or any appeal filed in any court in this state that relates to or involves a prisoner's conditions of confinement. Civil action does not include a motion for postconviction relief or petition for habeas corpus relief;

(b) Conditions of confinement means any circumstance, situation, or event that involves a prisoner's custody, transportation, incarceration, or supervision;

(c) Correctional institution means any state or local facility that incarcerates or detains any adult accused of, charged with, convicted of, or sentenced for any crime;

(d) Frivolous means the law and evidence supporting a litigant's position is wholly without merit or rational argument; and

(e) Prisoner means any person who is incarcerated, imprisoned, or otherwise detained in a correctional institution.

(2)(a) A prisoner who has filed three or more civil actions, commenced after July 19, 2012, that have been found to be frivolous by a court of this state or a federal court for a case originating in this state shall not be permitted to proceed in forma pauperis for any further civil actions without leave of court. A court shall permit the prisoner to proceed in forma pauperis if the court determines that the person is in danger of serious bodily injury.

(b) A court may include in its final order or judgment in any civil action a finding that the action was frivolous.

(c) A finding under subdivision (2)(b) of this section shall be reflected in the record of the case.

(d) This subsection does not apply to judicial review of disciplinary procedures in adult institutions administered by the Department of Correctional Services governed by sections 83-4,109 to 83-4,123.

Source: Laws 2012, LB793, § 1; Laws 2018, LB193, § 48.

ARTICLE 35

UNIFORM CIVIL REMEDIES FOR UNAUTHORIZED DISCLOSURE OF INTIMATE IMAGES

Section

25-3501 Act, how cited.

Sections 25-3501 to 25-3508 shall be known and may be cited as the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act.

Source: Laws 2019, LB680, § 1.

25-3502 Definitions.

In the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act:

(1) Consent means affirmative, conscious, and voluntary authorization by an individual with legal capacity to give authorization.

(2) Depicted individual means an individual whose body is shown in whole or in part in an intimate image.

(3) Disclosure means transfer, publication, or distribution to another person. Disclose has a corresponding meaning.

(4) Identifiable means recognizable by a person other than the depicted individual:

(A) from an intimate image itself; or

(B) from an intimate image and identifying characteristic displayed in connection with the intimate image.

(5) Identifying characteristic means information that may be used to identify a depicted individual.

(6) Individual means a human being.

(7) Intimate image means a photograph, film, video recording, or other similar medium that shows:

(A) the uncovered genitals, pubic area, anus, or female post-pubescent nipple of a depicted individual; or

(B) a depicted individual engaging in or being subjected to sexual conduct.

(8) Person means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(9) Sexual conduct includes:

(A) masturbation;

(B) genital, anal, or oral sex;

(C) sexual penetration of, or with, an object;

(D) bestiality; or

(E) the transfer of semen onto a depicted individual.

Source: Laws 2019, LB680, § 2.

25-3503 Civil action.

(a) In this section:

(1) Harm includes physical harm, economic harm, and emotional distress whether or not accompanied by physical or economic harm.

(2) Private means:

(A) created or obtained under circumstances in which a depicted individual had a reasonable expectation of privacy; or

(B) made accessible through theft, bribery, extortion, fraud, false pretenses, voyeurism, or exceeding authorized access to an account, message, file, device, resource, or property.

(b) Except as otherwise provided in section 25-3504, a depicted individual who is identifiable and who suffers harm from a person's intentional disclosure or threatened disclosure of an intimate image that was private without the

depicted individual's consent has a cause of action against the person if the person knew or acted with reckless disregard for whether:

(1) the depicted individual did not consent to the disclosure;

(2) the intimate image was private; and

(3) the depicted individual was identifiable.

(c) The following conduct by a depicted individual does not establish by itself that the individual consented to the disclosure of the intimate image which is the subject of an action under the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act or that the individual lacked a reasonable expectation of privacy:

(1) consent to creation of the image; or

(2) previous consensual disclosure of the image.

(d) A depicted individual who does not consent to the sexual conduct or uncovering of the part of the body depicted in an intimate image of the individual retains a reasonable expectation of privacy even if the image was created when the individual was in a public place.

Source: Laws 2019, LB680, § 3.

25-3504 Exceptions to liability.

(a) In this section:

(1) Child means an unemancipated individual who is less than nineteen years of age.

(2) Parent means an individual recognized as a parent under law of this state other than the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act.

(b) A person is not liable under the act if the person proves that disclosure of, or a threat to disclose, an intimate image was:

(1) made in good faith in:

(A) law enforcement;

(B) a legal proceeding; or

(C) medical education or treatment;

(2) made in good faith in the reporting or investigation of:

(A) unlawful conduct; or

(B) unsolicited and unwelcome conduct;

(3) related to a matter of public concern or public interest; or

(4) reasonably intended to assist the depicted individual.

(c) Subject to subsection (d) of this section, a defendant who is a parent, legal guardian, or individual with legal custody of a child is not liable under the act for a disclosure or threatened disclosure of an intimate image, as defined in subdivision (7)(A) of section 25-3502, of the child.

(d) If a defendant asserts an exception to liability under subsection (c) of this section, the exception does not apply if the plaintiff proves the disclosure was:

(1) prohibited by law other than the act; or

(2) made for the purpose of sexual arousal, sexual gratification, humiliation, degradation, or monetary or commercial gain.

(e) Disclosure of, or a threat to disclose, an intimate image is not a matter of public concern or public interest solely because the depicted individual is a public figure.

Source: Laws 2019, LB680, § 4.

25-3505 Remedies.

(a) In an action under the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act, a prevailing plaintiff may recover as compensation:

(1)(A) economic and noneconomic damages proximately caused by the defendant's disclosure or threatened disclosure, including damages for emotional distress whether or not accompanied by other damages; or

(B) if the actual damages are incapable of being quantified or difficult to quantify, presumed damages not to exceed ten thousand dollars against each defendant in an amount that bears a reasonable relationship to the probable damages incurred by the prevailing plaintiff. In determining the amount of presumed damages under subdivision (a)(1)(B) of this section, consideration must be given to the age of the parties at the time of the disclosure or threatened disclosure, the number of disclosures or threatened disclosures made by the defendant, the breadth of distribution of the image by the defendant, and other exacerbating or mitigating factors; and

(2) an amount equal to any monetary gain made by the defendant from disclosure of the intimate image.

(b) In an action under the act, the court may award a prevailing plaintiff:

(1) reasonable attorney's fees and costs; and

(2) additional relief, including injunctive relief.

(c) The act does not affect a right or remedy available under law of this state other than the act.

Source: Laws 2019, LB680, § 5.

25-3506 Statute of limitations.

(a) An action under subsection (b) of section 25-3503 for:

(1) an unauthorized disclosure may not be brought later than four years from the date the disclosure was discovered or should have been discovered with the exercise of reasonable diligence; and

(2) a threat to disclose may not be brought later than four years from the date of the threat to disclose.

(b) This section is subject to section 25-213.

Source: Laws 2019, LB680, § 6.

25-3507 Construction.

(a) In an action brought under the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act, no provider or user of an interactive computer service shall be treated as a person disclosing any information provided by another information content provider unless the provider or user of such interactive computer service is responsible, in whole or in part, for the

creation or development of the information provided through the Internet or any other interactive service.

(b) No provider or user of an interactive computer service shall be held liable under the act on account of:

(1) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(2) any action taken to enable or make available to any information content provider or others the technical means to restrict access to material described in subdivision (b)(1) of this section.

(c) Nothing in the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act shall be construed to impose liability on an interactive computer service for content provided by another person.

(d) The Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act must be construed to be consistent with 47 U.S.C. 230, as such section existed on January 1, 2019.

(e) The act may not be construed to alter the law of this state on sovereign immunity.

(f) For purposes of this section, information content provider and interactive computer service have the same meanings as in 47 U.S.C. 230, as such section existed on January 1, 2019.

Source: Laws 2019, LB680, § 7.

25-3508 Uniformity of application and construction.

In applying and construing the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Source: Laws 2019, LB680, § 8.

25-3509 Plaintiff's privacy.

In any action brought pursuant to the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act, a plaintiff may request to use a pseudonym instead of his or her legal name in all court proceedings and records. Upon finding that the use of a pseudonym is proper, the court shall ensure that the pseudonym is used in all court proceedings and records.

Source: Laws 2019, LB680, § 9.

Cross References

Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act, see section 25-3501.

ARTICLE 36

COVID-19 LIABILITY ACT

Section
25-3601. Act, how cited.
25-3602. Terms, defined.
25-3603. Exposure or potential exposure to COVID-19; civil action; when permitted.

Section
25-3604. Act; how construed.

25-3601 Act, how cited.

Sections 25-3601 to 25-3604 shall be known and may be cited as the COVID-19 Liability Act.

Source: Laws 2021, LB139, § 1.

Cross References

Health Care Crisis Protocol Act, see section 71-2701.

25-3602 Terms, defined.

For purposes of the COVID-19 Liability Act:

(1) COVID-19 means the novel coronavirus identified as SARS-CoV-2, the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating therefrom, and the health conditions or threats associated with the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating therefrom;

(2) Federal public health guidance means and includes written or oral guidance related to COVID-19 issued by any of the following:

(a) The Centers for Disease Control and Prevention of the United States Department of Health and Human Services;

(b) The Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services; or

(c) The federal Occupational Safety and Health Administration; and

(3)(a) Person means:

(i) Any natural person;

(ii) Any sole proprietorship, partnership, limited liability partnership, corporation, limited liability company, business trust, estate, trust, unincorporated association, or joint venture;

(iii) The State of Nebraska and any political subdivision of the state;

(iv) Any school, college, university, institution of higher education, religious organization, or charitable organization; or

(v) Any other legal or commercial entity.

(b) Person includes an employee, director, governing board, officer, agent, independent contractor, or volunteer of a person listed in subdivision (3)(a) of this section.

Source: Laws 2021, LB139, § 2.

Cross References

Health Care Crisis Protocol Act, see section 71-2701.

25-3603 Exposure or potential exposure to COVID-19; civil action; when permitted.

A person may not bring or maintain a civil action seeking recovery for any injuries or damages sustained from exposure or potential exposure to COVID-19 on or after May 26, 2021, if the act or omission alleged to violate a duty of care was in substantial compliance with any federal public health guidance

that was applicable to the person, place, or activity at issue at the time of the alleged exposure or potential exposure.

Source: Laws 2021, LB139, § 3.

Cross References

Health Care Crisis Protocol Act, see section 71-2701.

25-3604 Act; how construed.

The COVID-19 Liability Act shall not be construed to:

(1) Create, recognize, or ratify a claim or cause of action of any kind;

(2) Eliminate or satisfy a required element of a claim or cause of action of any kind;

(3) Affect rights or coverage limits under the Nebraska Workers' Compensation Act;

(4) Abrogate, amend, repeal, alter, or affect any statutory or common law immunity or limitation of liability; or

(5) Constitute a waiver of the sovereign immunity of the State of Nebraska or any political subdivision of the state.

Source: Laws 2021, LB139, § 4.

Cross References

Health Care Crisis Protocol Act, see section 71-2701.
Nebraska Workers' Compensation Act, see section 48-1,110.

CHAPTER 27
COURTS; RULES OF EVIDENCE

Article.
4. Relevancy and Its Limits. 27-404 to 27-413.
7. Opinion and Expert Testimony. 27-707.
8. Hearsay. 27-801, 27-803.
9. Authentication and Identification. 27-902.
11. Miscellaneous Rules. 27-1103.

ARTICLE 4
RELEVANCY AND ITS LIMITS

Section
27-404. Rule 404. Character evidence; not admissible to prove conduct; exceptions; evidence of other crimes, wrongs, or acts; standard of proof; sexual assault; provisions applicable.
27-412. Sex offense cases; relevance of alleged victim's past sexual behavior or alleged sexual predisposition; evidence of victim's consent; when not admissible.
27-413. Offense of sexual assault, defined.

27-404 Rule 404. Character evidence; not admissible to prove conduct; exceptions; evidence of other crimes, wrongs, or acts; standard of proof; sexual assault; provisions applicable.

(1) Evidence of a person's character or a trait of his or her character is not admissible for the purpose of proving that he or she acted in conformity therewith on a particular occasion, except:

(a) Evidence of a pertinent trait of his or her character offered by an accused, or by the prosecution to rebut the same;

(b) Evidence of a pertinent trait of character of the victim of the crime offered by an accused or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor. In a sexual assault case, reputation, opinion, or other evidence of past sexual behavior of the victim is governed by section 27-412; or

(c) Evidence of the character of a witness as provided in sections 27-607 to 27-609.

(2) Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he or she acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(3) When such evidence is admissible pursuant to this section, in criminal cases evidence of other crimes, wrongs, or acts of the accused may be offered in evidence by the prosecution if the prosecution proves to the court by clear and convincing evidence that the accused committed the crime, wrong, or act. Such proof shall first be made outside the presence of any jury.

(4) Regarding the admissibility in a civil or criminal action of evidence of a person's commission of another offense or offenses of sexual assault under sections 28-316.01 and 28-319 to 28-322.05, see sections 27-413 to 27-415.

Source: Laws 1975, LB 279, § 14; Laws 1984, LB 79, § 2; Laws 1993, LB 598, § 1; Laws 2009, LB97, § 7; Laws 2019, LB519, § 2; Laws 2020, LB881, § 2.

27-412 Sex offense cases; relevance of alleged victim's past sexual behavior or alleged sexual predisposition; evidence of victim's consent; when not admissible.

(1) The following evidence is not admissible in any civil or criminal proceeding involving alleged sexual misconduct except as provided in subsections (2) and (3) of this section:

(a) Evidence offered to prove that any victim engaged in other sexual behavior; and

(b) Evidence offered to prove any victim's sexual predisposition.

(2)(a) In a criminal case, the following evidence is admissible, if otherwise admissible under the Nebraska Evidence Rules:

(i) Evidence of specific instances of sexual behavior by the victim offered to prove that a person other than the accused was the source of semen, injury, or other physical evidence;

(ii) Evidence of specific instances of sexual behavior of the victim with respect to the accused offered by the accused to prove consent of the victim if it is first established to the court that such behavior is similar to the behavior involved in the case and tends to establish a pattern of behavior of the victim relevant to the issue of consent; and

(iii) Evidence, the exclusion of which would violate the constitutional rights of the accused.

(b) In a civil case, evidence offered to prove the sexual behavior or sexual predisposition of any victim is admissible if it is otherwise admissible under the Nebraska Evidence Rules and its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. Evidence of a victim's reputation is admissible only if it has been placed in controversy by the victim.

(3)(a) A party intending to offer evidence under subsection (2) of this section shall:

(i) File a written motion at least fifteen days before trial specifically describing the evidence and stating the purpose for which it is offered unless the court, for good cause, requires a different time for filing or permits filing during trial; and

(ii) Serve the motion on all parties and notify the victim or, when appropriate, the victim's guardian or representative.

(b) Before admitting evidence under this section, the court shall conduct a hearing in camera outside the presence of any jury.

(4) Evidence of the victim's consent is not admissible in any civil proceeding involving alleged:

(a) Sexual penetration when the actor is nineteen years of age or older and the victim is less than sixteen years of age; or

(b) Sexual contact when the actor is nineteen years of age or older and the victim is less than fifteen years of age.

Source: Laws 2009, LB97, § 3; Laws 2019, LB478, § 1.

27-413 Offense of sexual assault, defined.

For purposes of sections 27-414 and 27-415, offense of sexual assault means sexual assault under section 28-319 or 28-320, sexual abuse by a school employee under section 28-316.01, sexual assault of a child under section 28-319.01 or 28-320.01, sexual assault by use of an electronic communication device under section 28-320.02, sexual abuse of an inmate or parolee under sections 28-322.01 to 28-322.03, sexual abuse of a protected individual under section 28-322.04, sexual abuse of a detainee under section 28-322.05, an attempt or conspiracy to commit any of the crimes listed in this section, or the commission of or conviction for a crime in another jurisdiction that is substantially similar to any crime listed in this section.

Source: Laws 2009, LB97, § 4; Laws 2015, LB294, § 8; Laws 2019, LB519, § 3; Laws 2020, LB881, § 3.

ARTICLE 7

OPINION AND EXPERT TESTIMONY

Section
27-707. Eyewitness identification and memory; expert witness; admissibility of testimony.

27-707 Eyewitness identification and memory; expert witness; admissibility of testimony.

The testimony of an expert witness regarding eyewitness identification and memory may be admitted in any criminal or civil proceeding pursuant to the rules governing admissibility of evidence set forth in the Nebraska Evidence Rules.

Source: Laws 2020, LB881, § 4.

ARTICLE 8

HEARSAY

Section
27-801. Rule 801. Definitions; statement, declarant, hearsay; statements which are not hearsay.
27-803. Rule 803. Hearsay exceptions; enumerated; availability of declarant immaterial.

27-801 Rule 801. Definitions; statement, declarant, hearsay; statements which are not hearsay.

The following definitions apply under this article:

(1) A statement is (a) an oral or written assertion or (b) nonverbal conduct of a person, if it is intended by him or her as an assertion;

(2) A declarant is a person who makes a statement;

(3) Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted; and

(4) A statement is not hearsay if:

(a) The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement (i) is inconsistent with his or her testimony and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, (ii) is consistent with his or her testimony and is offered to rebut an express or implied charge against him or her of recent fabrication or improper influence or motive, or (iii) identifies a person as someone the declarant perceived earlier; or

(b) The statement is offered against a party and is (i) his or her own statement, in either his or her individual or a representative capacity, (ii) a statement of which he or she has manifested his or her adoption or belief in its truth, (iii) a statement by a person authorized by him or her to make a statement concerning the subject, (iv) a statement by his or her agent or servant within the scope of his or her agency or employment, or (v) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

Source: Laws 1975, LB 279, § 55; Laws 2019, LB392, § 1.

Cross References

Electronic recordation of statements in custodial interrogation, admissibility, see sections 29-4501 to 29-4508.

27-803 Rule 803. Hearsay exceptions; enumerated; availability of declarant immaterial.

Subject to the provisions of section 27-403, the following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it;

(2) A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition;

(3) A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will;

(4) Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment;

(5) A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him or her to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in his or her memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party;

(6)(a) A memorandum, report, record, or data compilation, in any form, of acts, events, or conditions, other than opinions or diagnoses, made at or near the time of such acts, events, or conditions, in the course of a regularly conducted activity, if it was the regular course of such activity to make such memorandum, report, record, or data compilation at the time of such act,

event, or condition, or within a reasonable time thereafter, as shown by the testimony of the custodian or other qualified witness or by a certification that complies with subdivision (11) or (12) of section 27-902 or with a statute permitting certification, unless the source of information or method or circumstances of preparation indicate lack of trustworthiness. The circumstances of the making of such memorandum, report, record, or data compilation, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight.

(b) A memorandum, report, record, or data compilation, in any form, of acts, events, or conditions, other than opinions or diagnoses, that was received or acquired in the regular course of business by an entity from another entity and has been incorporated into and kept in the regular course of business of the receiving or acquiring entity; that the receiving or acquiring entity typically relies upon the accuracy of the contents of the memorandum, report, record, or data compilation; and that the circumstances otherwise indicate the trustworthiness of the memorandum, report, record, or data compilation, as shown by the testimony of the custodian or other qualified witness. Subdivision (6)(b) of this section shall not apply in any criminal proceeding;

(7) Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of subdivision (6) of this section to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate a lack of trustworthiness;

(8) Upon reasonable notice to the opposing party prior to trial, records, reports, statements, or data compilations made by a public official or agency of facts required to be observed and recorded pursuant to a duty imposed by law, unless the sources of information or the method or circumstances of the investigation are shown by the opposing party to indicate a lack of trustworthiness;

(9) Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law;

(10) To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with section 27-902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation or entry;

(11) Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization;

(12) Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a member of the clergy, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter;

(13) Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones or the like;

(14) The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorized the recording of documents of that kind in that office;

(15) A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document;

(16) Statements in a document in existence thirty years or more whose authenticity is established;

(17) Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations;

(18) Statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice, to the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination. If admitted, the statements may be read into evidence but may not be received as exhibits;

(19) Reputation among members of his or her family by blood, adoption, or marriage, or among his or her associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of his or her personal or family history;

(20) Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or state or nation in which located;

(21) Reputation of a person's character among his or her associates or in the community;

(22) Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the government in a criminal prosecution for purposes other than impeachment, judgments against a person other than the accused. The pendency of an appeal may be shown but does not affect admissibility;

(23) Judgments as proof of matters of personal, family, or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation; and

(24) A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (a) the statement is offered as evidence of a material fact, (b) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts, and (c) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. A statement may not be admitted under this exception unless the proponent of it makes known to the adverse party, sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his or her intention to offer the statement and the particulars of it, including the name and address of the declarant.

Source: Laws 1975, LB 279, § 57; Laws 1999, LB 64, § 1; Laws 2014, LB788, § 7; Laws 2021, LB57, § 1; Laws 2023, LB50, § 3.

ARTICLE 9

AUTHENTICATION AND IDENTIFICATION

Section
27-902. Rule 902. Self-authentication; when.

27-902 Rule 902. Self-authentication; when.

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) A document bearing a seal purporting to be that of the United States, or of any state, district, commonwealth, territory, or insular possession thereof, or the Panama Canal Zone or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution;

(2) A document purporting to bear the signature in his or her official capacity of an officer or employee of any entity included in subdivision (1) of this section, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine;

(3) A document purporting to be executed or attested in his or her official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (a) of the executing or attesting person, or (b) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the judge may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification;

(4) A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with subdivision (1), (2), or (3) of this section or complying with any Act of Congress or the Legislature or rule adopted by the Supreme Court of Nebraska which are not in conflict with laws governing such matters;

(5) Books, pamphlets, or other publications purporting to be issued by public authority;

(6) Printed materials purporting to be newspapers or periodicals;

(7) Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin;

(8) Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments;

(9) Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law;

(10) Any signature, document, or other matter declared by Act of Congress and the laws of the State of Nebraska to be presumptively or prima facie genuine or authentic;

(11)(a) The original or a copy of a domestic record that meets the requirements of subdivision (6) of section 27-803, as shown by a certification of the custodian or another qualified person.

(b) Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record and must make the record and certification available for inspection so that the party has a fair opportunity to challenge them on the ground that the sources of information or the method or circumstances of preparation indicate a lack of trustworthiness;

(12) In a civil case, the original or a copy of a foreign record that meets the requirements of subdivision (11)(a) of this section, modified as follows: The certification must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the certification is signed. The proponent must also meet the notice requirements of subdivision (11)(b) of this section;

(13) A record generated by an electronic process or system that produces an accurate result, as shown by a certification of a qualified person that complies with the certification requirements of subdivision (11)(a) or (12) of this section. The proponent must also meet the notice requirements of subdivision (11)(b) of this section; or

(14) Data copied from an electronic device, storage medium, or file, if authenticated by a process of digital identification, as shown by a certification of a qualified person that complies with the certification requirements of subdivision (11)(a) or (12) of this section. The proponent must also meet the notice requirements of subdivision (11)(b) of this section.

Source: Laws 1975, LB 279, § 62; Laws 2023, LB50, § 4.

Cross References

Ordinances of city of the primary class, see section 15-402.

ARTICLE 11
MISCELLANEOUS RULES

Section
27-1103. Rule 1103. Act, how cited.

27-1103 Rule 1103. Act, how cited.

These rules may be known and cited as the Nebraska Evidence Rules.

Source: Laws 1975, LB 279, § 73; Laws 2009, LB97, § 8; Laws 2020, LB881, § 5.

CHAPTER 28
CRIMES AND PUNISHMENTS

ARTICLE 1

PROVISIONS APPLICABLE TO OFFENSES GENERALLY

(a) GENERAL PROVISIONS

(b) DISCRIMINATION-BASED OFFENSES

(d) VICTIMS OF SEX TRAFFICKING OF A MINOR OR LABOR TRAFFICKING OF A MINOR

(a) GENERAL PROVISIONS

28-101 Code, how cited.

Sections 28-101 to 28-1357, 28-1601 to 28-1603, and 28-1701 shall be known and may be cited as the Nebraska Criminal Code.

Source: Laws 1977, LB 38, § 1; Laws 1980, LB 991, § 8; Laws 1982, LB 465, § 1; Laws 1985, LB 371, § 1; Laws 1985, LB 406, § 1; Laws 1986, LB 956, § 12; Laws 1986, LB 969, § 1; Laws 1987, LB 451, § 1; Laws 1988, LB 170, § 1; Laws 1988, LB 463, § 41; Laws 1989, LB 372, § 1; Laws 1990, LB 50, § 10; Laws 1990, LB 571, § 2; Laws 1990, LB 1018, § 1; Laws 1991, LB 135, § 1; Laws 1991, LB 477, § 2; Laws 1992, LB 1098, § 5; Laws 1992, LB 1184, § 8; Laws 1994, LB 988, § 1; Laws 1994, LB 1035, § 1; Laws 1994, LB 1129, § 1; Laws 1995, LB 371, § 1; Laws 1995, LB 385, § 11; Laws 1996, LB 908, § 2; Laws 1997, LB 90, § 1; Laws 1997, LB 814, § 6; Laws 1998, LB 218, § 2; Laws 1999, LB 6, § 1; Laws 1999, LB 49, § 1; Laws 1999, LB 163, § 1; Laws 1999, LB 511, § 1; Laws 2002, LB 276, § 1; Laws 2002, LB 824, § 1; Laws 2003, LB 17, § 1; Laws 2003, LB 43, § 8; Laws 2003, LB 273, § 2; Laws 2004, LB 943, § 1; Laws 2006, LB 57, § 1; Laws 2006, LB 287, § 4; Laws 2006, LB 1086, § 6; Laws 2006, LB 1199, § 1; Laws 2007, LB142, § 1; Laws 2008, LB764, § 1; Laws 2008, LB1055, § 1; Laws 2009, LB63, § 2; Laws 2009, LB97, § 9; Laws 2009, LB155, § 1; Laws 2010, LB252, § 1; Laws 2010, LB594, § 1; Laws 2010, LB894, § 1; Laws 2010, LB1103, § 11; Laws 2011, LB20, § 1; Laws 2011, LB226, § 1; Laws 2011, LB667, § 1; Laws 2013, LB3, § 1; Laws 2013, LB44 § 1; Laws 2014, LB403, § 1; Laws 2014, LB863, § 15; Laws 2015, LB390, § 1; Laws 2016, LB136, § 1; Laws 2016, LB934, § 1; Laws 2016, LB1009, § 1; Laws 2016, LB1106, § 3; Laws 2017, LB289, § 2; Laws 2017, LB487, § 2; Laws 2018, LB931, § 1; Laws 2018, LB990, § 1; Laws 2019, LB7, § 1; Laws 2019, LB519, § 4; Laws 2019, LB686, § 1; Laws 2020, LB814, § 1; Laws 2020, LB881, § 6; Laws 2020, LB1152, § 14; Laws 2022, LB519, § 2; Laws 2022, LB922, § 5; Laws 2023, LB77, § 6.

28-104 Offense; crime; synonymous.

The terms offense and crime are synonymous as used in this code and mean a violation of, or conduct defined by, any statute for which a fine, imprisonment, or death may be imposed.

Source: Laws 1977, LB 38, § 4; Laws 2015, LB268, § 5; Referendum 2016, No. 426.

Note: The changes made to section 28-104 by Laws 2015, LB 268, section 5, have been omitted because of the vote on the referendum at the November 2016 general election.

28-105 Felonies; classification of penalties; sentences; where served; eligibility for probation.

(1) For purposes of the Nebraska Criminal Code and any statute passed by the Legislature after the date of passage of the code, felonies are divided into ten classes which are distinguished from one another by the following penalties which are authorized upon conviction:

Class I felony . . . . . Death
Class IA felony . . . . . Life imprisonment

Class IB felony	Maximum–life imprisonment Minimum–twenty years imprisonment
Class IC felony	Maximum–fifty years imprisonment Mandatory minimum–five years imprisonment
Class ID felony	Maximum–fifty years imprisonment Mandatory minimum–three years imprisonment
Class II felony	Maximum–fifty years imprisonment Minimum–one year imprisonment
Class IIA felony	Maximum—twenty years imprisonment Minimum–none
Class III felony	Maximum–four years imprisonment and two years post-release supervision or twenty-five thousand dollars fine, or both Minimum–none for imprisonment and nine months post-release supervision if imprisonment is imposed
Class IIIA felony	Maximum–three years imprisonment and eighteen months post-release supervision or ten thousand dollars fine, or both Minimum–none for imprisonment and nine months post-release supervision if imprisonment is imposed
Class IV felony	Maximum–two years imprisonment and twelve months post-release supervision or ten thousand dollars fine, or both Minimum–none for imprisonment and none for post-release supervision

(2) All sentences for maximum terms of imprisonment for one year or more for felonies shall be served in institutions under the jurisdiction of the Department of Correctional Services. All sentences for maximum terms of imprisonment of less than one year shall be served in the county jail.

(3) Nothing in this section shall limit the authority granted in sections 29-2221 and 29-2222 to increase sentences for habitual criminals.

(4) A person convicted of a felony for which a mandatory minimum sentence is prescribed shall not be eligible for probation.

(5) All sentences of post-release supervision shall be served under the jurisdiction of the Office of Probation Administration and shall be subject to conditions imposed pursuant to section 29-2262 and subject to sanctions authorized pursuant to section 29-2266.02.

(6) Any person who is sentenced to imprisonment for a Class I, IA, IB, IC, ID, II, or IIA felony and sentenced concurrently or consecutively to imprisonment for a Class III, IIIA, or IV felony shall not be subject to post-release supervision pursuant to subsection (1) of this section.

(7) Any person who is sentenced to imprisonment for a Class III, IIIA, or IV felony committed prior to August 30, 2015, and sentenced concurrently or consecutively to imprisonment for a Class III, IIIA, or IV felony committed on or after August 30, 2015, shall not be subject to post-release supervision pursuant to subsection (1) of this section.

(8) The changes made to the penalties for Class III, IIIA, and IV felonies by Laws 2015, LB605, do not apply to any offense committed prior to August 30, 2015, as provided in section 28-116.

Source: Laws 1977, LB 38, § 5; Laws 1989, LB 592, § 1; Laws 1995, LB 371, § 2; Laws 1997, LB 364, § 1; Laws 1998, LB 900, § 1; Laws

1998, LB 1266, § 1; Laws 2002, Third Spec. Sess., LB 1, § 1; Laws 2011, LB12, § 1; Laws 2015, LB268, § 6; Laws 2015, LB605, § 6; Laws 2016, LB1094, § 2; Referendum 2016, No. 426; Laws 2019, LB686, § 2.

28-105.01 Death penalty imposition; restriction on person under eighteen years; restriction on person with intellectual disability; sentencing procedure.

(1) Notwithstanding any other provision of law, the death penalty shall not be imposed upon any person who was under the age of eighteen years at the time of the commission of the crime.

(2) Notwithstanding any other provision of law, the death penalty shall not be imposed upon any person with an intellectual disability.

(3) As used in subsection (2) of this section, intellectual disability means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior. An intelligence quotient of seventy or below on a reliably administered intelligence quotient test shall be presumptive evidence of intellectual disability.

(4) If (a) a jury renders a verdict finding the existence of one or more aggravating circumstances as provided in section 29-2520 or (b)(i) the information contains a notice of aggravation as provided in section 29-1603 and (ii) the defendant waives his or her right to a jury determination of the alleged aggravating circumstances, the court shall hold a hearing prior to any sentencing determination proceeding as provided in section 29-2521 upon a verified motion of the defense requesting a ruling that the penalty of death be precluded under subsection (2) of this section. If the court finds, by a preponderance of the evidence, that the defendant is a person with an intellectual disability, the death sentence shall not be imposed. A ruling by the court that the evidence of diminished intelligence introduced by the defendant does not preclude the death penalty under subsection (2) of this section shall not restrict the defendant's opportunity to introduce such evidence at the sentencing determination proceeding as provided in section 29-2521 or to argue that such evidence should be given mitigating significance.

Source: Laws 1982, LB 787, § 23; Laws 1998, LB 1266, § 2; Laws 2002, Third Spec. Sess., LB 1, § 2; Laws 2013, LB23, § 3; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 28-105.01 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

(b) DISCRIMINATION-BASED OFFENSES

28-115 Criminal offense against a pregnant woman; enhanced penalty.

(1) Except as provided in subsection (2) of this section, any person who commits any of the following criminal offenses against a pregnant woman shall be punished by the imposition of the next higher penalty classification than the penalty classification prescribed for the criminal offense:

(a) Assault in the first degree, section 28-308;

(b) Assault in the second degree, section 28-309;

(c) Assault in the third degree, section 28-310;

(d) Assault by strangulation or suffocation, section 28-310.01;

(e) Sexual assault in the first degree, section 28-319;

(f) Sexual assault in the second or third degree, section 28-320;

(g) Sexual assault of a child in the first degree, section 28-319.01;

(h) Sexual assault of a child in the second or third degree, section 28-320.01;

(i) Sexual abuse of an inmate or parolee in the first degree, section 28-322.02;

(j) Sexual abuse of an inmate or parolee in the second degree, section 28-322.03;

(k) Sexual abuse of a protected individual in the first or second degree, section 28-322.04;

(l) Sexual abuse of a detainee under section 28-322.05;

(m) Domestic assault in the first, second, or third degree, section 28-323;

(n) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the first degree, section 28-929;

(o) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the second degree, section 28-930;

(p) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the third degree, section 28-931;

(q) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional using a motor vehicle, section 28-931.01;

(r) Assault by a confined person, section 28-932;

(s) Confined person committing offenses against another person, section 28-933; and

(t) Proximately causing serious bodily injury while operating a motor vehicle, section 60-6,198.

(2) The enhancement in subsection (1) of this section does not apply to any criminal offense listed in subsection (1) of this section that is already punishable as a Class I, IA, or IB felony. If any criminal offense listed in subsection (1) of this section is punishable as a Class I misdemeanor, the penalty under this section is a Class IIIA felony.

(3) The prosecution shall allege and prove beyond a reasonable doubt that the victim was pregnant at the time of the offense.

Source: Laws 2006, LB 57, § 9; Laws 2010, LB771, § 1; Laws 2014, LB811, § 1; Laws 2016, LB1094, § 4; Laws 2019, LB141, § 1; Laws 2019, LB519, § 5.

(d) VICTIMS OF SEX TRAFFICKING OF A MINOR OR LABOR TRAFFICKING OF A MINOR

28-117 Department of Health and Human Services; information on programs and services.

On or before December 1, 2019, the Department of Health and Human Services shall make publicly available information on programs and services available for referral by the department to respond to the safety and needs of

children reported or suspected to be victims of sex trafficking of a minor or labor trafficking of a minor as defined in section 28-830 and their families. The department shall develop this information in consultation with representatives of child advocacy centers, behavioral health providers, child welfare and juvenile justice service providers, law enforcement representatives, and prosecutors.

Source: Laws 2019, LB519, § 12.

ARTICLE 2
INCHOATE OFFENSES

Section
28-201. Criminal attempt; conduct; penalties.
28-202. Conspiracy, defined; penalty.

28-201 Criminal attempt; conduct; penalties.

(1) A person shall be guilty of an attempt to commit a crime if he or she:

(a) Intentionally engages in conduct which would constitute the crime if the attendant circumstances were as he or she believes them to be; or

(b) Intentionally engages in conduct which, under the circumstances as he or she believes them to be, constitutes a substantial step in a course of conduct intended to culminate in his or her commission of the crime.

(2) When causing a particular result is an element of the crime, a person shall be guilty of an attempt to commit the crime if, acting with the state of mind required to establish liability with respect to the attendant circumstances specified in the definition of the crime, he or she intentionally engages in conduct which is a substantial step in a course of conduct intended or known to cause such a result.

(3) Conduct shall not be considered a substantial step under this section unless it is strongly corroborative of the defendant's criminal intent.

(4) Criminal attempt is:

(a) A Class II felony when the crime attempted is a Class I, IA, IB, IC, or ID felony;

(b) A Class IIA felony when the crime attempted is a Class II felony;

(c) A Class IIIA felony when the crime attempted is a Class IIA felony;

(d) A Class IV felony when the crime attempted is a Class III or IIIA felony;

(e) A Class I misdemeanor when the crime attempted is a Class IV felony;

(f) A Class II misdemeanor when the crime attempted is a Class I misdemeanor; and

(g) A Class III misdemeanor when the crime attempted is a Class II misdemeanor.

Source: Laws 1977, LB 38, § 10; Laws 1997, LB 364, § 2; Laws 1998, LB 1266, § 3; Laws 2010, LB712, § 7; Laws 2010, LB771, § 2; Laws 2012, LB799, § 1; Laws 2015, LB268, § 7; Laws 2015, LB605, § 8; Referendum 2016, No. 426.

Note: The changes made to section 28-201 by Laws 2015, LB 268, section 7, have been omitted because of the vote on the referendum at the November 2016 general election.

28-202 Conspiracy, defined; penalty.

(1) A person shall be guilty of criminal conspiracy if, with intent to promote or facilitate the commission of a felony:

(a) He agrees with one or more persons that they or one or more of them shall engage in or solicit the conduct or shall cause or solicit the result specified by the definition of the offense; and

(b) He or another person with whom he conspired commits an overt act in pursuance of the conspiracy.

(2) If a person knows that one with whom he conspires to commit a crime has conspired with another person or persons to commit the same crime, he is guilty of conspiring to commit such crime with such other person or persons whether or not he knows their identity.

(3) If a person conspires to commit a number of crimes, he is guilty of only one conspiracy so long as such multiple crimes are the object of the same agreement or continuous conspiratorial relationship.

(4) Conspiracy is a crime of the same class as the most serious offense which is an object of the conspiracy, except that conspiracy to commit a Class I felony is a Class II felony.

A person prosecuted for a criminal conspiracy shall be acquitted if such person proves by a preponderance of the evidence that his or her conduct occurred in response to an entrapment.

Source: Laws 1977, LB 38, § 11; Laws 2015, LB268, § 8; Referendum 2016, No. 426.

Note: The changes made to section 28-202 by Laws 2015, LB 268, section 8, have been omitted because of the vote on the referendum at the November 2016 general election.

ARTICLE 3

OFFENSES AGAINST THE PERSON

(a) GENERAL PROVISIONS

Section

(a) GENERAL PROVISIONS

28-303 Murder in the first degree; penalty.

A person commits murder in the first degree if he or she kills another person (1) purposely and with deliberate and premeditated malice, or (2) in the perpetration of or attempt to perpetrate any sexual assault in the first degree, arson, robbery, kidnapping, hijacking of any public or private means of transportation, or burglary, or (3) by administering poison or causing the same to be done; or if by willful and corrupt perjury or subornation of the same he or she purposely procures the conviction and execution of any innocent person. The determination of whether murder in the first degree shall be punished as a Class I or Class IA felony shall be made pursuant to sections 29-2519 to 29-2524.

Source: Laws 1977, LB 38, § 18; Laws 2002, Third Spec. Sess., LB 1, § 3; Laws 2015, LB268, § 9; Referendum 2016, No. 426.

Note: The changes made to section 28-303 by Laws 2015, LB 268, section 9, have been omitted because of the vote on the referendum at the November 2016 general election.

28-310.01 Assault by strangulation or suffocation; penalty; affirmative defense.

(1) A person commits the offense of assault by strangulation or suffocation if the person knowingly and intentionally:

(a) Impedes the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck of the other person; or

(b) Impedes the normal breathing of another person by covering the mouth and nose of the person.

(2) An offense is committed under this section regardless of whether a visible injury resulted.

(3) Except as provided in subsection (4) of this section, a violation of this section is a Class IIIA felony.

(4) A violation of this section is a Class IIA felony if:

(a) The person used or attempted to use a dangerous instrument while committing the offense;

(b) The person caused serious bodily injury to the other person while committing the offense; or

(c) The person has been previously convicted of a violation of this section.

(5) It is an affirmative defense that an act constituting strangulation or suffocation was the result of a legitimate medical procedure.

Source: Laws 2004, LB 943, § 2; Laws 2015, LB605, § 13; Laws 2019, LB141, § 2.

28-311.04 Stalking; violations; penalties.

(1) Except as provided in subsection (2) of this section, any person convicted of violating section 28-311.03 is guilty of a Class I misdemeanor.

(2) Any person convicted of violating section 28-311.03 is guilty of a Class IIIA felony if:

(a) The person has a prior conviction under such section or a substantially conforming criminal violation within the last seven years;

(b) The victim is under sixteen years of age;

(c) The person possessed a deadly weapon at any time during the violation;

(d) The person was also in violation of section 28-311.09, 28-311.11, 42-924, or 42-925, or in violation of a valid foreign harassment protection order recognized pursuant to section 28-311.10 or a valid foreign sexual assault protection order recognized pursuant to section 28-311.12 at any time during the violation; or

(e) The person has been convicted of any felony in this state or has been convicted of a crime in another jurisdiction which, if committed in this state, would constitute a felony and the victim or a family or household member of the victim was also the victim of such previous felony.

Source: Laws 1992, LB 1098, § 3; Laws 1993, LB 299, § 3; Laws 2006, LB 1113, § 23; Laws 2015, LB605, § 16; Laws 2017, LB289, § 3.

28-311.08 Unlawful intrusion; photograph, film, or record image or video of intimate area; distribute or make public; penalty; court; duties; registration under Sex Offender Registration Act; statute of limitations.

(1) It shall be unlawful for any person to knowingly intrude upon any other person without his or her consent in a place of solitude or seclusion. Violation of this subsection is a Class I misdemeanor. A second or subsequent violation of this subsection is a Class IV felony.

(2) It shall be unlawful for any person to knowingly and intentionally photograph, film, or otherwise record an image or video of the intimate area of any other person without his or her knowledge and consent when his or her intimate area would not be generally visible to the public regardless of whether such other person is located in a public or private place. Violation of this subsection is a Class IV felony.

(3) It shall be unlawful for any person to knowingly and intentionally distribute or otherwise make public an image or video of another person recorded in violation of subsection (2) of this section without that person's consent. A first or second violation of this subsection is a Class IIA felony. A third or subsequent violation of this subsection is a Class II felony.

(4) It shall be unlawful for any person to knowingly and intentionally distribute or otherwise make public an image or video of another person's intimate area or of another person engaged in sexually explicit conduct (a) if the other person had a reasonable expectation that the image would remain

private, (b) knowing the other person did not consent to distributing or making public the image or video, and (c) if distributing or making public the image or video serves no legitimate purpose. Violation of this subsection is a Class I misdemeanor. A second or subsequent violation of this subsection is a Class IV felony.

(5) It shall be unlawful for any person to threaten to distribute or otherwise make public an image or video of another person's intimate area or of another person engaged in sexually explicit conduct with the intent to intimidate, threaten, or harass any person. Violation of this subsection is a Class I misdemeanor.

(6) As part of sentencing following a conviction for a violation of subsection (1), (2), or (3) of this section, the court shall make a finding as to the ages of the defendant and the victim at the time the offense occurred. If the defendant is found to have been nineteen years of age or older and the victim is found to have been less than eighteen years of age at such time, then the defendant shall be required to register under the Sex Offender Registration Act.

(7) No person shall be prosecuted under this section unless the indictment for such offense is found by a grand jury or a complaint filed before a magistrate within three years after the later of:

(a) The commission of the crime;

(b) Law enforcement's or a victim's receipt of actual or constructive notice of either the existence of a video or other electronic recording made in violation of this section or the distribution of images, video, or other electronic recording made in violation of this section; or

(c) The youngest victim of a violation of this section reaching the age of twenty-one years.

(8) For purposes of this section:

(a) Intimate area means the naked or undergarment-clad genitalia, pubic area, buttocks, or female breast of an individual;

(b) Intrude means either:

(i) Viewing another person in a state of undress as it is occurring; or

(ii) Recording another person in a state of undress by video, photographic, digital, or other electronic means; and

(c) Place of solitude or seclusion means a place where a person would intend to be in a state of undress and have a reasonable expectation of privacy, including, but not limited to, any facility, public or private, used as a restroom, tanning booth, locker room, shower room, fitting room, or dressing room.

Source: Laws 1996, LB 908, § 1; Laws 2011, LB61, § 1; Laws 2014, LB998, § 2; Laws 2015, LB605, § 17; Laws 2019, LB630, § 1.

Cross References

Sex Offender Registration Act, see section 29-4001.

28-311.09 Harassment protection order; violation; penalty; procedure; costs; enforcement.

(1) Any victim who has been harassed as defined by section 28-311.02 may file a petition and affidavit for a harassment protection order as provided in subsection (3) of this section. Upon the filing of such a petition and affidavit in support thereof, the court may issue a harassment protection order without

bond enjoining the respondent from (a) imposing any restraint upon the person or liberty of the petitioner, (b) harassing, threatening, assaulting, molesting, attacking, or otherwise disturbing the peace of the petitioner, or (c) telephoning, contacting, or otherwise communicating with the petitioner. The harassment protection order shall specify to whom relief under this section was granted.

(2) The petition for a harassment protection order shall state the events and dates or approximate dates of acts constituting the alleged harassment, including the most recent and most severe incident or incidents.

(3) A petition for a harassment protection order shall be filed with the clerk of the district court, and the proceeding may be heard by the county court or the district court as provided in section 25-2740.

(4) A petition for a harassment protection order filed pursuant to subsection (1) of this section may not be withdrawn except upon order of the court. An order issued pursuant to subsection (1) of this section shall specify that it is effective for a period of one year unless otherwise dismissed or modified by the court. Any person, except the petitioner, who knowingly violates an order issued pursuant to subsection (1) of this section after service or notice as described in subdivision (9)(b) of this section shall be guilty of a Class II misdemeanor.

(5)(a) Fees to cover costs associated with the filing of a petition for a harassment protection order or the issuance or service of a harassment protection order seeking only the relief provided by this section shall not be charged, except that a court may assess such fees and costs if the court finds, by clear and convincing evidence, that the statements contained in the petition were false and that the harassment protection order was sought in bad faith.

(b) A court may also assess costs associated with the filing of a petition for a harassment protection order or the issuance or service of a harassment protection order seeking only the relief provided by this section against the respondent.

(6) The clerk of the district court shall make available standard application and affidavit forms for a harassment protection order with instructions for completion to be used by a petitioner. Affidavit forms shall request all relevant information, including, but not limited to: A description of the incidents that are the basis for the application for a harassment protection order, including the most severe incident, and the date or approximate date of such incidents. The clerk and his or her employees shall not provide assistance in completing the forms. The State Court Administrator shall adopt and promulgate the standard application and affidavit forms provided for in this section as well as the standard temporary ex parte and final harassment protection order forms and provide a copy of such forms to all clerks of the district courts in this state. These standard temporary ex parte and final harassment protection order forms shall be the only such forms used in this state.

(7) Any order issued under subsection (1) of this section may be issued ex parte without notice to the respondent if it reasonably appears from the specific facts shown by affidavit of the petitioner that irreparable harm, loss, or damage will result before the matter can be heard on notice. If the specific facts included in the affidavit (a) do not show that the petitioner will suffer irreparable harm, loss, or damage or (b) show that, for any other compelling reason, an ex parte order should not be issued, the court may forthwith cause notice of the

application to be given to the respondent stating that he or she may show cause, not more than fourteen days after service, why such order should not be entered. Any notice provided to the respondent shall include notification that a court may treat a petition for a harassment protection order as a petition for a sexual assault protection order or a domestic abuse protection order if it appears from the facts that such other protection order is more appropriate and that the respondent shall have an opportunity to show cause as to why such protection order should not be entered. If such ex parte order is issued without notice to the respondent, the court shall forthwith cause notice of the petition and order and a form with which to request a show-cause hearing to be given the respondent stating that, upon service on the respondent, the order shall remain in effect for a period of one year unless the respondent shows cause why the order should not remain in effect for a period of one year. If the respondent wishes to appear and show cause why the order should not remain in effect for a period of one year, he or she shall affix his or her current address, telephone number, and signature to the form and return it to the clerk of the district court within ten business days after service upon him or her. Upon receipt of a timely request for a show-cause hearing, the court shall immediately schedule a show-cause hearing to be held within thirty days after the receipt of the request for a show-cause hearing and shall notify the petitioner and respondent of the hearing date. If a petition is dismissed without a hearing, it shall be dismissed without prejudice. The petition and affidavit shall be deemed to have been offered into evidence at any show-cause hearing. The petition and affidavit shall be admitted into evidence unless specifically excluded by the court.

(8) A court may treat a petition for a harassment protection order as a petition for a sexual assault protection order or a domestic abuse protection order if it appears from the facts in the petition, affidavit, and evidence presented at a show-cause hearing that such other protection order is more appropriate and if:

(a) The court makes specific findings that such other order is more appropriate; or

(b) The petitioner has requested the court to so treat the petition.

(9)(a) Upon the issuance of any temporary ex parte or final harassment protection order, the clerk of the court shall forthwith provide the petitioner, without charge, with two certified copies of such order. The clerk of the court shall also forthwith provide the local police department or local law enforcement agency and the local sheriff's office, without charge, with one copy each of such order and one copy each of the sheriff's return thereon. The clerk of the court shall also forthwith provide a copy of the harassment protection order to the sheriff's office in the county where the respondent may be personally served together with instructions for service. Upon receipt of the order and instructions for service, such sheriff's office shall forthwith serve the harassment protection order upon the respondent and file its return thereon with the clerk of the court which issued the harassment protection order within fourteen days of the issuance of the harassment protection order. If any harassment protection order is dismissed or modified by the court, the clerk of the court shall forthwith provide the local police department or local law enforcement agency and the local sheriff's office, without charge, with one copy each of the order of dismissal or modification.

(b) If the respondent is present at a hearing convened pursuant to this section and the harassment protection order is not dismissed, such respondent shall be deemed to have notice by the court at such hearing that the harassment protection order will be granted and remain in effect and further service of such notice described in this subsection shall not be required for purposes of prosecution under this section.

(c) A temporary ex parte harassment protection order shall be affirmed and deemed the final protection order and service of the temporary ex parte order shall be notice of the final protection order if the respondent has been properly served with the ex parte order and:

(i) The respondent fails to request a show-cause hearing within ten business days after service upon him or her and no hearing was requested by the petitioner or upon the court's own motion;

(ii) The respondent has been properly served with notice of any hearing requested by the respondent or petitioner or upon the court's own motion and the respondent fails to appear at such hearing; or

(iii) The respondent has been properly served with notice of any hearing requested by the respondent, the petitioner, or upon the court's own motion and the protection order was not dismissed at the hearing.

(10) A peace officer may, with or without a warrant, arrest a person if (a) the officer has probable cause to believe that the person has committed a violation of a harassment protection order issued pursuant to this section or a violation of a valid foreign harassment protection order recognized pursuant to section 28-311.10 and (b) a petitioner under this section provides the peace officer with a copy of a harassment protection order or the peace officer determines that such an order exists after communicating with the local law enforcement agency or a person protected under a valid foreign harassment protection order recognized pursuant to section 28-311.10 provides the peace officer with a copy of such order.

(11) A peace officer making an arrest pursuant to subsection (10) of this section shall take such person into custody and take such person before the county court or the court which issued the harassment protection order within a reasonable time. At such time the court shall establish the conditions of such person's release from custody, including the determination of bond or recognizance, as the case may be. The court shall issue an order directing that such person shall have no contact with the alleged victim of the harassment.

(12) When provided by the petitioner, the court shall make confidential numeric victim identification information, including social security numbers and dates of birth, available to appropriate criminal justice agencies engaged in protection order enforcement efforts. Such agencies shall maintain the confidentiality of this information except for entry into state and federal databases for protection order enforcement.

Source: Laws 1998, LB 218, § 6; Laws 2012, LB310, § 1; Laws 2019, LB532, § 1.

28-311.11 Sexual assault protection order; violation; penalty; procedure; renewal; enforcement.

(1) Any victim of a sexual assault offense may file a petition and affidavit for a sexual assault protection order as provided in subsection (3) of this section.

Upon the filing of such a petition and affidavit in support thereof, the court may issue a sexual assault protection order without bond enjoining the respondent from (a) imposing any restraint upon the person or liberty of the petitioner, (b) harassing, threatening, assaulting, molesting, attacking, or otherwise disturbing the peace of the petitioner, or (c) telephoning, contacting, or otherwise communicating with the petitioner. The sexual assault protection order shall specify to whom relief under this section was granted.

(2) The petition for a sexual assault protection order shall state the events and dates or approximate dates of acts constituting the sexual assault offense, including the most recent and most severe incident or incidents.

(3) A petition for a sexual assault protection order shall be filed with the clerk of the district court and the proceeding may be heard by the county court or the district court as provided in section 25-2740.

(4) A petition for a sexual assault protection order may not be withdrawn except upon order of the court. A sexual assault protection order shall specify that it is effective for a period of one year unless renewed pursuant to subsection (12) of this section or otherwise dismissed or modified by the court. Any person, except the petitioner, who knowingly violates a sexual assault protection order after service or notice as described in subdivision (9)(b) of this section shall be guilty of a Class I misdemeanor, except that any person convicted of violating such order who has a prior conviction for violating a sexual assault protection order shall be guilty of a Class IV felony.

(5)(a) Fees to cover costs associated with the filing of a petition for issuance or renewal of a sexual assault protection order or the issuance or service of a sexual assault protection order seeking only the relief provided by this section shall not be charged, except that a court may assess such fees and costs if the court finds, by clear and convincing evidence, that the statements contained in the petition were false and that the sexual assault protection order was sought in bad faith.

(b) A court may also assess costs associated with the filing of a petition for issuance or renewal of a sexual assault protection order or the issuance or service of a sexual assault protection order seeking only the relief provided by this section against the respondent.

(6) The clerk of the district court shall make available standard application and affidavit forms for issuance and renewal of a sexual assault protection order with instructions for completion to be used by a petitioner. Affidavit forms shall request all relevant information, including, but not limited to: A description of the most recent incident that was the basis for the application for a sexual assault protection order and the date or approximate date of the incident and, if there was more than one incident, the most severe incident and the date or approximate date of such incident. The clerk and his or her employees shall not provide assistance in completing the forms. The State Court Administrator shall adopt and promulgate the standard application and affidavit forms provided for in this section as well as the standard temporary ex parte and final sexual assault protection order forms and provide a copy of such forms to all clerks of the district courts in this state. Such standard temporary ex parte and final sexual assault protection order forms shall be the only forms used in this state.

(7) A sexual assault protection order may be issued or renewed ex parte without notice to the respondent if it reasonably appears from the specific facts

shown by affidavit of the petitioner that irreparable harm, loss, or damage will result before the matter can be heard on notice. If a sexual assault protection order is not issued ex parte, the court shall immediately schedule an evidentiary hearing to be held within fourteen days after the filing of the petition, and the court shall cause notice of the application to be given to the respondent stating that he or she may show cause why such order should not be entered. Any notice provided to the respondent shall include notification that a court may treat a petition for a sexual assault protection order as a petition for a harassment protection order or a domestic abuse protection order if it appears from the facts that such other protection order is more appropriate and that the respondent shall have an opportunity to show cause as to why such protection order should not be entered. If such ex parte order is issued or renewed without notice to the respondent, the court shall forthwith cause notice of the petition and order and a form with which to request a show-cause hearing to be given the respondent stating that, upon service on the respondent, the order shall remain in effect for a period of one year unless the respondent shows cause why the order should not remain in effect for a period of one year. If the respondent wishes to appear and show cause why the order should not remain in effect for a period of one year, he or she shall affix his or her current address, telephone number, and signature to the form and return it to the clerk of the district court within ten business days after service upon him or her. Upon receipt of a timely request for a show-cause hearing, the court shall immediately schedule a show-cause hearing to be held within thirty days after the receipt of the request for a show-cause hearing and shall notify the petitioner and respondent of the hearing date. The petition and affidavit shall be deemed to have been offered into evidence at any show-cause hearing. The petition and affidavit shall be admitted into evidence unless specifically excluded by the court.

(8) A court may treat a petition for a sexual assault protection order as a petition for a harassment protection order or a domestic abuse protection order if it appears from the facts in the petition, affidavit, and evidence presented at a show-cause hearing that such other protection order is more appropriate and if:

(a) The court makes specific findings that such other order is more appropriate; or

(b) The petitioner has requested the court to so treat the petition.

(9)(a) Upon the issuance or renewal of any temporary ex parte or final sexual assault protection order, the clerk of the court shall forthwith provide the petitioner, without charge, with two certified copies of such order. The clerk of the court shall also forthwith provide the local police department or local law enforcement agency and the local sheriff's office, without charge, with one copy each of such order and one copy each of the sheriff's return thereon. The clerk of the court shall also forthwith provide a copy of the sexual assault protection order to the sheriff's office in the county where the respondent may be personally served together with instructions for service. Upon receipt of the order and instructions for service, such sheriff's office shall forthwith serve the sexual assault protection order upon the respondent and file its return thereon with the clerk of the court which issued the sexual assault protection order within fourteen days of the issuance of the initial or renewed sexual assault protection order. If any sexual assault protection order is dismissed or modified by the court, the clerk of the court shall forthwith provide the local police

department or local law enforcement agency and the local sheriff's office, without charge, with one copy each of the order of dismissal or modification.

(b) If the respondent is present at a hearing convened pursuant to this section and the sexual assault protection order is not dismissed, such respondent shall be deemed to have notice by the court at such hearing that the protection order will be granted and remain in effect and further service of such notice described in this subsection shall not be required for purposes of prosecution under this section.

(c) A temporary ex parte sexual assault protection order shall be affirmed and deemed the final protection order and service of the temporary ex parte order shall be notice of the final protection order if the respondent has been properly served with the ex parte order and:

(i) The respondent fails to request a show-cause hearing within ten business days after service upon him or her and no hearing was requested by the petitioner or upon the court's own motion;

(ii) The respondent has been properly served with notice of any hearing requested by the respondent or petitioner or upon the court's own motion and the respondent fails to appear at such hearing; or

(iii) The respondent has been properly served with notice of any hearing requested by the respondent, the petitioner, or upon the court's own motion and the protection order was not dismissed at the hearing.

(10) A peace officer shall, with or without a warrant, arrest a person if (a) the officer has probable cause to believe that the person has committed a violation of a sexual assault protection order issued pursuant to this section or a violation of a valid foreign sexual assault protection order recognized pursuant to section 28-311.12 and (b) a petitioner under this section provides the peace officer with a copy of such order or the peace officer determines that such an order exists after communicating with the local law enforcement agency.

(11) A peace officer making an arrest pursuant to subsection (10) of this section shall take such person into custody and take such person before the county court or the court which issued the sexual assault protection order within a reasonable time. At such time the court shall establish the conditions of such person's release from custody, including the determination of bond or recognizance, as the case may be. The court shall issue an order directing that such person shall have no contact with the alleged victim of the sexual assault offense.

(12)(a) An order issued under subsection (1) of this section may be renewed annually. To request renewal of the order, the petitioner shall file a petition for renewal and affidavit in support thereof at any time within forty-five days prior to the date the order is set to expire, including the date the order expires.

(b) A sexual assault protection order may be renewed on the basis of the petitioner's affidavit stating that there has been no material change in relevant circumstances since entry of the order and stating the reason for the requested renewal if:

(i) The petitioner seeks no modification of the order; and

(ii)(A) The respondent has been properly served with notice of the petition for renewal and notice of hearing and fails to appear at the hearing; or

(B) The respondent indicates that he or she does not contest the renewal.

(c) The petition for renewal shall state the reasons a renewal is sought and shall be filed with the clerk of the district court, and the proceeding thereon may be heard by the county court or the district court as provided in section 25-2740. A petition for renewal will otherwise be governed in accordance with the procedures set forth in subsections (4) through (11) of this section. The renewed order shall specify that it is effective for one year commencing on the first calendar day after expiration of the previous order or on the calendar day the court grants the renewal if such day is subsequent to the first calendar day after expiration of the previous order.

(13) When provided by the petitioner, the court shall make confidential numeric victim identification information, including social security numbers and dates of birth, available to appropriate criminal justice agencies engaged in protection order enforcement efforts. Such agencies shall maintain the confidentiality of this information, except for entry into state and federal databases for protection order enforcement.

(14) For purposes of this section, sexual assault offense means:

(a) Conduct amounting to sexual assault under section 28-319 or 28-320, sexual abuse by a school employee under section 28-316.01, sexual assault of a child under section 28-319.01 or 28-320.01, or an attempt to commit any of such offenses; or

(b) Subjecting or attempting to subject another person to sexual contact or sexual penetration without his or her consent, as such terms are defined in section 28-318.

Source: Laws 2017, LB289, § 4; Laws 2019, LB532, § 2; Laws 2020, LB881, § 7.

28-311.12 Foreign sexual assault protection order; enforcement.

(1) A valid foreign sexual assault protection order or an order similar to a sexual assault protection order issued by a court of another state, territory, possession, or tribe shall be accorded full faith and credit by the courts of this state and enforced as if it were issued in this state.

(2) A foreign sexual assault protection order issued by a court of another state, territory, possession, or tribe shall be valid if:

(a) The issuing court had jurisdiction over the parties and matter under the law of such state, territory, possession, or tribe;

(b) The respondent was given reasonable notice and an opportunity to be heard sufficient to protect the respondent's right to due process before the order was issued; and

(c) The sexual assault protection order from another jurisdiction has not been rendered against both the petitioner and the respondent, unless: (i) The respondent filed a cross or counter petition, complaint, or other written pleading seeking such a sexual assault protection order; and (ii) the issuing court made specific findings of sexual assault offenses against both the petitioner and respondent and determined that each party was entitled to such an order.

(3) There is a presumption of the validity of the foreign protection order when the order appears authentic on its face.

(4) A peace officer may rely upon a copy of any putative valid foreign sexual assault protection order which has been provided to the peace officer by any source.

Source: Laws 2017, LB289, § 5.

28-316.01 Sexual abuse by a school employee; penalty.

(1) For purposes of this section:

(a) Sexual contact has the same meaning as in section 28-318;

(b) Sexual penetration has the same meaning as in section 28-318;

(c) School employee means a person nineteen years of age or older who is employed by a public, private, denominational, or parochial school approved or accredited by the State Department of Education; and

(d) Student means a person at least sixteen but not more than nineteen years of age enrolled in or attending a public, private, denominational, or parochial school approved or accredited by the State Department of Education, or who was such a person enrolled in or who attended such a school within ninety days of any violation of this section.

(2) A person commits the offense of sexual abuse by a school employee if a school employee subjects a student in the school to which such employee is assigned for work to sexual penetration or sexual contact, or engages in a pattern or scheme of conduct to subject a student in the school to which such employee is assigned for work to sexual penetration or sexual contact. It is not a defense to a charge under this section that the student consented to such sexual penetration or sexual contact.

(3) Any school employee who engages in sexual penetration with a student is guilty of sexual abuse by a school employee in the first degree. Sexual abuse by a school employee in the first degree is a Class IIA felony.

(4) Any school employee who engages in sexual contact with a student is guilty of sexual abuse by a school employee in the second degree. Sexual abuse by a school employee in the second degree is a Class IIIA felony.

(5) Any school employee who engages in a pattern or scheme of conduct with the intent to subject a student to sexual penetration or sexual contact is guilty of sexual abuse by a school employee in the third degree. Sexual abuse by a school employee in the third degree is a Class IV felony.

Source: Laws 2020, LB881, § 12.

28-318 Terms, defined.

As used in sections 28-317 to 28-322.05, unless the context otherwise requires:

(1) Actor means a person accused of sexual assault;

(2) Intimate parts means the genital area, groin, inner thighs, buttocks, or breasts;

(3) Past sexual behavior means sexual behavior other than the sexual behavior upon which the sexual assault is alleged;

(4) Serious personal injury means great bodily injury or disfigurement, extreme mental anguish or mental trauma, pregnancy, disease, or loss or impairment of a sexual or reproductive organ;

(5) Sexual contact means the intentional touching of the victim's sexual or intimate parts or the intentional touching of the victim's clothing covering the immediate area of the victim's sexual or intimate parts. Sexual contact also means the touching by the victim of the actor's sexual or intimate parts or the clothing covering the immediate area of the actor's sexual or intimate parts when such touching is intentionally caused by the actor. Sexual contact includes only such conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification of either party. Sexual contact also includes the touching of a child with the actor's sexual or intimate parts on any part of the child's body for purposes of sexual abuse by a school employee under section 28-316.01 or sexual assault of a child under sections 28-319.01 and 28-320.01;

(6) Sexual penetration means sexual intercourse in its ordinary meaning, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the actor's or victim's body or any object manipulated by the actor into the genital or anal openings of the victim's body which can be reasonably construed as being for nonmedical, nonhealth, or nonlaw enforcement purposes. Sexual penetration shall not require emission of semen;

(7) Victim means the person alleging to have been sexually assaulted;

(8) Without consent means:

(a)(i) The victim was compelled to submit due to the use of force or threat of force or coercion, or (ii) the victim expressed a lack of consent through words, or (iii) the victim expressed a lack of consent through conduct, or (iv) the consent, if any was actually given, was the result of the actor's deception as to the identity of the actor or the nature or purpose of the act on the part of the actor;

(b) The victim need only resist, either verbally or physically, so as to make the victim's refusal to consent genuine and real and so as to reasonably make known to the actor the victim's refusal to consent; and

(c) A victim need not resist verbally or physically where it would be useless or futile to do so; and

(9) Force or threat of force means (a) the use of physical force which overcomes the victim's resistance or (b) the threat of physical force, express or implied, against the victim or a third person that places the victim in fear of death or in fear of serious personal injury to the victim or a third person where the victim reasonably believes that the actor has the present or future ability to execute the threat.

Source: Laws 1977, LB 38, § 33; Laws 1978, LB 701, § 1; Laws 1984, LB 79, § 3; Laws 1985, LB 2, § 2; Laws 1995, LB 371, § 3; Laws 2004, LB 943, § 4; Laws 2006, LB 1199, § 4; Laws 2009, LB97, § 11; Laws 2019, LB519, § 6; Laws 2020, LB881, § 8.

28-322 Sexual abuse of an inmate or parolee; terms, defined.

For purposes of sections 28-322 to 28-322.03:

(1) Inmate or parolee means any individual confined in a facility operated by the Department of Correctional Services or a city or county correctional or jail facility or under parole supervision; and

(2) Person means (a) an individual employed by the Department of Correctional Services or by the Division of Parole Supervision, including any individu-

al working in central administration of the department, any individual working under contract with the department, and any individual, other than an inmate's spouse, to whom the department has authorized or delegated control over an inmate or an inmate's activities, (b) an individual employed by a city or county correctional or jail facility, including any individual working in central administration of the city or county correctional or jail facility, any individual working under contract with the city or county correctional or jail facility, and any individual, other than an inmate's spouse, to whom the city or county correctional or jail facility has authorized or delegated control over an inmate or an inmate's activities, and (c) an individual employed by the Office of Probation Administration who performs official duties within any facility operated by the Department of Correctional Services or a city or county correctional or jail facility.

Source: Laws 1999, LB 511, § 2; Laws 2001, LB 155, § 1; Laws 2004, LB 943, § 5; Laws 2018, LB841, § 1.

28-322.01 Sexual abuse of an inmate or parolee.

(1) A person commits the offense of sexual abuse of an inmate or parolee if such person subjects an inmate or parolee to sexual penetration or sexual contact as those terms are defined in section 28-318. It is not a defense to a charge under this section that the inmate or parolee consented to such sexual penetration or sexual contact.

(2) An otherwise lawful pat-down or body cavity search by a person is not a violation of this section.

Source: Laws 1999, LB 511, § 3; Laws 2001, LB 155, § 2; Laws 2004, LB 943, § 6; Laws 2019, LB519, § 7.

28-322.05 Sexual abuse of a detainee; penalty.

(1) For purposes of this section:

(a) Detainee means an individual who has been:

(i) Arrested by a person;

(ii) Detained by a person, regardless of whether the detainee has been arrested or charged; or

(iii) Placed into the custody of a person, regardless of whether the detainee has been arrested or charged;

(b) Law enforcement agency means an agency or department of this state or of any political subdivision of this state which is responsible for the prevention and detection of crime; the enforcement of the penal, traffic, or highway laws of this state or any political subdivision of this state; and the enforcement of arrest warrants. Law enforcement agency includes a police department, an office of the town marshal, an office of the county sheriff, the Nebraska State Patrol, and any department to which a deputy state sheriff is assigned as provided in section 84-106; and

(c) Person means an individual:

(i) Who is employed by a law enforcement agency, including an individual working under contract with the agency;

(ii) To whom the law enforcement agency has authorized or delegated authority to make arrests, to place a detainee in detention or custody, or to otherwise exercise control over a detainee or a detainee's activities; and

(iii) Who is not the spouse of a detainee.

(2) A person commits the offense of sexual abuse of a detainee if the person engages in sexual penetration or sexual contact with a detainee. It is not a defense to a charge under this section that the detainee consented to such sexual penetration or sexual contact.

(3) An otherwise lawful pat-down or body cavity search by a person is not a violation of this section.

(4) Any person who engages in sexual penetration with a detainee is guilty of sexual abuse of a detainee in the first degree. Sexual abuse of a detainee in the first degree is a Class IIA felony.

(5) Any person who engages in sexual contact with a detainee is guilty of sexual abuse of a detainee in the second degree. Sexual abuse of a detainee in the second degree is a Class IIIA felony.

Source: Laws 2019, LB519, § 8.

28-326 Terms, defined.

For purposes of sections 28-325 to 28-345 and 28-347 to 28-347.06, unless the context otherwise requires:

(1) Abortion means the use or prescription of any instrument, medicine, drug, or other substance or device intentionally to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child, and which causes the premature termination of the pregnancy;

(2) Complications associated with abortion means any adverse physical, psychological, or emotional reaction that is reported in a peer-reviewed journal to be statistically associated with abortion such that there is less than a five percent probability ($P < .05$) that the result is due to chance;

(3) Conception means the fecundation of the ovum by the spermatozoa;

(4)(a) Dismemberment abortion means an abortion in which, with the purpose of causing the death of an unborn child, a person purposely dismembers the body of a living unborn child and extracts him or her one piece at a time from the uterus through use of clamps, grasping forceps, tongs, scissors, or similar instruments that, through the convergence of two rigid levers, slice, crush, or grasp a portion of the unborn child's body to cut or rip it off.

(b) Dismemberment abortion does not include:

(i) An abortion in which suction is used to dismember the body of an unborn child by sucking fetal parts into a collection container; or

(ii) The use of instruments or suction to remove the remains of an unborn child who has already died;

(5) Emergency situation means that condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial impairment of a major bodily function;

(6) Hospital means those institutions licensed by the Department of Health and Human Services pursuant to the Health Care Facility Licensure Act;

(7) Negligible risk means a risk that a reasonable person would consider to be immaterial to a decision to undergo an elective medical procedure;

(8) Partial-birth abortion means an abortion procedure in which the person performing the abortion partially delivers vaginally a living unborn child before killing the unborn child and completing the delivery. For purposes of this subdivision, the term partially delivers vaginally a living unborn child before killing the unborn child means deliberately and intentionally delivering into the vagina a living unborn child, or a substantial portion thereof, for the purpose of performing a procedure that the person performing such procedure knows will kill the unborn child and does kill the unborn child;

(9) Physician means any person licensed to practice medicine in this state as provided in the Uniform Credentialing Act;

(10) Pregnant means that condition of a woman who has unborn human life within her as the result of conception;

(11) Probable gestational age of the unborn child means what will with reasonable probability, in the judgment of the physician, be the gestational age of the unborn child at the time the abortion is planned to be performed;

(12) Risk factor associated with abortion means any factor, including any physical, psychological, emotional, demographic, or situational factor, for which there is a statistical association with one or more complications associated with abortion such that there is less than a five percent probability ($P < .05$) that such statistical association is due to chance. Such information on risk factors shall have been published in any peer-reviewed journals indexed by the United States National Library of Medicine's search services (PubMed or MEDLINE) or in any journal included in the Thomson Reuters Scientific Master Journal List not less than twelve months prior to the day preabortion screening was provided;

(13) Self-induced abortion means any abortion or menstrual extraction attempted or completed by a pregnant woman on her own body;

(14) Ultrasound means the use of ultrasonic waves for diagnostic or therapeutic purposes, specifically to monitor an unborn child;

(15) Viability means that stage of human development when the unborn child is potentially able to live more than merely momentarily outside the womb of the mother by natural or artificial means; and

(16) Woman means any female human being whether or not she has reached the age of majority.

Source: Laws 1977, LB 38, § 41; Laws 1979, LB 316, § 1; Laws 1984, LB 695, § 1; Laws 1986, LB 663, § 1; Laws 1993, LB 110, § 1; Laws 1996, LB 1044, § 59; Laws 1997, LB 23, § 2; Laws 2000, LB 819, § 64; Laws 2007, LB296, § 27; Laws 2009, LB675, § 1; Laws 2010, LB594, § 3; Laws 2020, LB814, § 2.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Uniform Credentialing Act, see section 38-101.

28-327 Abortion; voluntary and informed consent required; exception.

No abortion shall be performed except with the voluntary and informed consent of the woman upon whom the abortion is to be performed. Except in the case of an emergency situation, consent to an abortion is voluntary and informed only if:

(1) The woman is told the following by the physician who is to perform the abortion, by the referring physician, or by a physician assistant or registered nurse licensed under the Uniform Credentialing Act who is an agent of either physician, at least twenty-four hours before the abortion:

(a) The particular medical risks associated with the particular abortion procedure to be employed including, when medically accurate, the risks of infection, hemorrhage, perforated uterus, danger to subsequent pregnancies, and infertility;

(b) The probable gestational age of the unborn child at the time the abortion is to be performed;

(c) The medical risks associated with carrying her child to term;

(d) That she cannot be forced or required by anyone to have an abortion and is free to withhold or withdraw her consent for an abortion; and

(e) Research indicates that mifepristone alone is not always effective in ending a pregnancy. You may still have a viable pregnancy after taking mifepristone. If you change your mind and want to continue your pregnancy after taking mifepristone, information on finding immediate medical assistance is available on the website of the Department of Health and Human Services.

The person providing the information specified in this subdivision to the person upon whom the abortion is to be performed shall be deemed qualified to so advise and provide such information only if, at a minimum, he or she has had training in each of the following subjects: Sexual and reproductive health; abortion technology; contraceptive technology; short-term counseling skills; community resources and referral; and informed consent. The physician or the physician's agent may provide this information by telephone without conducting a physical examination or tests of the patient, in which case the information required to be supplied may be based on facts supplied by the patient and whatever other relevant information is reasonably available to the physician or the physician's agent;

(2) The woman is informed by telephone or in person, by the physician who is to perform the abortion, by the referring physician, or by an agent of either physician, at least twenty-four hours before the abortion:

(a) The name of the physician who will perform the abortion;

(b) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;

(c) That the father is liable to assist in the support of her child, even in instances in which the father has offered to pay for the abortion;

(d) That she has the right to review the printed materials described in section 28-327.01. The physician or his or her agent shall orally inform the woman that the materials have been provided by the Department of Health and Human Services and that they describe the unborn child, list agencies which offer alternatives to abortion, and include information on finding immediate medical assistance if she changes her mind after taking mifepristone and wants to continue her pregnancy. If the woman chooses to review the materials, they shall either be given to her at least twenty-four hours before the abortion or

mailed to her at least seventy-two hours before the abortion by certified mail, restricted delivery to addressee, which means the postal employee can only deliver the mail to the addressee. The physician and his or her agent may disassociate themselves from the materials and may comment or refrain from commenting on them as they choose; and

(e) That she has the right to request a comprehensive list, compiled by the Department of Health and Human Services, of health care providers, facilities, and clinics that offer to have ultrasounds performed by a person at least as qualified as a registered nurse licensed under the Uniform Credentialing Act, including and specifying those that offer to perform such ultrasounds free of charge. The list shall be arranged geographically and shall include the name, address, hours of operation, and telephone number of each entity. If requested by the woman, the physician who is to perform the abortion, the referring physician, or his or her agent shall provide such a list as compiled by the department;

(3) If an ultrasound is used prior to the performance of an abortion, the physician who is to perform the abortion, the referring physician, or a physician assistant or registered nurse licensed under the Uniform Credentialing Act who is an agent of either physician, or any qualified agent of either physician, shall:

(a) Perform an ultrasound of the woman's unborn child of a quality consistent with standard medical practice in the community at least one hour prior to the performance of the abortion;

(b) Simultaneously display the ultrasound images so that the woman may choose to view the ultrasound images or not view the ultrasound images. The woman shall be informed that the ultrasound images will be displayed so that she is able to view them. Nothing in this subdivision shall be construed to require the woman to view the displayed ultrasound images; and

(c) If the woman requests information about the displayed ultrasound image, her questions shall be answered. If she requests a detailed, simultaneous, medical description of the ultrasound image, one shall be provided that includes the dimensions of the unborn child, the presence of cardiac activity, if present and viewable, and the presence of external members and internal organs, if present and viewable;

(4) At least one hour prior to the performance of an abortion, a physician, psychiatrist, psychologist, mental health practitioner, physician assistant, or registered nurse licensed under the Uniform Credentialing Act; a social worker licensed under the Uniform Credentialing Act or holding a multistate authorization to practice in Nebraska under the Social Worker Licensure Compact; or a professional counselor holding a privilege to practice in Nebraska under the Licensed Professional Counselors Interstate Compact has:

(a) Evaluated the pregnant woman to identify if the pregnant woman had the perception of feeling pressured or coerced into seeking or consenting to an abortion;

(b) Evaluated the pregnant woman to identify the presence of any risk factors associated with abortion;

(c) Informed the pregnant woman and the physician who is to perform the abortion of the results of the evaluation in writing. The written evaluation shall include, at a minimum, a checklist identifying both the positive and negative

results of the evaluation for each risk factor associated with abortion and both the licensed person's written certification and the woman's written certification that the pregnant woman was informed of the risk factors associated with abortion as discussed; and

(d) Retained a copy of the written evaluation results in the pregnant woman's permanent record;

(5) If any risk factors associated with abortion were identified, the pregnant woman was informed of the following in such manner and detail that a reasonable person would consider material to a decision of undergoing an elective medical procedure:

(a) Each complication associated with each identified risk factor; and

(b) Any quantifiable risk rates whenever such relevant data exists;

(6) The physician performing the abortion has formed a reasonable medical judgment, documented in the permanent record, that:

(a) The preponderance of statistically validated medical studies demonstrates that the physical, psychological, and familial risks associated with abortion for patients with risk factors similar to the patient's risk factors are negligible risks;

(b) Continuance of the pregnancy would involve risk of injury to the physical or mental health of the pregnant woman greater than if the pregnancy were terminated by induced abortion; or

(c) Continuance of the pregnancy would involve less risk of injury to the physical or mental health of the pregnant woman than if the pregnancy were terminated by an induced abortion;

(7) The woman certifies in writing, prior to the abortion, that:

(a) The information described in subdivisions (1) and (2)(a), (b), and (c) of this section has been furnished her;

(b) She has been informed of her right to review the information referred to in subdivision (2)(d) of this section; and

(c) The requirements of subdivision (3) of this section have been performed if an ultrasound is performed prior to the performance of the abortion; and

(8) Prior to the performance of the abortion, the physician who is to perform the abortion or his or her agent receives a copy of the written certification prescribed by subdivision (7) of this section. The physician or his or her agent shall retain a copy of the signed certification form in the woman's medical record.

Source: Laws 1977, LB 38, § 42; Laws 1979, LB 316, § 2; Laws 1984, LB 695, § 2; Laws 1993, LB 110, § 2; Laws 1996, LB 1044, § 60; Laws 2009, LB675, § 2; Laws 2010, LB594, § 4; Laws 2019, LB209, § 1; Laws 2022, LB752, § 3; Laws 2024, LB932, § 2. Operative date January 1, 2025.

Cross References

Licensed Professional Counselors Interstate Compact, see section 38-4201.
Social Worker Licensure Compact, see section 38-4501.
Uniform Credentialing Act, see section 38-101.

28-327.01 Department of Health and Human Services; printed materials; duties; availability; Internet website information; reporting form; contents.

(1) The Department of Health and Human Services shall cause to be published the following easily comprehensible printed materials:

(a) Geographically indexed materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth, and while the child is dependent, including adoption agencies and agencies and services for prevention of unintended pregnancies, which materials shall include a comprehensive list of the agencies available, a description of the services they offer, and a description of the manner, including telephone numbers and addresses in which such agencies may be contacted or printed materials including a toll-free, twenty-four-hour-a-day telephone number which may be called to orally obtain such a list and description of agencies in the locality of the caller and of the services they offer;

(b) Materials designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time when a woman can be known to be pregnant to full term, including pictures or drawings representing the development of unborn children at the two-week gestational increments, and any relevant information on the possibility of the unborn child's survival. Any such pictures or drawings shall contain the dimensions of the unborn child and shall be realistic and appropriate for the stage of pregnancy depicted. The materials shall be objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages. The materials shall also contain objective information describing the methods of abortion procedures commonly employed, the medical risks commonly associated with each such procedure, the possible detrimental psychological effects of abortion, the medical risks commonly associated with abortion, and the medical risks commonly associated with carrying a child to term;

(c) A comprehensive list of health care providers, facilities, and clinics that offer to have ultrasounds performed by a person at least as qualified as a registered nurse licensed under the Uniform Credentialing Act, including and specifying those that offer to perform such ultrasounds free of charge. The list shall be arranged geographically and shall include the name, address, hours of operation, and telephone number of each entity;

(d) Materials designed to inform the woman that she may still have a viable pregnancy after taking mifepristone. The materials shall include the following statements: ''Research indicates that mifepristone alone is not always effective in ending a pregnancy. You may still have a viable pregnancy after taking mifepristone. If you change your mind and want to continue your pregnancy after taking mifepristone, it may not be too late.''; and

(e) Materials, including contact information, that will assist the woman in finding a medical professional who can help her continue her pregnancy after taking mifepristone.

(2) The printed materials shall be printed in a typeface large enough to be clearly legible.

(3) The printed materials required under this section shall be available from the department upon the request by any person, facility, or hospital for an amount equal to the cost incurred by the department to publish the materials.

(4) The Department of Health and Human Services shall make available on its Internet website a printable publication of geographically indexed materials designed to inform the woman of public and private agencies with services

available to assist a woman with mental health concerns, following a risk factor evaluation. Such services shall include, but not be limited to, outpatient and crisis intervention services and crisis hotlines. The materials shall include a comprehensive list of the agencies available, a description of the services offered, and a description of the manner in which such agencies may be contacted, including addresses and telephone numbers of such agencies, as well as a toll-free, twenty-four-hour-a-day telephone number to be provided by the department which may be called to orally obtain the names of the agencies and the services they provide in the locality of the woman. The department shall update the publication as necessary.

(5) The Department of Health and Human Services shall publish and make available on its website materials designed to inform the woman that she may still have a viable pregnancy after taking mifepristone. The materials shall include the following statements: ''Research indicates that mifepristone alone is not always effective in ending a pregnancy. You may still have a viable pregnancy after taking mifepristone. If you change your mind and want to continue your pregnancy after taking mifepristone, it may not be too late.'' The materials shall also include information, including contact information, that will assist the woman in finding a medical professional who can help her continue her pregnancy after taking mifepristone.

(6) The Department of Health and Human Services shall review and update, as necessary, the materials, including contact information, regarding medical professionals who can help a woman continue her pregnancy after taking mifepristone.

(7)(a) The Department of Health and Human Services shall prescribe a reporting form which shall be used for the reporting of every attempt at continuing a woman's pregnancy after taking mifepristone as described in this section performed in this state. Such form shall include the following items:

(i) The age of the pregnant woman;

(ii) The location of the facility where the service was performed;

(iii) The type of service provided;

(iv) Complications, if any;

(v) The name of the attending medical professional;

(vi) The pregnant woman's obstetrical history regarding previous pregnancies, abortions, and live births;

(vii) The state of the pregnant woman's legal residence;

(viii) Whether an emergency situation caused the physician to waive any of the requirements of section 28-327; and

(ix) Such other information as may be prescribed in accordance with section 71-602.

(b) The completed form shall be signed by the attending medical professional and sent to the department within fifteen days after each reporting month. The completed form shall be an original, typed or written legibly in durable ink, and shall not be deemed complete unless the omission of any item of information required shall have been disclosed or satisfactorily accounted for. Carbon copies shall not be acceptable. The reporting form shall not include the name of the person for whom the service was provided. The reporting form shall be

confidential and shall not be revealed except upon the order of a court of competent jurisdiction in a civil or criminal proceeding.

Source: Laws 1993, LB 110, § 3; Laws 1996, LB 1044, § 61; Laws 2009, LB675, § 3; Laws 2010, LB594, § 12; Laws 2019, LB209, § 2.

Cross References

Uniform Credentialing Act, see section 38-101.

28-345 Department of Health and Human Services; permanent file; rules and regulations.

The Department of Health and Human Services shall prepare and keep on permanent file compilations of the information submitted on the abortion reporting forms and reporting forms regarding attempts at continuing a woman's pregnancy after taking mifepristone pursuant to such rules and regulations as established by the department, which compilations shall be a matter of public record. Under no circumstances shall the compilations of information include the name of any attending physician or identify in any respect facilities where abortions are performed. The department, in order to maintain and keep such compilations current, shall file with such reports any new or amended information.

Source: Laws 1977, LB 38, § 60; Laws 1979, LB 316, § 10; Laws 1996, LB 1044, § 64; Laws 2007, LB296, § 30; Laws 2019, LB209, § 3.

28-347 Dismemberment abortion; unlawful; when; medical emergency; Board of Medicine and Surgery; hearing; findings admissible at trial; persons not liable.

(1) It shall be unlawful for any person to purposely perform or attempt to perform a dismemberment abortion and thereby kill an unborn child unless a dismemberment abortion is necessary due to a medical emergency as defined in subdivision (4) of section 28-3,103.

(2) A person accused in any proceeding of unlawful conduct under subsection (1) of this section may seek a hearing before the Board of Medicine and Surgery on whether the performance of a dismemberment abortion was necessary due to a medical emergency as defined in subdivision (4) of section 28-3,103. The board's findings are admissible on that issue at any trial in which such unlawful conduct is alleged. Upon a motion of the person accused, the court shall delay the beginning of the trial for not more than thirty days to permit such a hearing to take place.

(3) No woman upon whom an abortion is performed or attempted to be performed shall be liable for performing or attempting to perform a dismemberment abortion. No nurse, secretary, receptionist, or other employee or agent who is not a physician, but who acts at the direction of a physician, shall be liable for performing or attempting to perform a dismemberment abortion. No pharmacist or other individual who is not a physician, but who fills a prescription or provides instruments or materials used in an abortion at the direction of or to a physician, shall be liable for performing or attempting to perform a dismemberment abortion.

Source: Laws 2020, LB814, § 3.

28-347.01 Dismemberment abortion; injunction; cause of action; who may maintain.

(1) A cause of action for injunctive relief against a person who has performed a dismemberment abortion in violation of section 28-347 may be maintained by:

(a) A woman upon whom such a dismemberment abortion was performed;

(b) If the woman had not attained the age of nineteen years at the time of the dismemberment abortion, a person who is the parent or guardian of the woman upon whom such a dismemberment abortion was performed; or

(c) A prosecuting attorney with appropriate jurisdiction.

(2) The injunction shall prevent the defendant from performing or attempting to perform dismemberment abortions in this state in violation of section 28-347.

(3) A cause of action may not be maintained by a plaintiff if the pregnancy resulted from the plaintiff's criminal conduct.

Source: Laws 2020, LB814, § 4.

28-347.02 Dismemberment abortion; damages; cause of action; who may maintain.

(1) A cause of action for civil damages against a person who performed a dismemberment abortion in violation of section 28-347 may be maintained by:

(a) Any woman upon whom a dismemberment abortion has been performed in violation of section 28-347;

(b) The father of the unborn child, if married to the woman at the time the dismemberment abortion was performed; or

(c) If the woman had not attained the age of nineteen years at the time of the dismemberment abortion or has died as a result of the abortion, the maternal grandparents of the unborn child.

(2) No damages may be awarded a plaintiff if the pregnancy resulted from the plaintiff's criminal conduct.

(3) Damages awarded in such an action shall include money damages for all injuries, psychological and physical, occasioned by the dismemberment abortion.

Source: Laws 2020, LB814, § 5.

28-347.03 Dismemberment abortion; cause of action; judgment; attorney's fees.

(1) If judgment is rendered in favor of the plaintiff in an action described in section 28-347.01 or 28-347.02, the court shall also render judgment for reasonable attorney's fees in favor of the plaintiff against the defendant.

(2) If judgment is rendered in favor of the defendant in an action described in section 28-347.01 or 28-347.02 and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall render judgment for reasonable attorney's fees in favor of the defendant against the plaintiff.

(3) No attorney's fees may be assessed against the woman upon whom an abortion was performed or attempted to be performed except in accordance with subsection (2) of this section.

Source: Laws 2020, LB814, § 6.

28-347.04 Dismemberment abortion; penalty.

The intentional and knowing performance of an unlawful dismemberment abortion in violation of section 28-347 is a Class IV felony.

Source: Laws 2020, LB814, § 7.

28-347.05 Dismemberment abortion; action or proceeding; anonymity of woman; preserved; court order.

In every civil, criminal, or administrative proceeding or action brought under sections 28-347 to 28-347.04, the court shall rule whether the anonymity of any woman upon whom an abortion has been performed or attempted to be performed shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or attempted to be performed, any person other than a public official who brings an action under section 28-347.01 or 28-347.02 shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant or from attorneys for the defendant.

Source: Laws 2020, LB814, § 8.

28-347.06 Dismemberment abortion; sections, how construed.

Nothing in sections 28-347 to 28-347.04 shall be construed as creating or recognizing a right to abortion or a right to a particular method of abortion.

Source: Laws 2020, LB814, § 9.

(b) ADULT PROTECTIVE SERVICES ACT

28-358.01 Isolation, defined.

(1) Isolation means intentional acts (a) committed for the purpose of preventing, and which do prevent, a vulnerable adult or senior adult from having contact with family, friends, or concerned persons, (b) committed to prevent a vulnerable adult or senior adult from receiving his or her mail or telephone calls, (c) of physical or chemical restraint of a vulnerable adult or senior adult committed for purposes of preventing contact with visitors, family, friends, or other concerned persons, or (d) which restrict, place, or confine a vulnerable adult or senior adult in a restricted area for purposes of social deprivation or preventing contact with family, friends, visitors, or other concerned persons.

(2) Isolation does not include (a) medical isolation prescribed by a licensed physician caring for the vulnerable adult or senior adult, (b) action taken in compliance with a harassment protection order issued pursuant to section 28-311.09, a valid foreign harassment protection order recognized pursuant to section 28-311.10, a sexual assault protection order issued pursuant to section 28-311.11, a valid foreign sexual assault protection order recognized pursuant to section 28-311.12, an order issued pursuant to section 42-924, an ex parte order issued pursuant to section 42-925, an order excluding a person from certain premises issued pursuant to section 42-357, or a valid foreign protection order recognized pursuant to section 42-931, or (c) action authorized by an administrator of a nursing home pursuant to section 71-6021.

Source: Laws 2016, LB934, § 5; Laws 2017, LB289, § 6.

28-372 Report of abuse, neglect, or exploitation; required; contents; notification; toll-free number established.

(1) When any physician, psychologist, physician assistant, nurse, nurse aide, other medical, developmental disability, or mental health professional, law enforcement personnel, caregiver or employee of a caregiver, operator or employee of a sheltered workshop, owner, operator, or employee of any facility licensed by the department, or human services professional or paraprofessional not including a member of the clergy has reasonable cause to believe that a vulnerable adult has been subjected to abuse, neglect, or exploitation or observes such adult being subjected to conditions or circumstances which reasonably would result in abuse, neglect, or exploitation, he or she shall report the incident or cause a report to be made to the appropriate law enforcement agency or to the department. Any other person may report abuse, neglect, or exploitation if such person has reasonable cause to believe that a vulnerable adult has been subjected to abuse, neglect, or exploitation or observes such adult being subjected to conditions or circumstances which reasonably would result in abuse, neglect, or exploitation.

(2) Such report may be made by telephone, with the caller giving his or her name and address, and, if requested by the department, shall be followed by a written report within forty-eight hours. To the extent available the report shall contain: (a) The name, address, and age of the vulnerable adult; (b) the address of the caregiver or caregivers of the vulnerable adult; (c) the nature and extent of the alleged abuse, neglect, or exploitation or the conditions and circumstances which would reasonably be expected to result in such abuse, neglect, or exploitation; (d) any evidence of previous abuse, neglect, or exploitation, including the nature and extent of the abuse, neglect, or exploitation; and (e) any other information which in the opinion of the person making the report may be helpful in establishing the cause of the alleged abuse, neglect, or exploitation and the identity of the perpetrator or perpetrators.

(3) Any law enforcement agency receiving a report of abuse, neglect, or exploitation shall notify the department no later than the next working day by telephone or mail.

(4) A report of abuse, neglect, or exploitation made to the department which was not previously made to or by a law enforcement agency shall be communicated to the appropriate law enforcement agency by the department no later than the next working day by telephone or mail.

(5) The department shall establish a statewide toll-free number to be used by any person any hour of the day or night and any day of the week to make reports of abuse, neglect, or exploitation.

Source: Laws 1988, LB 463, § 25; Laws 1996, LB 1044, § 66; Laws 2006, LB 994, § 52; Laws 2007, LB296, § 32; Laws 2012, LB1051, § 10; Laws 2017, LB417, § 2.

28-377 Records relating to abuse; access.

Except as otherwise provided in sections 28-376 to 28-380, no person, official, or agency shall have access to the records relating to abuse unless in furtherance of purposes directly connected with the administration of the Adult Protective Services Act and section 28-726. Persons, officials, and agencies having access to such records shall include, but not be limited to:

(1) A law enforcement agency investigating a report of known or suspected abuse;

(2) A county attorney in preparation of an abuse petition;

(3) A physician who has before him or her a person whom he or she reasonably suspects may be abused;

(4) An agency having the legal responsibility or authorization to care for, treat, or supervise an abused vulnerable adult;

(5) Defense counsel in preparation of the defense of a person charged with abuse;

(6) Any person engaged in bona fide research or auditing, except that no information identifying the subjects of the report shall be made available to the researcher or auditor. The researcher shall be charged for any costs of such research incurred by the department at a rate established by rules and regulations adopted and promulgated by the department;

(7) The designated protection and advocacy system authorized pursuant to the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. 6000, as the act existed on September 1, 2001, and the Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. 10801, as the act existed on September 1, 2001, acting upon a complaint received from or on behalf of a person with developmental disabilities or mental illness; and

(8) The department, as required or authorized by state law, federal law, federal regulation, or applicable federal program provisions and in furtherance of its programs.

Source: Laws 1988, LB 463, § 30; Laws 1992, LB 643, § 1; Laws 2001, LB 214, § 1; Laws 2007, LB296, § 33; Laws 2020, LB1148, § 1.

28-378 Records relating to abuse; release of information; when.

The department or appropriate law enforcement agency shall provide requested information to any person legally authorized by sections 28-376 to 28-380 to have access to records relating to abuse when ordered by a court of competent jurisdiction or upon compliance by such person with identification requirements established by rules and regulations of the department or law enforcement agency. Such information shall not include the name and address of the person making the report, except that the department may use the name and address as required or authorized by state law, federal law, federal

regulation, or applicable federal program provisions and in furtherance of its programs and the county attorney's office may request and receive the name and address of the person making the report with such person's written consent. The name and other identifying data of any person requesting or receiving information from the registry and the dates and the circumstances under which requests are made or information is released shall be entered in the registry.

Source: Laws 1988, LB 463, § 31; Laws 2020, LB1148, § 2.

ARTICLE 4

DRUGS AND NARCOTICS

Section

28-401 Terms, defined.

As used in the Uniform Controlled Substances Act, unless the context otherwise requires:

(1) Administer means to directly apply a controlled substance by injection, inhalation, ingestion, or any other means to the body of a patient or research subject;

(2) Agent means an authorized person who acts on behalf of or at the direction of another person but does not include a common or contract carrier, public warehouse keeper, or employee of a carrier or warehouse keeper;

(3) Administration means the Drug Enforcement Administration of the United States Department of Justice;

(4) Controlled substance means a drug, biological, substance, or immediate precursor in Schedules I through V of section 28-405. Controlled substance does not include distilled spirits, wine, malt beverages, tobacco, hemp, or any nonnarcotic substance if such substance may, under the Federal Food, Drug,

and Cosmetic Act, 21 U.S.C. 301 et seq., as such act existed on January 1, 2014, and the law of this state, be lawfully sold over the counter without a prescription;

(5) Counterfeit substance means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser;

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

(7) Division of Drug Control means the personnel of the Nebraska State Patrol who are assigned to enforce the Uniform Controlled Substances Act;

(8) Dispense means to deliver a controlled substance to an ultimate user or a research subject pursuant to a medical order issued by a practitioner authorized to prescribe, including the packaging, labeling, or compounding necessary to prepare the controlled substance for such delivery;

(9) Distribute means to deliver other than by administering or dispensing a controlled substance;

(10) Prescribe means to issue a medical order;

(11) Drug means (a) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them, (b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or animals, and (c) substances intended for use as a component of any article specified in subdivision (a) or (b) of this subdivision, but does not include devices or their components, parts, or accessories;

(12) Deliver or delivery means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship;

(13) Hemp has the same meaning as in section 2-503;

(14)(a) Marijuana means all parts of the plant of the genus cannabis, whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds.

(b) Marijuana does not include the mature stalks of such plant, hashish, tetrahydrocannabinols extracted or isolated from the plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, the sterilized seed of such plant which is incapable of germination, or cannabidiol contained in a drug product approved by the federal Food and Drug Administration.

(c) Marijuana does not include hemp.

(d) When the weight of marijuana is referred to in the Uniform Controlled Substances Act, it means its weight at or about the time it is seized or otherwise comes into the possession of law enforcement authorities, whether cured or uncured at that time;

(15) Manufacture means the production, preparation, propagation, conversion, or processing of a controlled substance, either directly or indirectly, by

extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. Manufacture does not include the preparation or compounding of a controlled substance by an individual for his or her own use, except for the preparation or compounding of components or ingredients used for or intended to be used for the manufacture of methamphetamine, or the preparation, compounding, conversion, packaging, or labeling of a controlled substance: (a) By a practitioner as an incident to his or her prescribing, administering, or dispensing of a controlled substance in the course of his or her professional practice; or (b) by a practitioner, or by his or her authorized agent under his or her supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale;

(16) Narcotic drug means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis: (a) Opium, opium poppy and poppy straw, coca leaves, and opiates; (b) a compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates; or (c) a substance and any compound, manufacture, salt, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subdivisions (a) and (b) of this subdivision, except that the words narcotic drug as used in the Uniform Controlled Substances Act does not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine, or isoquinoline alkaloids of opium;

(17) Opiate means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. Opiate does not include the dextrorotatory isomer of 3-methoxy-n methylmorphinan and its salts. Opiate includes its racemic and levorotatory forms;

(18) Opium poppy means the plant of the species Papaver somniferum L., except the seeds thereof;

(19) Poppy straw means all parts, except the seeds, of the opium poppy after mowing;

(20) Person means any corporation, association, partnership, limited liability company, or one or more persons;

(21) Practitioner means a physician, a physician assistant, a dentist, a veterinarian, a pharmacist, a podiatrist, an optometrist, a certified nurse midwife, a certified registered nurse anesthetist, a nurse practitioner, a scientific investigator, a pharmacy, a hospital, or any other person licensed, registered, or otherwise permitted to distribute, dispense, prescribe, conduct research with respect to, or administer a controlled substance in the course of practice or research in this state, including an emergency medical service as defined in section 38-1207;

(22) Production includes the manufacture, planting, cultivation, or harvesting of a controlled substance;

(23) Immediate precursor means a substance which is the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a

controlled substance, the control of which is necessary to prevent, curtail, or limit such manufacture;

(24) State means the State of Nebraska;

(25) Ultimate user means a person who lawfully possesses a controlled substance for his or her own use, for the use of a member of his or her household, or for administration to an animal owned by him or her or by a member of his or her household;

(26) Hospital has the same meaning as in section 71-419;

(27) Cooperating individual means any person, other than a commissioned law enforcement officer, who acts on behalf of, at the request of, or as agent for a law enforcement agency for the purpose of gathering or obtaining evidence of offenses punishable under the Uniform Controlled Substances Act;

(28)(a) Hashish or concentrated cannabis means (i) the separated resin, whether crude or purified, obtained from a plant of the genus cannabis or (ii) any material, preparation, mixture, compound, or other substance which contains ten percent or more by weight of tetrahydrocannabinols.

(b) When resins extracted from hemp as defined in section 2-503 are in the possession of a person as authorized under the Nebraska Hemp Farming Act, they are not considered hashish or concentrated cannabis for purposes of the Uniform Controlled Substances Act.

(c) Hashish or concentrated cannabis does not include cannabidiol contained in a drug product approved by the federal Food and Drug Administration;

(29) Exceptionally hazardous drug means (a) a narcotic drug, (b) thiophene analog of phencyclidine, (c) phencyclidine, (d) amobarbital, (e) secobarbital, (f) pentobarbital, (g) amphetamine, or (h) methamphetamine;

(30) Imitation controlled substance means a substance which is not a controlled substance or controlled substance analogue but which, by way of express or implied representations and consideration of other relevant factors including those specified in section 28-445, would lead a reasonable person to believe the substance is a controlled substance or controlled substance analogue. A placebo or registered investigational drug manufactured, distributed, possessed, or delivered in the ordinary course of practice or research by a health care professional shall not be deemed to be an imitation controlled substance;

(31)(a) Controlled substance analogue means a substance (i) the chemical structure of which is substantially similar to the chemical structure of a Schedule I or Schedule II controlled substance as provided in section 28-405 or (ii) which has a stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system of a Schedule I or Schedule II controlled substance as provided in section 28-405. A controlled substance analogue shall, to the extent intended for human consumption, be treated as a controlled substance under Schedule I of section 28-405 for purposes of the Uniform Controlled Substances Act; and

(b) Controlled substance analogue does not include (i) a controlled substance, (ii) any substance generally recognized as safe and effective within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., as such act existed on January 1, 2014, (iii) any substance for which there is an approved new drug application, or (iv) with respect to a particular person, any substance

if an exemption is in effect for investigational use for that person, under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355, as such section existed on January 1, 2014, to the extent conduct with respect to such substance is pursuant to such exemption;

(32) Anabolic steroid means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids), that promotes muscle growth and includes any controlled substance in Schedule III(d) of section 28-405. Anabolic steroid does not include any anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and has been approved by the Secretary of Health and Human Services for such administration, but if any person prescribes, dispenses, or distributes such a steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subdivision;

(33) Chart order means an order for a controlled substance issued by a practitioner for a patient who is in the hospital where the chart is stored or for a patient receiving detoxification treatment or maintenance treatment pursuant to section 28-412. Chart order does not include a prescription;

(34) Medical order means a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner;

(35) Prescription means an order for a controlled substance issued by a practitioner. Prescription does not include a chart order;

(36) Registrant means any person who has a controlled substances registration issued by the state or the Drug Enforcement Administration of the United States Department of Justice;

(37) Reverse distributor means a person whose primary function is to act as an agent for a pharmacy, wholesaler, manufacturer, or other entity by receiving, inventorying, and managing the disposition of outdated, expired, or otherwise nonsaleable controlled substances;

(38) Signature means the name, word, or mark of a person written in his or her own hand with the intent to authenticate a writing or other form of communication or a digital signature which complies with section 86-611 or an electronic signature;

(39) Facsimile means a copy generated by a system that encodes a document or photograph into electrical signals, transmits those signals over telecommunications lines, and reconstructs the signals to create an exact duplicate of the original document at the receiving end;

(40) Electronic signature has the definition found in section 86-621;

(41) Electronic transmission means transmission of information in electronic form. Electronic transmission includes computer-to-computer transmission or computer-to-facsimile transmission;

(42) Long-term care facility means an intermediate care facility, an intermediate care facility for persons with developmental disabilities, a long-term care hospital, a mental health substance use treatment center, a nursing facility, or a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act;

(43) Compounding has the same meaning as in section 38-2811;

(44) Cannabinoid receptor agonist means any chemical compound or substance that, according to scientific or medical research, study, testing, or analysis, demonstrates the presence of binding activity at one or more of the CB1 or CB2 cell membrane receptors located within the human body. Cannabinoid receptor agonist does not include cannabidiol contained in a drug product approved by the federal Food and Drug Administration; and

(45) Lookalike substance means a product or substance, not specifically designated as a controlled substance in section 28-405, that is either portrayed in such a manner by a person to lead another person to reasonably believe that it produces effects on the human body that replicate, mimic, or are intended to simulate the effects produced by a controlled substance or that possesses one or more of the following indicia or characteristics:

(a) The packaging or labeling of the product or substance suggests that the user will achieve euphoria, hallucination, mood enhancement, stimulation, or another effect on the human body that replicates or mimics those produced by a controlled substance;

(b) The name or packaging of the product or substance uses images or labels suggesting that it is a controlled substance or produces effects on the human body that replicate or mimic those produced by a controlled substance;

(c) The product or substance is marketed or advertised for a particular use or purpose and the cost of the product or substance is disproportionately higher than other products or substances marketed or advertised for the same or similar use or purpose;

(d) The packaging or label on the product or substance contains words or markings that state or suggest that the product or substance is in compliance with state and federal laws regulating controlled substances;

(e) The owner or person in control of the product or substance uses evasive tactics or actions to avoid detection or inspection of the product or substance by law enforcement authorities;

(f) The owner or person in control of the product or substance makes a verbal or written statement suggesting or implying that the product or substance is a synthetic drug or that consumption of the product or substance will replicate or mimic effects on the human body to those effects commonly produced through use or consumption of a controlled substance;

(g) The owner or person in control of the product or substance makes a verbal or written statement to a prospective customer, buyer, or recipient of the product or substance implying that the product or substance may be resold for profit; or

(h) The product or substance contains a chemical or chemical compound that does not have a legitimate relationship to the use or purpose claimed by the seller, distributor, packer, or manufacturer of the product or substance or indicated by the product name, appearing on the product's packaging or label or depicted in advertisement of the product or substance.

Source: Laws 1977, LB 38, § 61; Laws 1978, LB 276, § 1; Laws 1980, LB 696, § 1; Laws 1985, LB 323, § 1; Laws 1985, LB 406, § 2; Laws 1988, LB 273, § 3; Laws 1988, LB 537, § 1; Laws 1992, LB 1019, § 30; Laws 1993, LB 121, § 175; Laws 1996, LB 1044, § 68; Laws 1996, LB 1108, § 1; Laws 1997, LB 307, § 3; Laws 1999, LB 379, § 1; Laws 2001, LB 398, § 1; Laws 2002, LB 1105,

§ 428; Laws 2003, LB 200, § 1; Laws 2005, LB 117, § 1; Laws 2005, LB 256, § 16; Laws 2005, LB 382, § 1; Laws 2007, LB247, § 1; Laws 2007, LB296, § 35; Laws 2007, LB463, § 1119; Laws 2009, LB195, § 1; Laws 2013, LB23, § 4; Laws 2014, LB811, § 2; Laws 2014, LB1001, § 2; Laws 2015, LB390, § 2; Laws 2016, LB1009, § 2; Laws 2017, LB487, § 3; Laws 2018, LB1034, § 1; Laws 2019, LB657, § 22; Laws 2021, LB236, § 1; Laws 2024, LB262, § 21.
Operative date January 1, 2025.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Nebraska Hemp Farming Act, see section 2-501.

28-401.01 Act, how cited.

Sections 28-401 to 28-456.01 and 28-458 to 28-476 shall be known and may be cited as the Uniform Controlled Substances Act.

Source: Laws 1977, LB 38, § 98; R.S.1943, (1995), § 28-438; Laws 2001, LB 113, § 17; Laws 2001, LB 398, § 2; Laws 2005, LB 117, § 2; Laws 2007, LB463, § 1120; Laws 2011, LB20, § 2; Laws 2014, LB811, § 3; Laws 2015, LB390, § 3; Laws 2016, LB1009, § 3; Laws 2017, LB487, § 4; Laws 2018, LB931, § 2; Laws 2020, LB1152, § 15.

28-405 Controlled substances; schedules; enumerated.

The following are the schedules of controlled substances referred to in the Uniform Controlled Substances Act, unless specifically contained on the list of exempted products of the Drug Enforcement Administration of the United States Department of Justice as the list existed on January 31, 2022:

Schedule I

(a) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetylmethadol;

(2) Allylprodine;

(3) Alphacetylmethadol, except levo-alphacetylmethadol which is also known as levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM;

(4) Alphameprodine;

(5) Alphamethadol;

(6) Benzethidine;

(7) Betacetylmethadol;

(8) Betameprodine;

(9) Betamethadol;

(10) Betaprodine;

(11) Clonitazene;

(12) Dextromoramide;

(13) Difenoxin;

(14) Diampromide;

(15) Diethylthiambutene;

(16) Dimenoxadol;

(17) Dimepheptanol;

(18) Dimethylthiambutene;

(19) Dioxaphetyl butyrate;

(20) Dipipanone;

(21) Ethylmethylthiambutene;

(22) Etonitazene;

(23) Etoxeridine;

(24) Furethidine;

(25) Hydroxypethidine;

(26) Ketobemidone;

(27) Levomoramide;

(28) Levophenacylmorphan;

(29) Morpheridine;

(30) Noracymethadol;

(31) Norlevorphanol;

(32) Normethadone;

(33) Norpipanone;

(34) Phenadoxone;

(35) Phenampromide;

(36) Phenomorphan;

(37) Phenoperidine;

(38) Piritramide;

(39) Proheptazine;

(40) Properidine;

(41) Propiram;

(42) Racemoramide;

(43) Trimeperidine;

(44) Alpha-methylfentanyl, N-(1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl) propionanilide, 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine;

(45) Tilidine;

(46) 3-Methylfentanyl, N-(3-methyl-1-(2-phenylethyl)-4-piperidyl)-N-phenyl-propanamide, its optical and geometric isomers, salts, and salts of isomers;

(47) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP), its optical isomers, salts, and salts of isomers;

(48) PEPAP, 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine, its optical isomers, salts, and salts of isomers;

(49) Acetyl-alpha-methylfentanyl, N-(1-(1-methyl-2-phenethyl)-4-piperidinyl)-N-phenylacetamide, its optical isomers, salts, and salts of isomers;

(50) Alpha-methylthiofentanyl, N-(1-methyl-2-(2-thienyl)ethyl-4-piperidinyl)-N-phenylpropanamide, its optical isomers, salts, and salts of isomers;

(51) Benzylfentanyl, N-(1-benzyl-4-piperidyl)-N-phenylpropanamide, its optical isomers, salts, and salts of isomers;

(52) Beta-hydroxyfentanyl, N-(1-(2-hydroxy-2-phenethyl)-4-piperidinyl)-N-phenylpropanamide, its optical isomers, salts, and salts of isomers;

(53) Beta-hydroxy-3-methylfentanyl, (other name: N-(1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl)-N-phenylpropanamide), its optical and geometric isomers, salts, and salts of isomers;

(54) 3-methylthiofentanyl, N-(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl)-N-phenylpropanamide, its optical and geometric isomers, salts, and salts of isomers;

(55) N-(1-(2-thienyl)methyl-4-piperidyl)-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts, and salts of isomers;

(56) Thiofentanyl, N-phenyl-N-(1-(2-thienyl)ethyl-4-piperidinyl)-propanamide, its optical isomers, salts, and salts of isomers;

(57) Para-fluorofentanyl, N-(4-fluorophenyl)-N-(1-(2-phenethyl)-4-piperidinyl)propanamide, its optical isomers, salts, and salts of isomers;

(58) U-47700, 3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide;

(59) 4-Fluoroisobutyryl Fentanyl;

(60) Acetyl Fentanyl;

(61) Acyrloylfentanyl;

(62) AH-7921; 3, 4-dichloro-N-[(1-dimethylamino) cyclohexylmethyl] benzamide;

(63) Butyryl fentanyl;

(64) Cyclopentyl fentanyl;

(65) Cyclopropyl fentanyl;

(66) Furanyl fentanyl;

(67) Isobutyryl fentanyl;

(68) Isotonitazene;

(69) Methoxyacetyl fentanyl;

(70) MT-45; 1-cyclohexyl-4-(1,2-diphenylethyl) piperazine;

(71) Tetrahydrofuranyl fentanyl;

(72) 2-fluorofentanyl; N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl) propionamide;

(73) Ocfentanil;

(74) Ortho-Fluorofentanyl;

(75) Para-chloroisobutyryl fentanyl;

(76) Para-Fluorobutyryl Fentanyl;

(77) Valeryl fentanyl;

(78) Phenyl Fentanyl;

(79) Para-Methylfentanyl;

(80) Thiofuranyl Fentanyl;

(81) Beta-methyl Fentanyl;

(82) Beta'-Phenyl Fentanyl;

(83) Crotonyl Fentanyl;

(84) 2'-Fluoro Ortho-Fluorofentanyl;

(85) 4'-Methyl Acetyl Fentanyl;

(86) Ortho-Fluorobutyryl Fentanyl;

(87) Ortho-Methyl Acetylfentanyl;

(88) Ortho-Methyl Methoxyacetyl Fentanyl;

(89) Ortho-Fluoroacryl Fentanyl;

(90) Fentanyl Carbamate;

(91) Ortho-Fluoroisobutyryl Fentanyl;

(92) Para-Fluoro Furanyl Fentanyl;

(93) Para-Methoxybutyryl Fentanyl;

(94) Brorphine (other name: 1-(1-(1-(4-bromophenyl) ethyl) piperidin-4-yl-1,3-dihydro-2H-benzo[D]imidazole-2-one); and

(95) Fentanyl-related substances, their isomers, esters, ethers, salts and salts of isomers, esters, and ethers. Unless specifically excepted, listed in another schedule, or specifically named in this schedule, this includes any substance that is structurally related to fentanyl by one or more of the following modifications:

(A) Replacement of the phenyl portion of the phenethyl group by any monocycle, whether or not further substituted in or on the monocycle;

(B) Substitution in or on the phenethyl group with alkyl, alkenyl, alkoxyl, hydroxyl, halo, haloalkyl, amino, or nitro groups;

(C) Substitution in or on the piperidine ring with alkyl, alkenyl, alkoxyl, ester, ether, hydroxyl, halo, haloalkyl, amino, or nitro groups;

(D) Replacement of the aniline ring with any aromatic monocycle whether or not further substituted in or on the aromatic monocycle; or

(E) Replacement of the N-propionyl group by another acyl group.

(b) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;

(2) Acetyldihydrocodeine;

(3) Benzylmorphine;

(4) Codeine methylbromide;

(5) Codeine-N-Oxide;

(6) Cyprenorphine;

(7) Desomorphine;

(8) Dihydromorphine;

(9) Drotebanol;

(10) Etorphine, except hydrochloride salt;

(11) Heroin;

(12) Hydromorphinol;

(13) Methyldesorphine;

(14) Methyldihydromorphine;

(15) Morphine methylbromide;

(16) Morphine methylsulfonate;

(17) Morphine-N-Oxide;

(18) Myrophine;

(19) Nicocodeine;

(20) Nicomorphine;

(21) Normorphine;

(22) Pholcodine; and

(23) Thebacon.

(c) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, and, for purposes of this subdivision only, isomer shall include the optical, position, and geometric isomers:

(1) Bufotenine. Trade and other names shall include, but are not limited to: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; and mappine;

(2) 4-bromo-2,5-dimethoxyamphetamine. Trade and other names shall include, but are not limited to: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; and 4-bromo-2,5-DMA;

(3) 4-methoxyamphetamine. Trade and other names shall include, but are not limited to: 4-methoxy-alpha-methylphenethylamine; and paramethoxyamphetamine, PMA;

(4) 4-methyl-2,5-dimethoxyamphetamine. Trade and other names shall include, but are not limited to: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; DOM; and STP;

(5) Para-methoxymethamphetamine. Trade and other names shall include, but are not limited to: 1-(4-Methoxyphenyl)-N-methylpropan-2-amine, PMMA, and 4-MMA;

(6) Ibogaine. Trade and other names shall include, but are not limited to: 7-Ethyl-6,6beta,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido (1',2':1,2) azepino (5,4-b) indole; and Tabernanthe iboga;

(7) Lysergic acid diethylamide;

(8) Marijuana;

(9) Mescaline;

(10) Methoxetamine (MXE);

(11) Peyote. Peyote shall mean all parts of the plant presently classified botanically as Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant or its seeds or extracts;

(12) Psilocybin;

(13) Psilocyn;

(14) Tetrahydrocannabinols, including, but not limited to, synthetic equivalents of the substances contained in the plant or in the resinous extractives of cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: Delta 1 cis or trans tetrahydrocannabinol and their optical isomers, excluding dronabinol in a drug product approved by the federal Food and Drug Administration; Delta 6 cis or trans tetrahydrocannabinol and their optical isomers; and Delta 3,4 cis or trans tetrahydrocannabinol and its optical isomers. Since nomenclature of these substances is not internationally standardized, compounds of these structures shall be included regardless of the numerical designation of atomic positions covered. Tetrahydrocannabinols does not include cannabidiol contained in a drug product approved by the federal Food and Drug Administration;

(15) N-ethyl-3-piperidyl benzilate;

(16) N-methyl-3-piperidyl benzilate;

(17) Thiophene analog of phencyclidine. Trade and other names shall include, but are not limited to: 1-(1-(2-thienyl)-cyclohexyl)-piperidine; 2-thienyl analog of phencyclidine; TPCP; and TCP;

(18) Hashish or concentrated cannabis;

(19) Parahexyl. Trade and other names shall include, but are not limited to: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo(b,d)pyran; and Synhexyl;

(20) Ethylamine analog of phencyclidine. Trade and other names shall include, but are not limited to: N-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl)ethylamine; N-(1-phenylcyclohexyl)ethylamine; cyclohexamine; and PCE;

(21) Pyrrolidine analog of phencyclidine. Trade and other names shall include, but are not limited to: 1-(1-phenylcyclohexyl)-pyrrolidine; PCPy; and PHP;

(22) Alpha-ethyltryptamine. Some trade or other names: etryptamine; Monase; alpha-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; and AET;

(23) 2,5-dimethoxy-4-ethylamphet-amine; and DOET;

(24) 1-(1-(2-thienyl)cyclohexyl)pyrrolidine; and TCPy;

(25) Alpha-methyltryptamine, which is also known as AMT;

(26) Salvia divinorum or Salvinorin A. Salvia divinorum or Salvinorin A includes all parts of the plant presently classified botanically as Salvia divinorum, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, derivative, mixture, or preparation of such plant, its seeds, or its extracts, including salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation;

(27) Any material, compound, mixture, or preparation containing any quantity of synthetically produced cannabinoids as listed in subdivisions (A) through (L) of this subdivision, including their salts, isomers, salts of isomers, and nitrogen, oxygen, or sulfur-heterocyclic analogs, unless specifically excepted elsewhere in this section. Since nomenclature of these synthetically produced cannabinoids is not internationally standardized and may continually evolve,

these structures or compounds of these structures shall be included under this subdivision, regardless of their specific numerical designation of atomic positions covered, so long as it can be determined through a recognized method of scientific testing or analysis that the substance contains properties that fit within one or more of the following categories:

(A) Tetrahydrocannabinols: Meaning tetrahydrocannabinols naturally contained in a plant of the genus cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the plant, or in the resinous extractives of cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers; Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; Delta 3,4 cis or trans tetrahydrocannabinol, and its optical isomers. This subdivision does not include cannabidiol contained in a drug product approved by the federal Food and Drug Administration;

(B) Naphthoylindoles: Any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;

(C) Naphthylmethylindoles: Any compound containing a 1 H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;

(D) Naphthoylpyrroles: Any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;

(E) Naphthylideneindenes: Any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;

(F) Phenylacetylindoles: Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;

(G) Cyclohexylphenols: Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not substituted in or on any of the listed ring systems to any extent;

(H) Benzoylindoles: Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;

(I) Adamantoylindoles: Any compound containing a 3-adamantoylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;

(J) Tetramethylcyclopropanoylindoles: Any compound containing a 3-tetramethylcyclopropanoylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;

(K) Indole carboxamides: Any compound containing a 1-indole-3-carboxamide structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, substitution at the carboxamide group by an alkyl, methoxy, benzyl, propionaldehyde, adamantyl, 1-naphthyl, phenyl, aminooxoalkyl group, or quinolinyl group, whether or not further substituted in or on any of the listed ring systems to any extent or to the adamantyl, 1-mapthyl, phenyl, aminooxoalkyl, benzyl, or propionaldehyde groups to any extent;

(L) Indole carboxylates: Any compound containing a 1-indole-3-carboxylate structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, substitution at the carboxylate group by an alkyl, methoxy, benzyl, propionaldehyde, adamantyl, 1-naphthyl, phenyl, aminooxoalkyl group, or quinolinyl group, whether or not further substituted in or on any of the listed ring systems to any extent or to the adamantyl, 1-mapthyl, phenyl, aminooxoalkyl, benzyl, or propionaldehyde groups to any extent; and

(M) Any nonnaturally occurring substance, chemical compound, mixture, or preparation, not specifically listed elsewhere in these schedules and which is

not approved for human consumption by the federal Food and Drug Administration, containing or constituting a cannabinoid receptor agonist as defined in section 28-401;

(28) Zipeprol 1-methoxy-3-[4-(2-methoxy-2-phenylethyl)piperazin-1-yl]-1-phenylpropan-2-ol, including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation;

(29) Any material, compound, mixture, or preparation containing any quantity of a substituted phenethylamine as listed in subdivisions (A) through (C) of this subdivision, unless specifically excepted, listed in another schedule, or specifically named in this schedule, that is structurally derived from phenylethan-2-amine by substitution on the phenyl ring with a fused methylenedioxy ring, fused furan ring, or a fused tetrahydrofuran ring; by substitution with two alkoxy groups; by substitution with one alkoxy and either one fused furan, tetrahydrofuran, or tetrahydropyran ring system; or by substitution with two fused ring systems from any combination of the furan, tetrahydrofuran, or tetrahydropyran ring systems, whether or not the compound is further modified in any of the following ways:

(A) Substitution of the phenyl ring by any halo, hydroxyl, alkyl, trifluoromethyl, alkoxy, or alkylthio groups; (B) substitution at the 2-position by any alkyl groups; or (C) substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, hydroxybenzyl, or methoxybenzyl groups, and including, but not limited to:

(i) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine, which is also known as 2C-C or 2,5-Dimethoxy-4-chlorophenethylamine;

(ii) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine, which is also known as 2C-D or 2,5-Dimethoxy-4-methylphenethylamine;

(iii) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine, which is also known as 2C-E or 2,5-Dimethoxy-4-ethylphenethylamine;

(iv) 2-(2,5-Dimethoxyphenyl)ethanamine, which is also known as 2C-H or 2,5-Dimethoxyphenethylamine;

(v) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine, which is also known as 2C-I or 2,5-Dimethoxy-4-iodophenethylamine;

(vi) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine, which is also known as 2C-N or 2,5-Dimethoxy-4-nitrophenethylamine;

(vii) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine, which is also known as 2C-P or 2,5-Dimethoxy-4-propylphenethylamine;

(viii) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine, which is also known as 2C-T-2 or 2,5-Dimethoxy-4-ethylthiophenethylamine;

(ix) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine, which is also known as 2C-T-4 or 2,5-Dimethoxy-4-isopropylthiophenethylamine;

(x) 2-(4-bromo-2,5-dimethoxyphenyl)ethanamine, which is also known as 2C-B or 2,5-Dimethoxy-4-bromophenethylamine;

(xi) 2-(2,5-dimethoxy-4-(methylthio)phenyl)ethanamine, which is also known as 2C-T or 4-methylthio-2,5-dimethoxyphenethylamine;

(xii) 1-(2,5-dimethoxy-4-iodophenyl)-propan-2-amine, which is also known as DOI or 2,5-Dimethoxy-4-iodoamphetamine;

(xiii) 1-(4-Bromo-2,5-dimethoxyphenyl)-2-aminopropane, which is also known as DOB or 2,5-Dimethoxy-4-bromoamphetamine;

(xiv) 1-(4-chloro-2,5-dimethoxy-phenyl)propan-2-amine, which is also known as DOC or 2,5-Dimethoxy-4-chloroamphetamine;

(xv) 2-(4-bromo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine, which is also known as 2C-B-NBOMe; 25B-NBOMe or 2,5-Dimethoxy-4-bromo-N-(2-methoxybenzyl)phenethylamine;

(xvi) 2-(4-iodo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine, which is also known as 2C-I-NBOMe; 25I-NBOMe or 2,5-Dimethoxy-4-iodo-N-(2-methoxybenzyl)phenethylamine;

(xvii) N-(2-Methoxybenzyl)-2-(3,4,5-trimethoxyphenyl)ethanamine, which is also known as Mescaline-NBOMe or 3,4,5-trimethoxy-N-(2-methoxybenzyl)phenethylamine;

(xviii) 2-(4-chloro-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine, which is also known as 2C-C-NBOMe; or 25C-NBOMe or 2,5-Dimethoxy-4-chloro-N-(2-methoxybenzyl)phenethylamine;

(xix) 2-(7-Bromo-5-methoxy-2,3-dihydro-1-benzofuran-4-yl)ethanamine, which is also known as 2CB-5-hemiFLY;

(xx) 2-(8-bromo-2,3,6,7-tetrahydrofuro [2,3-f][1]benzofuran-4-yl)ethanamine, which is also known as 2C-B-FLY;

(xxi) 2-(10-Bromo-2,3,4,7,8,9-hexahydropyrano[2,3-g]chromen-5-yl)ethanamine, which is also known as 2C-B-butterFLY;

(xxii) N-(2-Methoxybenzyl)-1-(8-bromo-2,3,6,7- tetrahydrobenzo[1,2-b:4,5-b']difuran-4-yl)-2-aminoethane, which is also known as 2C-B-FLY-NBOMe;

(xxiii) 1-(4-Bromofuro[2,3-f][1]benzofuran-8-yl)propan-2-amine, which is also known as bromo-benzodifuranylisopropylamine or bromo-dragonFLY;

(xxiv) N-(2-Hydroxybenzyl)-4-iodo-2,5-dimethoxyphenethylamine, which is also known as 2C-INBOH or 25I-NBOH;

(xxv) 5-(2-Aminopropyl)benzofuran, which is also known as 5-APB;

(xxvi) 6-(2-Aminopropyl)benzofuran, which is also known as 6-APB;

(xxvii) 5-(2-Aminopropyl)-2,3-dihydrobenzofuran, which is also known as 5-APDB;

(xxviii) 6-(2-Aminopropyl)-2,3-dihydrobenzofuran, which is also known as 6-APDB;

(xxix) 2,5-dimethoxy-amphetamine, which is also known as 2, 5-dimethoxy-amethylphenethylamine; 2, 5-DMA;

(xxx) 2,5-dimethoxy-4-ethylamphetamine, which is also known as DOET;

(xxxi) 2,5-dimethoxy-4-(n)-propylthiophenethylamine, which is also known as 2C-T-7;

(xxxii) 5-methoxy-3,4-methylenedioxy-amphetamine;

(xxxiii) 4-methyl-2,5-dimethoxy-amphetamine, which is also known as 4-methyl-2,5-dimethoxy-amethylphenethylamine; DOM and STP;

(xxxiv) 3,4-methylenedioxy amphetamine, which is also known as MDA;

(xxxv) 3,4-methylenedioxymethamphetamine, which is also known as MDMA;

(xxxvi) 3,4-methylenedioxy-N-ethylamphetamine, which is also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, MDE, MDEA;

(xxxvii) 3,4,5-trimethoxy amphetamine; and

(xxxviii) n-hydroxy-3, 4-Methylenedioxy-N-Hydroxyamphetamine, which is also known as N-hydroxyMDA;

(30) Any material, compound, mixture, or preparation containing any quantity of a substituted tryptamine unless specifically excepted, listed in another schedule, or specifically named in this schedule, that is structurally derived from 2-(1H-indol-3-yl)ethanamine, which is also known as tryptamine, by mono- or di-substitution of the amine nitrogen with alkyl or alkenyl groups or by inclusion of the amino nitrogen atom in a cyclic structure whether or not the compound is further substituted at the alpha position with an alkyl group or whether or not further substituted on the indole ring to any extent with any alkyl, alkoxy, halo, hydroxyl, or acetoxy groups, and including, but not limited to:

(A) 5-methoxy-N,N-diallyltryptamine, which is also known as 5-MeO-DALT;

(B) 4-acetoxy-N,N-dimethyltryptamine, which is also known as 4-AcO-DMT or OAcetylpsilocin;

(C) 4-hydroxy-N-methyl-N-ethyltryptamine, which is also known as 4-HO-MET;

(D) 4-hydroxy-N,N-diisopropyltryptamine, which is also known as 4-HO-DIPT;

(E) 5-methoxy-N-methyl-N-isopropyltryptamine, which is also known as 5-MeOMiPT;

(F) 5-Methoxy-N,N-Dimethyltryptamine, which is also known as 5-MeO-DMT;

(G) 5-methoxy-N,N-diisopropyltryptamine, which is also known as 5-MeO-DiPT;

(H) Diethyltryptamine, which is also known as N,N-Diethyltryptamine, DET; and

(I) Dimethyltryptamine, which is also known as DMT; and

(31)(A) Any substance containing any quantity of the following materials, compounds, mixtures, or structures:

(i) 3,4-methylenedioxymethcathinone, or bk-MDMA, or methylone;

(ii) 3,4-methylenedioxypyrovalerone, or MDPV;

(iii) 4-methylmethcathinone, or 4-MMC, or mephedrone;

(iv) 4-methoxymethcathinone, or bk-PMMA, or PMMC, or methedrone;

(v) Fluoromethcathinone, or FMC;

(vi) Naphthylpyrovalerone, or naphyrone; or

(vii) Beta-keto-N-methylbenzodioxolylpropylamine or bk-MBDB or butylone; or

(B) Unless listed in another schedule, any substance which contains any quantity of any material, compound, mixture, or structure, other than bupropion, that is structurally derived by any means from 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl, or thiophene ring systems, whether or not the compound is further modified in any of the following ways:

(i) Substitution in the ring system to any extent with alkyl, alkoxy, alkylenedioxy, haloalkyl, hydroxyl, or halide substituents, whether or not further substituted in the ring system by one or more other univalent substituents;

(ii) Substitution at the 3-position with an acyclic alkyl substituent; or

(iii) Substitution at the 2-amino nitrogen atom with alkyl or dialkyl groups, or by inclusion of the 2-amino nitrogen atom in a cyclic structure.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Amineptine 7-[(10,11-dihydro-5H-dibenzo]a,d[-cyclohepten-5-yl)amino-]heptanoic acid, including its salts, isomers, and salts of isomers;

(2) Mecloqualone;

(3) Methaqualone; and

(4) Gamma-Hydroxybutyric Acid. Some other names include: GHB; Gamma-hydroxybutyrate; 4-Hydroxybutyrate; 4-Hydroxybutanoic Acid; Sodium Oxybate; and Sodium Oxybutyrate.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Fenethylline;

(2) N-ethylamphetamine;

(3) Aminorex; aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine;

(4) Cathinone; 2-amino-1-phenyl-1-propanone; alpha-aminopropiophenone; 2-aminopropiophenone; and norephedrone;

(5) Methcathinone, its salts, optical isomers, and salts of optical isomers. Some other names: 2-(methylamino)-propiophenone; alpha-(methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; methylcathinone; monomethylpropion; ephedrone; N-methylcathinone; AL-464; AL-422; AL-463; UR1432; and 4-MEC;

(6) (+/-)cis-4-methylaminorex; and (+/-)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine;

(7) N,N-dimethylamphetamine; N,N-alpha-trimethyl-benzeneethanamine; and N,N-alpha-trimethylphenethylamine;

(8) Benzylpiperazine, 1-benzylpiperazine;

(9) 4,4'-dimethylaminorex (other names: 4,4'-DMAR, 4,5-dihydro-4-methyl-5-(4-methylphenyl)-2-oxazolamine); and

(10) N-phenyl-N' -(3-(1- phenylpropan-2-yl)-1,2,3-oxadiazol-3- ium-5-yl)carbamimidate), including its salts, isomers, and salts of isomers.

(f) Any controlled substance analogue to the extent intended for human consumption.

Schedule II

(a) Any of the following substances except those narcotic drugs listed in other schedules whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, buprenorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone and their salts, but including the following:

(A) Raw opium;

(B) Opium extracts;

(C) Opium fluid;

(D) Powdered opium;

(E) Granulated opium;

(F) Tincture of opium;

(G) Codeine;

(H) Ethylmorphine;

(I) Etorphine hydrochloride;

(J) Hydrocodone;

(K) Hydromorphone;

(L) Metopon;

(M) Morphine;

(N) Oxycodone;

(O) Oxymorphone;

(P) Oripavine;

(Q) Thebaine; and

(R) Dihydroetorphine;

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subdivision (1) of this subdivision, except that these substances shall not include the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent to or identical with any of these substances, including cocaine or ecgonine and its salts, optical isomers, and salts of optical isomers, except that the substances shall not include decocainized coca leaves or extractions which do not contain cocaine or ecgonine; and

(5) Concentrate of poppy straw, the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy.

(b) Unless specifically excepted or unless in another schedule any of the following opiates, including their isomers, esters, ethers, salts, and salts of their isomers, esters, and ethers whenever the existence of such isomers, esters,

ethers, and salts is possible within the specific chemical designation, dextrorphan excepted:

(1) Alphaprodine;

(2) Anileridine;

(3) Bezitramide;

(4) Diphenoxylate;

(5) Fentanyl;

(6) Isomethadone;

(7) Levomethorphan;

(8) Levorphanol;

(9) Metazocine;

(10) Methadone;

(11) Methadone-intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane;

(12) Moramide-intermediate, 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid;

(13) Norfentanyl (N-phenyl-N-piperidin-4-yl) propionamide;

(14) Oliceridine;

(15) Pethidine or meperidine;

(16) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

(17) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

(18) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

(19) Phenazocine;

(20) Piminodine;

(21) Racemethorphan;

(22) Racemorphan;

(23) Dihydrocodeine;

(24) Bulk Propoxyphene in nondosage forms;

(25) Sufentanil;

(26) Alfentanil;

(27) Levo-alphacetylmethadol which is also known as levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM;

(28) Carfentanil;

(29) Remifentanil;

(30) Tapentadol; and

(31) Thiafentanil.

(c) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(2) Phenmetrazine and its salts;

(3) Methamphetamine, its salts, isomers, and salts of its isomers;

(4) Methylphenidate; and

(5) Lisdexamfetamine, its salts, isomers, and salts of its isomers.

(d) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designations:

(1) Amobarbital;

(2) Secobarbital;

(3) Pentobarbital;

(4) Phencyclidine; and

(5) Glutethimide.

(e) Hallucinogenic substances known as:

(1) Nabilone. Another name for nabilone: (+/-)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-Hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo(b,d)pyran-9-one; and

(2) Dronabinol in an oral solution in a drug product approved by the federal Food and Drug Administration.

(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Immediate precursor to amphetamine and methamphetamine: Phenylacetone. Trade and other names shall include, but are not limited to: Phenyl-2-propanone; P2P; benzyl methyl ketone; and methyl benzyl ketone;

(2) Immediate precursors to phencyclidine, PCP:

(A) 1-phenylcyclohexylamine; or

(B) 1-piperidinocyclohexanecarbonitrile, PCC; or

(3) Immediate precursor to fentanyl; 4-anilino-N-phenethylpiperidine (ANPP).

Schedule III

(a) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system, including their salts, isomers, whether optical, position, or geometric, and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Benzphetamine;

(2) Chlorphentermine;

(3) Clortermine; and

(4) Phendimetrazine.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Any substance which contains any quantity of a derivative of barbituric acid or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules of this section;

(2) Aprobarbital;

(3) Butabarbital;

(4) Butalbital;

(5) Butethal;

(6) Butobarbital;

(7) Chlorhexadol;

(8) Embutramide;

(9) Lysergic acid;

(10) Lysergic acid amide;

(11) Methyprylon;

(12) Perampanel;

(13) Secbutabarbital;

(14) Sulfondiethylmethane;

(15) Sulfonethylmethane;

(16) Sulfonmethane;

(17) Nalorphine;

(18) Talbutal;

(19) Thiamylal;

(20) Thiopental;

(21) Vinbarbital;

(22) Any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule;

(23) Any suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs and approved by the federal Food and Drug Administration for marketing only as a suppository;

(24) Any drug product containing gamma-hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355, as such section existed on January 1, 2014;

(25) Ketamine, its salts, isomers, and salts of isomers. Some other names for ketamine: (+/-)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone; and

(26) Tiletamine and zolazepam or any salt thereof. Trade or other names for a tiletamine-zolazepam combination product shall include, but are not limited to: telazol. Trade or other names for tiletamine shall include, but are not limited to: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Trade or other names for zolazepam shall include, but are not limited to: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-(3,4-e) (1,4)-diazepin-7(1H)-one, and flupyrazapon.

(c) Unless specifically excepted or unless listed in another schedule:

(1) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(A) Not more than one and eight-tenths grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(B) Not more than one and eight-tenths grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(C) Not more than one and eight-tenths grams of dihydrocodeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(D) Not more than three hundred milligrams of ethylmorphine per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(E) Not more than five hundred milligrams of opium per one hundred milliliters or per one hundred grams, or not more than twenty-five milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(F) Not more than fifty milligrams of morphine per one hundred milliliters or per one hundred grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(2) Any material, compound, mixture, or preparation containing any of the following narcotic drug or its salts, as set forth below:

(A) Buprenorphine.

(d) Unless contained on the list of exempt anabolic steroids of the Drug Enforcement Administration of the United States Department of Justice as the list existed on January 31, 2022, any anabolic steroid, which shall include any material, compound, mixture, or preparation containing any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts of isomers is possible within the specific chemical designation:

(1) 3-beta,17-dihydroxy-5a-androstane;

(2) 3-alpha,17-beta-dihydroxy-5a-androstane;

(3) 5-alpha-androstan-3,17-dione;

(4) 1-androstenediol (3-beta,17-beta-dihydroxy-5-alpha-androst-1-ene);

(5) 1-androstenediol (3-alpha,17-beta-dihydroxy-5-alpha-androst-1-ene);

(6) 4-androstenediol (3-beta,17-beta-dihydroxy-androst-5-ene);

(7) 5-androstenediol (3-beta,17-beta-dihydroxy-androst-5-ene);

(8) 1-androstenedione ([5-alpha]-androst-1-en-3,17-dione);

(9) 4-androstenedione (androst-4-en-3,17-dione);

(10) 5-androstenedione (androst-5-en-3,17-dione);

(11) Bolasterone (7-alpha,17-alpha-dimethyl-17-beta-hydroxyandrost-4-en-3-one);

(12) Boldenone (17-beta-hydroxyandrost-1,4-diene-3-one);

(13) Boldione (androsta-1,4-diene-3,17-3-one);

(14) Calusterone (7-beta,17-alpha-dimethyl-17-beta-hydroxyandrost-4-en-3-one);

(15) Clostebol (4-chloro-17-beta-hydroxyandrost-4-en-3-one);

(16) Dehydrochloromethyltestosterone (4-chloro-17-beta-hydroxy-17-alpha-methyl-androst-1,4-dien-3-one);

(17) Desoxymethyltestosterone (17-alpha-methyl-5-alpha-androst-2-en-17-beta-ol) (a.k.a. 'madol');

(18) Delta-1-Dihydrotestosterone (a.k.a. '1-testosterone')(17-beta-hydroxy-5-alpha-androst-1-en-3-one);

(19) 4-Dihydrotestosterone (17-beta-hydroxy-androstan-3-one);

(20) Drostanolone (17-beta-hydroxy-2-alpha-methyl-5-alpha-androstan-3-one);

(21) Ethylestrenol (17-alpha-ethyl-17-beta-hydroxyestr-4-ene);

(22) Fluoxymesterone (9-fluoro-17-alpha-methyl-11-beta,17-beta-dihydroxyandrost-4-en-3-one);

(23) Formebulone (formebolone); (2-formyl-17-alpha-methyl-11-alpha,17-beta-dihydroxyandrost-1,4-dien-3-one);

(24) Furazabol (17-alpha-methyl-17-beta-hydroxyandrostano[2,3-c]-furazan);

(25) 13-beta-ethyl-17-beta-hydroxygon-4-en-3-one;

(26) 4-hydroxytestosterone (4,17-beta-dihydroxy-androst-4-en-3-one);

(27) 4-hydroxy-19-nortestosterone (4,17-beta-dihydroxy-estr-4-en-3-one);

(28) Mestanolone (17-alpha-methyl-17-beta-hydroxy-5-androstan-3-one);

(29) Mesterolone (17-alpha-methyl-17-beta-hydroxy-5-androstan-3-one);

(30) Methandienone (17-alpha-methyl-17-beta-hydroxyandrost-1,4-dien-3-one);

(31) Methandriol (17-alpha-methyl-3-beta,17-beta-dihydroxyandrost-5-ene);

(32) Methasterone (2-alpha,17-alpha-dimethyl-5-alpha-androstan-17-beta-ol-3-one);

(33) Methenolone (1-methyl-17-beta-hydroxy-5-alpha-androst-1-en-3-one);

(34) 17-alpha-methyl-3-beta,17-beta-dihydroxy-5a-androstane;

(35) 17-alpha-methyl-3-alpha,17-beta-dihydroxy-5a-androstane;

(36) 17-alpha-methyl-3-beta,17-beta-dihydroxyandrost-4-ene;

(37) 17-alpha-methyl-4-hydroxynandrolone (17-alpha-methyl-4-hydroxy-17-beta-hydroxyestr-4-en-3-one);

(38) Methyldienolone (17-alpha-methyl-17-beta-hydroxyestra-4,9(10)-dien-3-one);

(39) Methyltrienolone (17-alpha-methyl-17-beta-hydroxyestra-4,9,11-trien-3-one);

(40) Methyltestosterone (17-alpha-methyl-17-beta-hydroxyandrost-4-en-3-one);

(41) Mibolerone (7-alpha,17-alpha-dimethyl-17-beta-hydroxyestr-4-en-3-one);

(42) 17-alpha-methyl-delta-1-dihydrotestosterone (17-beta-hydroxy-17-alpha-methyl-5-alpha-androst-1-en-3-one) (a.k.a. '17-alpha-methyl-1-testosterone');

(43) Nandrolone (17-beta-hydroxyestr-4-en-3-one);

(44) 19-nor-4-androstenediol (3-beta, 17-beta-dihydroxyestr-4-ene);

(45) 19-nor-4-androstenediol (3-alpha, 17-beta-dihydroxyestr-4-ene);

(46) 19-nor-5-androstenediol (3-beta, 17-beta-dihydroxyestr-5-ene);

(47) 19-nor-5-androstenediol (3-alpha, 17-beta-dihydroxyestr-5-ene);

(48) 19-nor-4,9(10)-androstadienedione (estra-4,9(10)-diene-3,17-dione);

(49) 19-nor-4-androstenedione (estr-4-en-3,17-dione);

(50) 19-nor-5-androstenedione (estr-5-en-3,17-dione);

(51) Norbolethone (13-beta, 17-alpha-diethyl-17-beta-hydroxygon-4-en-3-one);

(52) Norclostebol (4-chloro-17-beta-hydroxyestr-4-en-3-one);

(53) Norethandrolone (17-alpha-ethyl-17-beta-hydroxyestr-4-en-3-one);

(54) Normethandrolone (17-alpha-methyl-17-beta-hydroxyestr-4-en-3-one);

(55) Oxandrolone (17-alpha-methyl-17-beta-hydroxy-2-oxa-[5-alpha]-androstan-3-one);

(56) Oxymesterone (17-alpha-methyl-4,17-beta-dihydroxyandrost-4-en-3-one);

(57) Oxymetholone (17-alpha-methyl-2-hydroxymethylene-17-beta-hydroxy-[5-alpha]-androstan-3-one);

(58) Prostanozol (17-beta-hydroxy-5-alpha-androstano[3,2-c]pyrazole);

(59) Stanozolol (17-alpha-methyl-17-beta-hydroxy-[5-alpha]-androst-2-eno[3,2-c]-pyrazole);

(60) Stenbolone (17-beta-hydroxy-2-methyl-[5-alpha]-androst-1-en-3-one);

(61) Testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone);

(62) Testosterone (17-beta-hydroxyandrost-4-en-3-one);

(63) Tetrahydrogestrinone (13-beta, 17-alpha-diethyl-17-beta-hydroxygon-4,9,11-trien-3-one);

(64) Trenbolone (17-beta-hydroxyestr-4,9,11-trien-3-one);

(65) [3,2-c]-furazan-5 alpha-androstane-17 beta-ol;

(66) [3,2-c]pyrazole-androst-4-en-17 beta-ol;

(67) 17 alpha-methyl-androst-ene-3,17 beta-diol;

(68) 17 alpha-methyl-androsta-1,4-diene-3,17 beta-diol;

(69) 17 alpha-methyl-androstan-3-hydroxyimine-17 beta-ol;

(70) 17 beta-hydroxy-androstano[2,3-d]isoxazole;

(71) 17 beta-hydroxy-androstano[3,2-c]isoxazole;

(72) 18a-homo-3-hydroxy-estra-2,5(10)-dien-17-one;

(73) 2 alpha, 3 alpha-epithio-17 alpha-methyl-5 alpha-androstan-17 beta-ol;

(74) 4-chloro-17 alpha-methyl-17 beta-hydroxy-androst-4-en-3-one;

(75) 4-chloro-17 alpha-methyl-17 beta-hydroxy-androst-4-en-3,11-dione;

(76) 4-chloro-17 alpha-methyl-androst-4-ene-3 beta,17 beta-diol;

(77) 4-chloro-17 alpha-methyl-androsta-1,4-diene-3,17 beta-diol;

(78) 4-hydroxy-androst-4-ene-3,17-dione;

(79) 5 alpha-Androstan-3,6,17-trione;

(80) 6-bromo-androst-1,4-diene-3,17-dione;

(81) 6-bromo-androstan-3,17-dione;

(82) 6 alpha-methyl-androst-4-ene-3,17-dione;

(83) Delta 1-dihydrotestosterone;

(84) Estra-4,9,11-triene-3,17-dione; and

(85) Any salt, ester, or ether of a drug or substance described or listed in this subdivision if the salt, ester, or ether promotes muscle growth.

(e) Hallucinogenic substances known as:

(1) Dronabinol, synthetic, in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the federal Food and Drug Administration. Some other names for dronabinol are (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo (b,d)pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol.

Schedule IV

(a) Any material, compound, mixture, or preparation which contains any quantity of the following substances, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Barbital;

(2) Chloral betaine;

(3) Chloral hydrate;

(4) Chlordiazepoxide, but not including librax (chlordiazepoxide hydrochloride and clindinium bromide) or menrium (chlordiazepoxide and water soluble esterified estrogens);

(5) Clonazepam;

(6) Clorazepate;

(7) Daridorexant;

(8) Diazepam;

(9) Ethchlorvynol;

(10) Ethinamate;

(11) Flurazepam;

(12) Mebutamate;

(13) Meprobamate;

(14) Methohexital;

(15) Methylphenobarbital;

(16) Oxazepam;

(17) Paraldehyde;

(18) Petrichloral;

(19) Phenobarbital;

(20) Prazepam;

(21) Alprazolam;

(22) Bromazepam;

(23) Camazepam;

(24) Clobazam;

(25) Clotiazepam;

(26) Cloxazolam;

(27) Delorazepam;

(28) Estazolam;

(29) Ethyl loflazepate;

(30) Fludiazepam;

(31) Flunitrazepam;

(32) Halazepam;

(33) Haloxazolam;

(34) Ketazolam;

(35) Loprazolam;

(36) Lorazepam;

(37) Lormetazepam;

(38) Medazepam;

(39) Nimetazepam;

(40) Nitrazepam;

(41) Nordiazepam;

(42) Oxazolam;

(43) Pinazepam;

(44) Temazepam;

(45) Tetrazepam;

(46) Triazolam;

(47) Midazolam;

(48) Quazepam;

(49) Zolpidem;

(50) Dichloralphenazone;

(51) Zaleplon;

(52) Zopiclone;

(53) Fospropofol;

(54) Alfaxalone;

(55) Suvorexant;

(56) Carisoprodol;

(57) Brexanolone; 3 alpha-hydroxy-5 alpha-pregnan-20-one;

(58) Lemborexant;

(59) Solriamfetol; 2-amino-3-phenylpropyl carbamate;

(60) Remimazolam; and

(61) Serdexmethylphenidate.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, isomers, whether optical, position, or geometric, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Fenfluramine.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, whether optical, position, or geometric, and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Diethylpropion;

(2) Phentermine;

(3) Pemoline, including organometallic complexes and chelates thereof;

(4) Mazindol;

(5) Pipradrol;

(6) SPA, ((-)-1-dimethylamino-1,2-diphenylethane);

(7) Cathine. Another name for cathine is ((+)-norpseudoephedrine);

(8) Fencamfamin;

(9) Fenproporex;

(10) Mefenorex;

(11) Modafinil; and

(12) Sibutramine.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following narcotic drugs, or their salts or isomers calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Propoxyphene in manufactured dosage forms;

(2) Not more than one milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit; and

(3) 2-[(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexanol, its salts, optical and geometric isomers, and salts of these isomers to include: Tramadol.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts:

(1) Pentazocine; and

(2) Butorphanol (including its optical isomers).

(f) Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Lorcaserin.

(g)(1) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, optical isomers, and salts of such optical isomers: Ephedrine.

(2) The following drug products containing ephedrine, its salts, optical isomers, and salts of such optical isomers, are excepted from subdivision (g)(1) of Schedule IV if they (A) are stored behind a counter, in an area not accessible to customers, or in a locked case so that a customer needs assistance from an employee to access the drug product; (B) are sold by a person, eighteen years of age or older, in the course of his or her employment to a customer eighteen years of age or older with the following restrictions: No customer shall be allowed to purchase, receive, or otherwise acquire more than three and six-tenths grams of ephedrine base during a twenty-four-hour period; no customer shall purchase, receive, or otherwise acquire more than nine grams of ephedrine base during a thirty-day period; and the customer shall display a valid driver's or operator's license, a Nebraska state identification card, a military identification card, an alien registration card, or a passport as proof of identification; (C) are labeled and marketed in a manner consistent with the pertinent OTC Tentative Final or Final Monograph; (D) are manufactured and distributed for legitimate medicinal use in a manner that reduces or eliminates

the likelihood of abuse; and (E) are not marketed, advertised, or represented in any manner for the indication of stimulation, mental alertness, euphoria, ecstasy, a buzz or high, heightened sexual performance, or increased muscle mass:

(i) Primatene Tablets; and

(ii) Bronkaid Dual Action Caplets.

Schedule V

(a) Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs or salts calculated as the free anhydrous base or alkaloid, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than two hundred milligrams of codeine per one hundred milliliters or per one hundred grams;

(2) Not more than one hundred milligrams of dihydrocodeine per one hundred milliliters or per one hundred grams;

(3) Not more than one hundred milligrams of ethylmorphine per one hundred milliliters or per one hundred grams;

(4) Not more than two and five-tenths milligrams of diphenoxylate and not less than twenty-five micrograms of atropine sulfate per dosage unit;

(5) Not more than one hundred milligrams of opium per one hundred milliliters or per one hundred grams; and

(6) Not more than five-tenths milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

(b) Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers: Pyrovalerone.

(c) Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Ezogabine (N-(2-amino-4-(4-fluorobenzylamino)-phenyl)-carbamic acid ethyl ester);

(2) Ganaxolone;

(3) Lacosamide ((R)-2-acetoamido-N-benzyl-3-methoxy-propionamide);

(4) Pregabalin ((S)-3-(aminomethyl)-5-methylhexanoic acid);

(5) Brivaracetam ((2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl] butanamide) (also referred to as BRV; UCB-34714; Briviact), including its salts;

(6) Cenobamate; and

(7) Lasmiditan.

Source: Laws 1977, LB 38, § 65; Laws 1978, LB 748, § 50; Laws 1980, LB 696, § 2; Laws 1985, LB 323, § 2; Laws 1985, LB 406, § 3; Laws 1986, LB 1160, § 1; Laws 1987, LB 473, § 1; Laws 1990, LB 571, § 6; Laws 1992, LB 1019, § 32; Laws 1994, LB 1210,

§ 3; Laws 1995, LB 406, § 5; Laws 1996, LB 1213, § 4; Laws 1998, LB 1073, § 8; Laws 1999, LB 594, § 1; Laws 2000, LB 1115, § 2; Laws 2001, LB 113, § 10; Laws 2002, LB 500, § 1; Laws 2003, LB 245, § 1; Laws 2005, LB 382, § 2; Laws 2007, LB247, § 2; Laws 2008, LB902, § 1; Laws 2009, LB123, § 1; Laws 2009, LB151, § 1; Laws 2010, LB792, § 1; Laws 2011, LB19, § 1; Laws 2012, LB670, § 1; Laws 2013, LB298, § 1; Laws 2014, LB811, § 4; Laws 2015, LB390, § 4; Laws 2017, LB487, § 5; Laws 2018, LB906, § 1; Laws 2021, LB236, § 2; Laws 2022, LB808, § 1; Laws 2023, LB157, § 6.

28-410 Records of registrants; inventory; violation; penalty; storage.

(1) Each registrant manufacturing, distributing, or dispensing controlled substances in Schedule I, II, III, IV, or V of section 28-405 shall keep and maintain a complete and accurate record of all stocks of such controlled substances on hand. Such records shall be maintained for five years.

(2) Each registrant manufacturing, distributing, storing, or dispensing such controlled substances shall prepare a biennial inventory of each controlled substance in the registrant's possession in accordance with 21 C.F.R. 1304.11, as such regulation existed on January 1, 2024. Such inventory shall be taken within two years after the previous inventory date. A registrant whose inventory fails to comply with this subsection shall be guilty of a Class IV misdemeanor.

(3) This section shall not apply to practitioners who prescribe or administer, as a part of their practice, controlled substances listed in Schedule II, III, IV, or V of section 28-405 unless such practitioner regularly engages in dispensing any such drug or drugs to his or her patients.

(4) Controlled substances shall be stored in accordance with the following:

(a) All controlled substances listed in Schedule I of section 28-405 must be stored in a locked cabinet; and

(b) All controlled substances listed in Schedule II, III, IV, or V of section 28-405 must be stored in a locked cabinet or distributed throughout the inventory of noncontrolled substances in a manner which will obstruct theft or diversion of the controlled substances or both.

(5) Each pharmacy which is registered with the administration and in which controlled substances are stored or dispensed shall complete a controlled-substances inventory when there is a change in the pharmacist-in-charge. The inventory shall contain the information required in the annual inventory, and the original copy shall be maintained in the pharmacy for five years after the date it is completed.

Source: Laws 1977, LB 38, § 70; Laws 1996, LB 1108, § 2; Laws 1997, LB 307, § 7; Laws 1997, LB 550, § 3; Laws 2001, LB 398, § 8; Laws 2003, LB 242, § 3; Laws 2008, LB902, § 2; Laws 2017, LB166, § 1; Laws 2024, LB1215, § 3.
Operative date July 19, 2024.

28-411 Controlled substances; records; by whom kept; contents; compound controlled substances; duties.

(1) Every practitioner who is authorized to administer or professionally use controlled substances shall keep a record of such controlled substances re-

ceived by him or her and a record of all such controlled substances administered or professionally used by him or her, other than by medical order issued by a practitioner authorized to prescribe, in accordance with subsection (4) of this section.

(2) Manufacturers, wholesalers, distributors, and reverse distributors shall keep records of all controlled substances compounded, mixed, cultivated, grown, or by any other process produced or prepared and of all controlled substances received and disposed of by them, in accordance with subsection (4) of this section.

(3) Pharmacies shall keep records of all controlled substances received and disposed of by them, in accordance with subsection (4) of this section.

(4)(a) The record of controlled substances received shall in every case show (i) the date of receipt, (ii) the name, address, and Drug Enforcement Administration number of the person receiving the controlled substances, (iii) the name, address, and Drug Enforcement Administration number of the person from whom received, (iv) the kind and quantity of controlled substances received, (v) the kind and quantity of controlled substances produced or removed from process of manufacture, and (vi) the date of such production or removal from process of manufacture.

(b) The record shall in every case show the proportion of morphine, cocaine, or ecgonine contained in or producible from crude opium or coca leaves received or produced. The record of all controlled substances sold, administered, dispensed, or otherwise disposed of shall show the date of selling, administering, or dispensing, the name and address of the person to whom or for whose use or the owner and species of animal for which the controlled substances were sold, administered, or dispensed, and the kind and quantity of controlled substances. For any lost, destroyed, or stolen controlled substances, the record shall list the kind and quantity of such controlled substances and the discovery date of such loss, destruction, or theft.

(c) Every such record shall be kept for a period of five years from the date of the transaction recorded.

(5) Any person authorized to compound controlled substances shall comply with section 38-2867.01.

Source: Laws 1977, LB 38, § 71; Laws 1988, LB 273, § 4; Laws 1995, LB 406, § 6; Laws 1996, LB 1044, § 69; Laws 2001, LB 398, § 9; Laws 2015, LB37, § 28; Laws 2017, LB166, § 2.

28-414 Controlled substance; Schedule II; prescription; requirements; contents; dispensing; powers and duties.

(1) Except as otherwise provided in this section or section 28-412 or when administered directly by a practitioner to an ultimate user, a controlled substance listed in Schedule II of section 28-405 shall not be dispensed without a prescription from a practitioner authorized to prescribe. All such prescriptions shall be subject to section 38-1,146. No prescription for a controlled substance listed in Schedule II of section 28-405 shall be filled more than six months from the date of issuance. A prescription for a controlled substance listed in Schedule II of section 28-405 shall not be refilled.

(2)(a) Except as provided in subdivision (2)(b) of this section, a prescription for controlled substances listed in Schedule II of section 28-405 must contain

the following information prior to being filled by a pharmacist or dispensing practitioner: (i) Patient's name and address, (ii) name of the drug, device, or biological, (iii) strength of the drug or biological, if applicable, (iv) dosage form of the drug or biological, (v) quantity of the drug, device, or biological prescribed, (vi) directions for use, (vii) date of issuance, (viii) prescribing practitioner's name and address, and (ix) Drug Enforcement Administration number of the prescribing practitioner.

(b) After consultation with the prescribing practitioner, a pharmacist may add or change the dosage form, drug strength, drug quantity, directions for use, and issue date for a prescription for a controlled substance listed in Schedule II of section 28-405.

(c) If the prescription is a written paper prescription, the paper prescription must contain the prescribing practitioner's manual signature. If the prescription is an electronic prescription, the electronic prescription must contain all of the elements in subdivision (2)(a) of this section, must be digitally signed, and must be transmitted to and received by the pharmacy electronically to meet all of the requirements of the Controlled Substances Act, 21 U.S.C. 801 et seq., as it existed on January 1, 2014, pertaining to electronic prescribing of controlled substances.

(3)(a) In emergency situations, a controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to an oral prescription reduced to writing in accordance with subsection (2) of this section, except for the prescribing practitioner's signature, and bearing the word ''emergency''.

(b) For purposes of this section, emergency situation means a situation in which a prescribing practitioner determines that (i) immediate administration of the controlled substance is necessary for proper treatment of the patient, (ii) no appropriate alternative treatment is available, including administration of a drug which is not a controlled substance listed in Schedule II of section 28-405, and (iii) it is not reasonably possible for the prescribing practitioner to provide a signed, written or electronic prescription to be presented to the person dispensing the controlled substance prior to dispensing.

(4)(a) In nonemergency situations:

(i) A controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to a facsimile of a written, signed paper prescription if the original written, signed paper prescription is presented to the pharmacist for review before the controlled substance is dispensed, except as provided in subdivision (a)(ii) or (iii) of this subsection;

(ii) A narcotic drug listed in Schedule II of section 28-405 may be dispensed pursuant to a facsimile of a written, signed paper prescription (A) to be compounded for direct parenteral administration to a patient for the purpose of home infusion therapy or (B) for administration to a patient enrolled in a hospice care program and bearing the words ''hospice patient''; and

(iii) A controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to a facsimile of a written, signed paper prescription for administration to a resident of a long-term care facility.

(b) For purposes of subdivisions (a)(ii) and (iii) of this subsection, a facsimile of a written, signed paper prescription shall serve as the original written prescription and shall be maintained in accordance with subsection (1) of section 28-414.03.

(5)(a) A prescription for a controlled substance listed in Schedule II of section 28-405 may be partially filled if the pharmacist does not supply the full quantity prescribed and he or she makes a notation of the quantity supplied on the face of the prescription or in the electronic record. The remaining portion of the prescription may be filled no later than thirty days after the date on which the prescription is written. The pharmacist shall notify the prescribing practitioner if the remaining portion of the prescription is not or cannot be filled within such period. No further quantity may be supplied after such period without a new written, signed paper prescription or electronic prescription.

(b) A prescription for a controlled substance listed in Schedule II of section 28-405 written for a patient in a long-term care facility or for a patient with a medical diagnosis documenting a terminal illness may be partially filled. Such prescription shall bear the words ''terminally ill'' or ''long-term care facility patient'' on its face or in the electronic record. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the prescribing practitioner prior to partially filling the prescription. Both the pharmacist and the prescribing practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient. For each partial filling, the dispensing pharmacist shall record on the back of the prescription or on another appropriate record, uniformly maintained and readily retrievable, the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist. The total quantity of controlled substances listed in Schedule II which is dispensed in all partial fillings shall not exceed the total quantity prescribed. A prescription for a Schedule II controlled substance for a patient in a long-term care facility or a patient with a medical diagnosis documenting a terminal illness is valid for sixty days from the date of issuance or until discontinuance of the prescription, whichever occurs first.

Source: Laws 1977, LB 38, § 74; Laws 1988, LB 273, § 5; Laws 1995, LB 406, § 7; Laws 1996, LB 1108, § 4; Laws 1997, LB 307, § 8; Laws 1999, LB 594, § 4; Laws 2000, LB 819, § 65; Laws 2001, LB 398, § 12; Laws 2004, LB 1005, § 2; Laws 2005, LB 382, § 3; Laws 2007, LB463, § 1122; Laws 2009, LB195, § 3; Laws 2011, LB179, § 1; Laws 2014, LB811, § 6; Laws 2017, LB166, § 3; Laws 2021, LB583, § 1; Laws 2024, LB1215, § 4.
Operative date July 19, 2024.

28-414.01 Controlled substance; Schedule III, IV, or V; medical order, required; prescription; requirements; contents; pharmacist; authority to adapt prescription; duties.

(1) Except as otherwise provided in this section or when administered directly by a practitioner to an ultimate user, a controlled substance listed in Schedule III, IV, or V of section 28-405 shall not be dispensed without a written, oral, or electronic medical order. Such medical order is valid for six months after the date of issuance. Original prescription information for any controlled substance listed in Schedule III, IV, or V of section 28-405 may be transferred between pharmacies for purposes of refill dispensing pursuant to section 38-2871.

(2) A prescription for controlled substances listed in Schedule III, IV, or V of section 28-405 must contain the following information prior to being filled by a

pharmacist or dispensing practitioner: (a) Patient's name and address, (b) name of the drug, device, or biological, (c) strength of the drug or biological, if applicable, (d) dosage form of the drug or biological, (e) quantity of the drug, device, or biological prescribed, (f) directions for use, (g) date of issuance, (h) number of refills, including pro re nata or PRN refills, not to exceed five refills within six months after the date of issuance, (i) prescribing practitioner's name and address, and (j) Drug Enforcement Administration number of the prescribing practitioner. Beginning January 1, 2022, all such prescriptions shall be subject to section 38-1,146, except that all such prescriptions issued by a practitioner who is a dentist shall be subject to section 38-1,146 beginning January 1, 2024. If the prescription is a written paper prescription, the paper prescription must contain the prescribing practitioner's manual signature. If the prescription is an electronic prescription, the electronic prescription must contain all of the elements in subdivisions (a) through (j) of this subsection, must be digitally signed, and must be transmitted to and received by the pharmacy electronically to meet all of the requirements of 21 C.F.R. 1311, as the regulation existed on January 1, 2014, pertaining to electronic prescribing of controlled substances.

(3)(a) A pharmacist who is exercising reasonable care and who has obtained patient consent may do the following:

(i) Change the quantity of a drug prescribed if:

(A) The prescribed quantity or package size is not commercially available; or

(B) The change in quantity is related to a change in dosage form;

(ii) Change the dosage form of the prescription if it is in the best interest of the patient and if the directions for use are also modified to equate to an equivalent amount of drug dispensed as prescribed;

(iii) Dispense multiple months' supply of a drug if a prescription is written with sufficient refills; and

(iv) Substitute any chemically equivalent drug product for a prescribed drug to comply with a drug formulary which is covered by the patient's health insurance plan unless the prescribing practitioner specifies ''no substitution'', ''dispense as written'', or ''D.A.W.'' to indicate that substitution is not permitted. If a pharmacist substitutes any chemically equivalent drug product as permitted under this subdivision, the pharmacist shall provide notice to the prescribing practitioner or the prescribing practitioner's designee. If drug product selection occurs involving a generic substitution, the drug product selection shall comply with section 38-28,111.

(b) A pharmacist who adapts a prescription in accordance with this subsection shall document the adaptation in the patient's pharmacy record.

(4) A controlled substance listed in Schedule III, IV, or V of section 28-405 may be dispensed pursuant to a facsimile of a written, signed paper prescription. The facsimile of a written, signed paper prescription shall serve as the original written prescription for purposes of this subsection and shall be maintained in accordance with subsection (2) of section 28-414.03.

(5) A prescription for a controlled substance listed in Schedule III, IV, or V of section 28-405 may be partially filled if (a) each partial filling is recorded in the same manner as a refilling, (b) the total quantity dispensed in all partial fillings

does not exceed the total quantity prescribed, and (c) each partial filling is dispensed within six months after the prescription was issued.

Source: Laws 2014, LB811, § 7; Laws 2017, LB166, § 4; Laws 2020, LB1052, § 1; Laws 2021, LB583, § 2.

28-414.03 Controlled substances; maintenance of records; label.

(1) Paper prescriptions for all controlled substances listed in Schedule II of section 28-405 shall be kept in a separate file by the dispensing practitioner and shall be maintained for a minimum of five years. The practitioner shall make all such files readily available to the department and law enforcement for inspection without a search warrant.

(2) Prescriptions for all controlled substances listed in Schedule III, IV, or V of section 28-405 shall be maintained either separately from other prescriptions or in a form in which the information required is readily retrievable from ordinary business records of the dispensing practitioner and shall be maintained for a minimum of five years. The practitioner shall make all such records readily available to the department, the administration, and law enforcement for inspection without a search warrant.

(3) Before dispensing any controlled substance listed in Schedule II, III, IV, or V of section 28-405, the dispensing practitioner shall affix a label to the container in which the controlled substance is dispensed. Such label shall bear the name and address of the pharmacy or dispensing practitioner, the name of the patient, the date of filling, the serial number of the prescription under which it is recorded in the practitioner's prescription records, the name of the prescribing practitioner, and the directions for use of the controlled substance. Unless the prescribing practitioner writes ''do not label'' or words of similar import on the original paper prescription or so designates in an electronic prescription or an oral prescription, such label shall also bear the name of the controlled substance.

(4) For multidrug containers, more than one drug, device, or biological may be dispensed in the same container when (a) such container is prepackaged by the manufacturer, packager, or distributor and shipped directly to the pharmacy in this manner or (b) the container does not accommodate greater than a thirty-one-day supply of compatible dosage units and is labeled to identify each drug or biological in the container in addition to all other information required by law.

(5) If a pharmacy fills prescriptions for controlled substances on behalf of another pharmacy under contractual agreement or common ownership, the prescription label shall contain the Drug Enforcement Administration number of the pharmacy at which the prescriptions are filled.

Source: Laws 2014, LB811, § 9; Laws 2017, LB166, § 5.

28-416 Prohibited acts; violations; penalties.

(1) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person knowingly or intentionally: (a) To manufacture, distribute, deliver, dispense, or possess with intent to manufacture, distribute, deliver, or dispense a controlled substance; or (b) to create, distribute, or possess with intent to distribute a counterfeit controlled substance.

(2) Except as provided in subsections (4), (5), (7), (8), (9), and (10) of this section, any person who violates subsection (1) of this section with respect to: (a) A controlled substance classified in Schedule I, II, or III of section 28-405 which is an exceptionally hazardous drug shall be guilty of a Class II felony; (b) any other controlled substance classified in Schedule I, II, or III of section 28-405 shall be guilty of a Class IIA felony; or (c) a controlled substance classified in Schedule IV or V of section 28-405 shall be guilty of a Class IIIA felony.

(3) A person knowingly or intentionally possessing a controlled substance, except marijuana or any substance containing a quantifiable amount of the substances, chemicals, or compounds described, defined, or delineated in subdivision (c)(27) of Schedule I of section 28-405, unless such substance was obtained directly or pursuant to a medical order issued by a practitioner authorized to prescribe while acting in the course of his or her professional practice, or except as otherwise authorized by the act, shall be guilty of a Class IV felony. A person shall not be in violation of this subsection if section 28-472 or 28-1701 applies.

(4)(a) Except as authorized by the Uniform Controlled Substances Act, any person eighteen years of age or older who knowingly or intentionally manufactures, distributes, delivers, dispenses, or possesses with intent to manufacture, distribute, deliver, or dispense a controlled substance or a counterfeit controlled substance (i) to a person under the age of eighteen years, (ii) in, on, or within one thousand feet of the real property comprising a public or private elementary, vocational, or secondary school, a community college, a public or private college, junior college, or university, or a playground, or (iii) within one hundred feet of a public or private youth center, public swimming pool, or video arcade facility shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section, depending upon the controlled substance involved, for the first violation and for a second or subsequent violation shall be punished by the next higher penalty classification than that prescribed for a first violation of this subsection, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(b) For purposes of this subsection:

(i) Playground means any outdoor facility, including any parking lot appurtenant to the facility, intended for recreation, open to the public, and with any portion containing three or more apparatus intended for the recreation of children, including sliding boards, swingsets, and teeterboards;

(ii) Video arcade facility means any facility legally accessible to persons under eighteen years of age, intended primarily for the use of pinball and video machines for amusement, and containing a minimum of ten pinball or video machines; and

(iii) Youth center means any recreational facility or gymnasium, including any parking lot appurtenant to the facility or gymnasium, intended primarily for use by persons under eighteen years of age which regularly provides athletic, civic, or cultural activities.

(5)(a) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person eighteen years of age or older to knowingly and intentionally employ, hire, use, cause, persuade, coax, induce, entice, seduce, or coerce any person under the age of eighteen years to manufacture, transport,

distribute, carry, deliver, dispense, prepare for delivery, offer for delivery, or possess with intent to do the same a controlled substance or a counterfeit controlled substance.

(b) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person eighteen years of age or older to knowingly and intentionally employ, hire, use, cause, persuade, coax, induce, entice, seduce, or coerce any person under the age of eighteen years to aid and abet any person in the manufacture, transportation, distribution, carrying, delivery, dispensing, preparation for delivery, offering for delivery, or possession with intent to do the same of a controlled substance or a counterfeit controlled substance.

(c) Any person who violates subdivision (a) or (b) of this subsection shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section, depending upon the controlled substance involved, for the first violation and for a second or subsequent violation shall be punished by the next higher penalty classification than that prescribed for a first violation of this subsection, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(6) It shall not be a defense to prosecution for violation of subsection (4) or (5) of this section that the defendant did not know the age of the person through whom the defendant violated such subsection.

(7) Any person who violates subsection (1) of this section with respect to cocaine or any mixture or substance containing a detectable amount of cocaine in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(8) Any person who violates subsection (1) of this section with respect to base cocaine (crack) or any mixture or substance containing a detectable amount of base cocaine in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(9) Any person who violates subsection (1) of this section with respect to heroin or any mixture or substance containing a detectable amount of heroin in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(10) Any person who violates subsection (1) of this section with respect to amphetamine, its salts, optical isomers, and salts of its isomers, or with respect to methamphetamine, its salts, optical isomers, and salts of its isomers, in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(11) Any person knowingly or intentionally possessing marijuana weighing more than one ounce but not more than one pound shall be guilty of a Class III misdemeanor.

(12) Any person knowingly or intentionally possessing marijuana weighing more than one pound shall be guilty of a Class IV felony.

(13) Except as provided in section 28-1701, any person knowingly or intentionally possessing marijuana weighing one ounce or less or any substance containing a quantifiable amount of the substances, chemicals, or compounds described, defined, or delineated in subdivision (c)(27) of Schedule I of section 28-405 shall:

(a) For the first offense, be guilty of an infraction, receive a citation, be fined three hundred dollars, and be assigned to attend a course as prescribed in section 29-433 if the judge determines that attending such course is in the best interest of the individual defendant;

(b) For the second offense, be guilty of a Class IV misdemeanor, receive a citation, and be fined four hundred dollars and may be imprisoned not to exceed five days; and

(c) For the third and all subsequent offenses, be guilty of a Class IIIA misdemeanor, receive a citation, be fined five hundred dollars, and be imprisoned not to exceed seven days.

(14) Any person convicted of violating this section, if placed on probation, shall, as a condition of probation, satisfactorily attend and complete appropriate treatment and counseling on drug abuse provided by a program authorized under the Nebraska Behavioral Health Services Act or other licensed drug treatment facility.

(15) Any person convicted of violating this section, if sentenced to the Department of Correctional Services, shall attend appropriate treatment and counseling on drug abuse.

(16) Any person knowingly or intentionally possessing a firearm while in violation of subsection (1) of this section shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(17) A person knowingly or intentionally in possession of money used or intended to be used to facilitate a violation of subsection (1) of this section shall be guilty of a Class IV felony.

(18) In addition to the existing penalties available for a violation of subsection (1) of this section, including any criminal attempt or conspiracy to violate subsection (1) of this section, a sentencing court may order that any money, securities, negotiable instruments, firearms, conveyances, or electronic communication devices as defined in section 28-833 or any equipment, components, peripherals, software, hardware, or accessories related to electronic communication devices be forfeited as a part of the sentence imposed if it finds by clear

and convincing evidence adduced at a separate hearing in the same prosecution, following conviction for a violation of subsection (1) of this section, and conducted pursuant to section 28-1601, that any or all such property was derived from, used, or intended to be used to facilitate a violation of subsection (1) of this section.

(19) In addition to the penalties provided in this section:

(a) If the person convicted or adjudicated of violating this section is eighteen years of age or younger and has one or more licenses or permits issued under the Motor Vehicle Operator's License Act:

(i) For the first offense, the court may, as a part of the judgment of conviction or adjudication, (A) impound any such licenses or permits for thirty days and (B) require such person to attend a drug education class;

(ii) For a second offense, the court may, as a part of the judgment of conviction or adjudication, (A) impound any such licenses or permits for ninety days and (B) require such person to complete no fewer than twenty and no more than forty hours of community service and to attend a drug education class; and

(iii) For a third or subsequent offense, the court may, as a part of the judgment of conviction or adjudication, (A) impound any such licenses or permits for twelve months and (B) require such person to complete no fewer than sixty hours of community service, to attend a drug education class, and to submit to a drug assessment by a licensed alcohol and drug counselor; and

(b) If the person convicted or adjudicated of violating this section is eighteen years of age or younger and does not have a permit or license issued under the Motor Vehicle Operator's License Act:

(i) For the first offense, the court may, as part of the judgment of conviction or adjudication, (A) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until thirty days after the date of such order and (B) require such person to attend a drug education class;

(ii) For a second offense, the court may, as part of the judgment of conviction or adjudication, (A) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until ninety days after the date of such order and (B) require such person to complete no fewer than twenty hours and no more than forty hours of community service and to attend a drug education class; and

(iii) For a third or subsequent offense, the court may, as part of the judgment of conviction or adjudication, (A) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until twelve months after the date of such order and (B) require such person to complete no fewer than sixty hours of community service, to attend a drug education class, and to submit to a drug assessment by a licensed alcohol and drug counselor.

A copy of an abstract of the court's conviction or adjudication shall be transmitted to the Director of Motor Vehicles pursuant to sections 60-497.01 to 60-497.04 if a license or permit is impounded or a juvenile is prohibited from obtaining a license or permit under this subsection.

Source: Laws 1977, LB 38, § 76; Laws 1978, LB 808, § 2; Laws 1980, LB 696, § 3; Laws 1985, LB 406, § 4; Laws 1986, LB 504, § 1; Laws

1989, LB 592, § 2; Laws 1991, LB 742, § 1; Laws 1993, LB 117, § 2; Laws 1995, LB 371, § 6; Laws 1997, LB 364, § 8; Laws 1999, LB 299, § 1; Laws 2001, LB 398, § 14; Laws 2003, LB 46, § 1; Laws 2004, LB 1083, § 86; Laws 2005, LB 117, § 3; Laws 2008, LB844, § 1; Laws 2010, LB800, § 4; Laws 2011, LB19, § 2; Laws 2011, LB463, § 1; Laws 2013, LB298, § 2; Laws 2015, LB605, § 26; Laws 2016, LB1106, § 5; Laws 2017, LB487, § 6; Laws 2022, LB519, § 4; Laws 2022, LB808, § 2; Laws 2023, LB157, § 7.

Cross References

Motor Vehicle Operator's License Act, see section 60-462.
Nebraska Behavioral Health Services Act, see section 71-801.

28-431 Seized without warrant; subject to forfeitures; disposition; manner; when; accepted as evidence; court costs and expenses; report to Auditor of Public Accounts; contents.

(1) The following shall be seized with or without a warrant by an officer of the Division of Drug Control or by any peace officer and the same shall be subject to forfeiture: (a) All controlled substances which have been manufactured, distributed, dispensed, acquired, or possessed in violation of the Uniform Controlled Substances Act; (b) all raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, administering, delivering, importing, or exporting any controlled substance in violation of the act; (c) all lookalike substances; (d) all property which is used, or is intended for use, as a container for property described in subdivisions (a) and (b) of this subsection; (e) all drug paraphernalia defined in section 28-439; (f) all books, records, and research, including, but not limited to, formulas, microfilm, tapes, and data, which are used, or intended for use, in violation of the act; (g) all conveyances including, but not limited to, aircraft, vehicles, or vessels which are used, or intended for use, in transporting any controlled substance with intent to manufacture, distribute, deliver, dispense, export, or import such controlled substance in violation of the act; and (h) all money used, or intended to be used, to facilitate a violation of the act.

(2) Any property described in subdivision (1)(g) of this section which is used, or intended for use, to transport any property described in subdivision (1)(a) or (b) of this section is hereby declared to be a common nuisance, and any peace officer having probable cause to believe that such property is so used, or intended for such use, shall make a search thereof with or without a warrant.

(3) All money that a law enforcement agency proves was furnished by such agency shall be returned to the agency. All property seized without a search warrant shall not be subject to a replevin action and: (a) All property described in subdivisions (1)(a) through (1)(f) of this section shall be kept by the property division of the law enforcement agency which employs the officer who seized such property for so long as it is needed as evidence in any trial; and (b) when no longer required as evidence, all property described in subdivision (1)(f) of this section shall be disposed of on order of a court of record of this state in such manner as the court in its sound discretion shall direct, and all property described in subdivisions (1)(a), (b), (c), (d), and (e) of this section, that has been used or is intended to be used in violation of the act, when no longer needed as evidence shall be destroyed by the law enforcement agency holding the same or turned over to the department for custody or destruction, except

that a law enforcement agency may keep a small quantity of the property described in subdivisions (1)(a), (b), (c), (d), and (e) of this section for training purposes or use in investigations. Any large quantity of property described in subdivisions (1)(a), (b), (c), (d), and (e) of this section, whether seized under a search warrant or validly seized without a warrant, may be disposed of on order of a court of record of this state in such manner as the court in its sound discretion shall direct. Such an order may be given only after a proper laboratory examination and report of such property has been completed and after a hearing has been held by the court after notice to the defendant of the proposed disposition of the property. The findings in such court order as to the nature, kind, and quantity of the property so disposed of may be accepted as evidence at subsequent court proceedings in lieu of the property ordered destroyed by the court order.

(4) When any property described in subdivision (1)(g) or (h) of this section is seized, the person seizing the same shall cause to be filed, within ten days thereafter, in the district court of the county in which seizure was made, petition for disposition of such property. The proceedings shall be brought in the name of the state by the county attorney of the county in which such property was seized. The petition shall describe the property, state the name of the owner if known, allege the essential elements of the violation which is claimed to exist, and conclude with a prayer for disposition. The county attorney shall have a copy of the petition served upon the owner of or any person having an interest in the property, if known, in person or by registered or certified mail at his or her last-known address. If the owner is unknown or there is a reasonable probability that there are unknown persons with interests in the property, the county attorney shall provide notice of the seizure and petition for disposition by publication once a week for four consecutive weeks in a newspaper of general circulation in the county of the seizure. At least five days shall elapse between each publication of notice.

(5) At any time after seizure and prior to court disposition, the owner of record of such property may petition the district court of the county in which seizure was made to release such property, and the court shall order the release of the property upon a showing by the owner that he or she had no actual knowledge that such property was being used in violation of the Uniform Controlled Substances Act.

(6) Any person having an interest in the property proceeded against or any person against whom civil or criminal liability would exist if such property is in violation of the act may, within thirty days after seizure, appear and file an answer or demurrer to the petition. The answer or demurrer shall allege the claimant's interest in or liability involving such property. At least thirty but not more than ninety days after seizure, there shall be a hearing before the court. If the claimant proves by a preponderance of the evidence that he or she (a) has not used or intended to use the property to facilitate an offense in violation of the act, (b) has an interest in such property as owner or lienor or otherwise, acquired by him or her in good faith, and (c) at no time had any actual knowledge that such property was being or would be used in, or to facilitate, the violation of the act, the court shall order that such property or the value of the claimant's interest in such property be returned to the claimant. If there are no claims, if all claims are denied, or if the value of the property exceeds all claims granted and it is shown by clear and convincing evidence that such property was used in violation of the act, the court shall order disposition of

such property at such time as the property is no longer required as evidence in any criminal proceeding. The court may order that property described in subdivision (1)(g) of this section be sold or put to official use by the confiscating agency for a period of not more than one year and that when such property is no longer necessary for official use or at the end of two years, whichever comes first, such property shall be sold. Proceeds from the sale of the property and any money described in subdivision (1)(h) of this section shall be distributed pursuant to section 28-1439.02. Official use shall mean use directly in connection with enforcement of the act.

(7) Any court costs and fees and storage and other proper expenses shall be charged against any person intervening as claimant or owner of the property unless such person shall establish his or her claim. If a sale is ordered, the officer holding the sale shall make a return to the court showing to whom the property was sold and for what price. This return together with the court order shall authorize the county treasurer to issue a title to the purchaser of the property if such title is required under the laws of this state.

(8)(a) For all money, securities, negotiable instruments, firearms, conveyances, or real estate seized pursuant to this section, the Division of Drug Control, any peace officer, or, as provided in subdivision (d) of this subsection, the prosecuting attorney shall provide a written report of the seizure to the Auditor of Public Accounts. The report shall include:

(i) The date of the seizure;

(ii) The type of property seized, such as a vehicle or currency;

(iii) A description of the property seized, including, if applicable, the make, model, year, and serial number of the property seized;

(iv) The street name and traffic direction where the seizure occurred, such as eastbound, westbound, southbound, or northbound;

(v) The crime for which the suspect was charged;

(vi) The disposition of the property seized through the forfeiture process, such as the property was returned to the suspect, returned to a third-party owner, sold, destroyed, or retained by law enforcement;

(vii) The basis for disposition of the seized property, such as the suspect was found not guilty, agreement for disposition, criminal forfeiture, or civil forfeiture;

(viii) The value of the property forfeited;

(ix) If the seizure resulted from a motor vehicle stop, (A) whether a warning or citation was issued, an arrest was made, or a search was conducted and (B) the characteristics of the race or ethnicity of the suspect. The identification of such characteristics shall be based on the observation and perception of the law enforcement officer responsible for reporting the motor vehicle stop. The information shall not be required to be provided by the suspect; and

(x) Any additional information the Division of Drug Control or peace officer deems appropriate.

(b) Reports shall be made on an annual basis in a manner prescribed by the Auditor of Public Accounts. The Auditor of Public Accounts shall submit a report to the Legislature on the nature and extent of such seizures on an annual basis. Such report shall be submitted electronically.

(c) For seizures resulting from the activities of multijurisdictional law enforcement entities, a law enforcement entity other than a Nebraska law enforcement entity shall, on its own initiative, report the information required by this subsection.

(d) The prosecuting attorney is not required to report information required by this subsection unless he or she has been notified by the Auditor of Public Accounts that the Division of Drug Control or any peace officer has not reported the information required by this subsection.

Source: Laws 1977, LB 38, § 91; Laws 1980, LB 991, § 7; Laws 1985, LB 247, § 1; Laws 1997, LB 307, § 11; Laws 2016, LB1009, § 5; Laws 2016, LB1106, § 6; Laws 2024, LB247, § 1.
Effective date July 19, 2024.

28-441 Drug paraphernalia; use or possession; unlawful; penalty.

(1) It shall be unlawful for any person to use, or to possess with intent to use, drug paraphernalia to manufacture, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of sections 28-101, 28-431, and 28-439 to 28-444.

(2) Any person who violates this section shall be guilty of an infraction.

(3) A person shall not be in violation of this section if section 28-472 or 28-1701 applies.

Source: Laws 1980, LB 991, § 3; Laws 2017, LB487, § 7; Laws 2022, LB519, § 5.

28-442 Drug paraphernalia; deliver or manufacture; unlawful; exception; penalty.

(1) It shall be unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances in which one reasonably should know, that it will be used to manufacture, inject, ingest, or inhale or otherwise be used to introduce into the human body a controlled substance in violation of sections 28-101, 28-431, and 28-439 to 28-444.

(2) This section shall not apply to pharmacists, pharmacist interns, pharmacy technicians, and pharmacy clerks who sell hypodermic syringes or needles for the prevention of the spread of infectious diseases.

(3) Any person who violates this section shall be guilty of a Class II misdemeanor.

Source: Laws 1980, LB 991, § 4; Laws 2001, LB 398, § 18; Laws 2017, LB166, § 6.

28-470 Naloxone; authorized activities; immunity from administrative action, criminal prosecution, or civil liability.

(1) A health professional who is authorized to prescribe or dispense naloxone, if acting with reasonable care, may prescribe, administer, or dispense naloxone to any of the following persons without being subject to administrative action or criminal prosecution:

(a) A person who is apparently experiencing or who is likely to experience an opioid-related overdose; or

(b) A family member, friend, or other person in a position to assist a person who is apparently experiencing or who is likely to experience an opioid-related overdose.

(2) A family member, friend, or other person, including school personnel, who is in a position to assist a person who is apparently experiencing or who is likely to experience an opioid-related overdose, other than an emergency responder or peace officer, is not subject to actions under the Uniform Credentialing Act, administrative action, or criminal prosecution if the person, acting in good faith, obtains naloxone from a health professional or a prescription for naloxone from a health professional and administers the naloxone obtained from the health professional or acquired pursuant to the prescription to a person who is apparently experiencing an opioid-related overdose.

(3) An emergency responder who, acting in good faith, obtains naloxone from the emergency responder's emergency medical service organization and administers the naloxone to a person who is apparently experiencing an opioid-related overdose shall not be:

(a) Subject to administrative action or criminal prosecution; or

(b) Personally liable in any civil action to respond in damages as a result of his or her acts of commission or omission arising out of and in the course of his or her rendering such care or services or arising out of his or her failure to act to provide or arrange for further medical treatment or care for the person who is apparently experiencing an opioid-related overdose, unless the emergency responder caused damage or injury by his or her willful, wanton, or grossly negligent act of commission or omission. This subdivision shall not affect the liability of such emergency medical service organization for the emergency responder's acts of commission or omission.

(4) A peace officer or law enforcement employee who, acting in good faith, obtains naloxone from the peace officer's or employee's law enforcement agency and administers the naloxone to a person who is apparently experiencing an opioid-related overdose shall not be:

(a) Subject to administrative action or criminal prosecution; or

(b) Personally liable in any civil action to respond in damages as a result of his or her acts of commission or omission arising out of and in the course of his or her rendering such care or services or arising out of his or her failure to act to provide or arrange for further medical treatment or care for the person who is apparently experiencing an opioid-related overdose, unless the peace officer or employee caused damage or injury by his or her willful, wanton, or grossly negligent act of commission or omission. This subdivision shall not affect the liability of such law enforcement agency for the peace officer's or employee's acts of commission or omission.

(5) For purposes of this section:

(a) Administer has the same meaning as in section 38-2806;

(b) Dispense has the same meaning as in section 38-2817;

(c) Emergency responder means an emergency medical responder, an emergency medical technician, an advanced emergency medical technician, or a paramedic licensed under the Emergency Medical Services Practice Act or practicing pursuant to the EMS Personnel Licensure Interstate Compact;

(d) Health professional means a physician, physician assistant, nurse practitioner, or pharmacist licensed under the Uniform Credentialing Act;

(e) Law enforcement agency means a police department, a town marshal, the office of sheriff, or the Nebraska State Patrol;

(f) Law enforcement employee means an employee of a law enforcement agency, a contractor of a law enforcement agency, or an employee of such contractor who regularly, as part of his or her duties, handles, processes, or is likely to come into contact with any evidence or property which may include or contain opioids;

(g) Naloxone means naloxone hydrochloride; and

(h) Peace officer has the same meaning as in section 49-801.

Source: Laws 2015, LB390, § 11; Laws 2017, LB487, § 9; Laws 2018, LB923, § 1; Laws 2018, LB1034, § 2; Laws 2023, LB50, § 5.

Cross References

Emergency Medical Services Practice Act, see section 38-1201.
EMS Personnel Licensure Interstate Compact, see section 38-3801.
Uniform Credentialing Act, see section 38-101.

28-472 Drug overdose; exception from criminal liability; conditions.

(1) A person shall not be in violation of section 28-441 or subsection (3) of section 28-416 if:

(a) Such person made a good faith request for emergency medical assistance in response to a drug overdose of himself, herself, or another;

(b) Such person made a request for medical assistance as soon as the drug overdose was apparent;

(c) The evidence for the violation of section 28-441 or subsection (3) of section 28-416 was obtained as a result of the drug overdose and the request for medical assistance; and

(d) When emergency medical assistance was requested for the drug overdose of another person:

(i) Such requesting person remained on the scene until medical assistance or law enforcement personnel arrived; and

(ii) Such requesting person cooperated with medical assistance and law enforcement personnel.

(2) The exception from criminal liability provided in subsection (1) of this section applies to any person who makes a request for emergency medical assistance and complies with the requirements of subsection (1) of this section.

(3) A person shall not be in violation of section 28-441 or subsection (3) of section 28-416 if such person was experiencing a drug overdose and the evidence for such violation was obtained as a result of the drug overdose and a request for medical assistance by another person made in compliance with subsection (1) of this section.

(4) A person shall not initiate or maintain an action against a peace officer or the state agency or political subdivision employing such officer based on the officer's compliance with subsections (1) through (3) of this section.

(5) Nothing in this section shall be interpreted to interfere with or prohibit the investigation, arrest, or prosecution of any person for, or affect the admissibility or use of evidence in, cases involving:

(a) Drug-induced homicide;

(b) Except as provided in subsections (1) through (3) of this section, violations of section 28-441 or subsection (3) of section 28-416; or

(c) Any other criminal offense.

(6) As used in this section, drug overdose means an acute condition including, but not limited to, physical illness, coma, mania, hysteria, or death resulting from the consumption or use of a controlled substance or the consumption or use of another substance with which a controlled substance was combined and which condition a layperson would reasonably believe requires emergency medical assistance.

Source: Laws 2017, LB487, § 8.

28-473 Transferred to section 38-1,144.

28-474 Transferred to section 38-1,145.

28-475 Opiates; receipt; identification required.

(1) Unless the individual taking receipt of dispensed opiates listed in Schedule II, III, or IV of section 28-405 is personally and positively known to the pharmacist or dispensing practitioner, the individual shall display a valid driver's or operator's license, a state identification card, a military identification card, an alien registration card, or a passport as proof of identification.

(2) This section does not apply to a patient who is a resident of a health care facility licensed pursuant to the Health Care Facility Licensure Act.

Source: Laws 2018, LB931, § 5.

Cross References

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

28-476 Hemp; carry or transport; requirements; peace officer; powers; violation; penalty.

(1) No person shall carry or transport hemp in this state unless such hemp is:

(a) Produced in compliance with the requirements of the Agriculture Improvement Act of 2018, as such act is defined in section 2-503; and

(b) Carried or transported as provided in section 2-515.

(2)(a) A peace officer may detain any person carrying or transporting hemp in this state if such person does not provide the documentation required by this section and section 2-515. Unless the peace officer has probable cause to believe the hemp is, or is being carried or transported with, marijuana or any other controlled substance, the peace officer shall immediately release the hemp and the person carrying or transporting such hemp upon production of such documentation.

(b) The failure of a person detained as described in this subsection to produce documentation required by this section shall constitute probable cause to believe the hemp may be marijuana or another controlled substance. In such case, a peace officer may collect such hemp for testing to determine the delta-9 tetrahydrocannabinol concentration in the hemp, and, if the peace officer has probable cause to believe the person detained is carrying or transporting marijuana or any other controlled substance in violation of state or federal law, the peace officer may seize and impound the hemp or marijuana or other controlled substance and arrest such person.

(c) This subsection does not limit or restrict in any way the power of a peace officer to enforce violations of the Uniform Controlled Substances Act and federal law regulating marijuana and other controlled substances.

(3) In addition to any other penalties provided by law, any person who intentionally violates this section shall be guilty of a Class IV misdemeanor and fined not more than one thousand dollars.

Source: Laws 2020, LB1152, § 16; Laws 2024, LB262, § 22.
Operative date January 1, 2025.

Cross References

Nebraska Hemp Farming Act, see section 2-501.

ARTICLE 5
OFFENSES AGAINST PROPERTY

Section
28-513. Theft by extortion.
28-518. Grading of theft offenses; aggregation allowed; when.
28-521. Criminal trespass, second degree; penalty.

28-513 Theft by extortion.

(1) A person commits theft if he or she obtains property, money, or other thing of value of another by threatening to:

(a) Inflict bodily injury on anyone or commit any other criminal offense;

(b) Accuse anyone of a criminal offense;

(c) Expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his or her credit or business repute;

(d) Take or withhold action as an official, or cause an official to take or withhold action;

(e) Bring about or continue a strike, boycott, or other collective unofficial action, if the property, money, or other thing of value is not demanded or received for the benefit of the group in whose interest the actor purports to act;

(f) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(g) Distribute or otherwise make public an image or video of a person's intimate area or of a person engaged in sexually explicit conduct without that person's consent.

(2) It is an affirmative defense to prosecution based on subdivision (1)(b), (1)(c), or (1)(d) of this section that the property, money, or other thing of value obtained by threat of accusation, exposure, lawsuit, or other invocation of official action was honestly claimed as restitution or indemnification for harm done in the circumstances to which such accusation, exposure, lawsuit, or other official action relates, or as compensation for property or lawful services.

Source: Laws 1977, LB 38, § 112; Laws 2019, LB630, § 2.

28-518 Grading of theft offenses; aggregation allowed; when.

(1) Theft constitutes a Class IIA felony when the value of the thing involved is five thousand dollars or more.

(2) Theft constitutes a Class IV felony when the value of the thing involved is one thousand five hundred dollars or more but less than five thousand dollars.

(3) Theft constitutes a Class I misdemeanor when the value of the thing involved is more than five hundred dollars but less than one thousand five hundred dollars.

(4) Theft constitutes a Class II misdemeanor when the value of the thing involved is five hundred dollars or less.

(5) For any second or subsequent conviction under subsection (3) of this section, any person so offending shall be guilty of a Class IV felony.

(6) For any second conviction under subsection (4) of this section, any person so offending shall be guilty of a Class I misdemeanor, and for any third or subsequent conviction under subsection (4) of this section, the person so offending shall be guilty of a Class IV felony.

(7) For a prior conviction to be used to enhance the penalty under subsection (5) or (6) of this section, the prior conviction must have occurred no more than ten years prior to the date of commission of the current offense.

(8) Amounts taken pursuant to one scheme or course of conduct from one or more persons may be aggregated in the indictment or information in determining the classification of the offense, except that amounts may not be aggregated into more than one offense.

(9) In any prosecution for theft under sections 28-509 to 28-518, value shall be an essential element of the offense that must be proved beyond a reasonable doubt.

Source: Laws 1977, LB 38, § 117; Laws 1978, LB 748, § 7; Laws 1982, LB 347, § 8; Laws 1992, LB 111, § 2; Laws 2009, LB155, § 7; Laws 2015, LB605, § 30; Laws 2023, LB50, § 6.

28-521 Criminal trespass, second degree; penalty.

(1) A person commits second degree criminal trespass if, knowing that he or she is not licensed or privileged to do so, he or she enters or remains in any place as to which notice against trespass is given by:

(a) Actual communication to the actor; or

(b) Posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or

(c) Fencing or other enclosure manifestly designed to exclude intruders except as otherwise provided in section 28-520.

(2) A person commits second degree criminal trespass if, knowing that he or she is not licensed or privileged to do so, he or she intentionally causes an electronic device, such as an unmanned aircraft, to enter into, upon, or above the property of another, including such property owned by such person and leased or rented to another, with the intent to observe another person without his or her consent in a place of solitude or seclusion.

(3) For purposes of this section, unmanned aircraft means an aircraft, including an aircraft commonly known as a drone, which is operated without the possibility of direct human intervention from within or on the aircraft.

(4) Second degree criminal trespass is a Class III misdemeanor, except as provided for in subsection (5) of this section.

(5) Second degree criminal trespass is a Class II misdemeanor if the offender defies an order to leave personally communicated to him or her by the owner of the premises or other authorized person.

Source: Laws 1977, LB 38, § 120; Laws 2009, LB238, § 2; Laws 2022, LB922, § 6.

ARTICLE 6

OFFENSES INVOLVING FRAUD

Section
28-611. Issuing or passing a bad check or similar order; penalty; collection procedures.
28-612. False statement or book entry; destruction or secretion of records; penalty.
28-632. Payment cards; terms, defined.
28-634. Payment cards; prohibited acts relating to scanning device or encoding machine; violation; penalty.
28-635. Repealed. Laws 2019, LB7, § 7.
28-641. Counterfeit airbags; act, how cited.
28-642. Counterfeit airbags; terms, defined.
28-643. Counterfeit airbags; prohibited acts.
28-644. Counterfeit airbags; violations; penalties.
28-645. Criminal impersonation by stolen valor; penalty; restitution.

28-611 Issuing or passing a bad check or similar order; penalty; collection procedures.

(1) Whoever obtains property, services, child support credit, spousal support credit, or present value of any kind by issuing or passing a check, draft, assignment of funds, or similar signed order for the payment of money, knowing that he or she does not have sufficient funds in or credit with the drawee for the payment of the check, draft, assignment of funds, or order in full upon presentation, commits the offense of issuing a bad check. Issuing a bad check is:

(a) A Class IIA felony if the amount of the check, draft, assignment of funds, or order is five thousand dollars or more;

(b) A Class IV felony if the amount of the check, draft, assignment of funds, or order is one thousand five hundred dollars or more, but less than five thousand dollars;

(c) A Class I misdemeanor if the amount of the check, draft, assignment of funds, or order is five hundred dollars or more, but less than one thousand five hundred dollars; and

(d) A Class II misdemeanor if the amount of the check, draft, assignment of funds, or order is less than five hundred dollars.

(2) The aggregate amount of any series of checks, drafts, assignments, or orders issued or passed within a sixty-day period in one county may be used in determining the classification of the offense pursuant to subsection (1) of this section, except that checks, drafts, assignments, or orders may not be aggregated into more than one offense.

(3) For any second or subsequent offense under subdivision (1)(c) or (1)(d) of this section, any person so offending shall be guilty of a Class IV felony.

(4) Whoever otherwise issues or passes a check, draft, assignment of funds, or similar signed order for the payment of money, knowing that he or she does not have sufficient funds in or credit with the drawee for the payment of the check,

draft, assignment of funds, or order in full upon its presentation, shall be guilty of a Class II misdemeanor.

(5) Any person in violation of this section who makes voluntary restitution to the injured party for the value of the check, draft, assignment of funds, or order shall also pay ten dollars to the injured party and any reasonable handling fee imposed on the injured party by a financial institution.

(6) In any prosecution for issuing a bad check, the person issuing the check, draft, assignment of funds, or order shall be presumed to have known that he or she did not have sufficient funds in or credit with the drawee for the payment of the check, draft, assignment of funds, or order in full upon presentation if, within thirty days after issuance of the check, draft, assignment of funds, or order, he or she was notified that the drawee refused payment for lack of funds and he or she failed within ten days after such notice to make the check, draft, assignment of funds, or order good or, in the absence of such notice, he or she failed to make the check, draft, assignment of funds, or order good within ten days after notice that such check, draft, assignment of funds, or order has been returned to the depositor was sent to him or her by the county attorney or his or her deputy, by United States mail addressed to such person at his or her last-known address. Upon request of the depositor and the payment of ten dollars for each check, draft, assignment of funds, or order, the county attorney or his or her deputy shall be required to mail notice to the person issuing the check, draft, assignment of funds, or order as provided in this subsection. The ten-dollar payment shall be payable to the county treasurer and credited to the county general fund. No such payment shall be collected from any county office to which such a check, draft, assignment of funds, or order is issued in the course of the official duties of the office.

(7) Any person convicted of violating this section may, in addition to a fine or imprisonment, be ordered to make restitution to the party injured for the value of the check, draft, assignment of funds, or order and to pay ten dollars to the injured party and any reasonable handling fee imposed on the injured party by a financial institution. If the court, in addition to sentencing any person to imprisonment under this section, also enters an order of restitution, the time permitted to make such restitution shall not be concurrent with the sentence of imprisonment.

(8) The fact that restitution to the party injured has been made and that ten dollars and any reasonable handling fee imposed on the injured party by a financial institution have been paid to the injured party shall be a mitigating factor in the imposition of punishment for any violation of this section.

Source: Laws 1977, LB 38, § 133; Laws 1978, LB 748, § 8; Laws 1983, LB 208, § 1; Laws 1985, LB 445, § 1; Laws 1987, LB 254, § 1; Laws 1992, LB 111, § 3; Laws 2009, LB155, § 15; Laws 2015, LB605, § 34; Laws 2019, LB514, § 1.

28-612 False statement or book entry; destruction or secretion of records; penalty.

(1) A person commits a Class IV felony if he or she:

(a) Willfully and knowingly subscribes to, makes, or causes to be made any false statement or entry in the books of an organization; or

(b) Knowingly subscribes to or exhibits false papers with the intent to deceive any person or persons authorized to examine into the affairs of any such organization; or

(c) Makes, states, or publishes any false statement of the amount of the assets or liabilities of any such organization; or

(d) Fails to make true and correct entry in the books and records of such organization of its business and transactions in the manner and form prescribed by the Department of Banking and Finance; or

(e) Mutilates, alters, destroys, secretes, or removes any of the books or records of such organization, without the consent of the Director of Banking and Finance.

(2) As used in this section, organization means:

(a) Any trust company transacting a business under the Nebraska Trust Company Act;

(b) Any association organized for the purpose set forth in section 8-302;

(c) Any bank as defined in section 8-101.03; or

(d) Any credit union transacting business in this state under the Credit Union Act.

Source: Laws 1977, LB 38, § 134; Laws 1983, LB 440, § 1; Laws 1984, LB 979, § 1; Laws 1995, LB 384, § 16; Laws 1996, LB 948, § 122; Laws 1998, LB 1321, § 77; Laws 2002, LB 1094, § 13; Laws 2003, LB 131, § 24; Laws 2017, LB140, § 150.

Cross References

Credit Union Act, see section 21-1701.
Nebraska Trust Company Act, see section 8-201.01.

28-632 Payment cards; terms, defined.

For purposes of this section and sections 28-633 and 28-634:

(1) Encoding machine means an electronic device that is used to encode information onto a payment card;

(2) Merchant means:

(a) An owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee, or independent contractor of such owner or operator;

(b) An establishing financial institution as defined in section 8-157.01; or

(c) A person who receives from an authorized user of a payment card, or someone the person believes to be an authorized user, a payment card or information from a payment card, or what the person believes to be a payment card or information from a payment card, as the instrument for obtaining, purchasing, or receiving goods, services, money, or anything else of value from the person;

(3) Payment card means a credit card, charge card, debit card, or any other card that is issued to an authorized card user and that allows the user to obtain, purchase, or receive goods, services, money, or anything else of value from a merchant;

(4) Person means an individual, firm, partnership, association, corporation, limited liability company, or other business entity; and

(5) Scanning device means a scanner, a reader, a wireless access device, a radio-frequency identification scanner, near-field communication technology, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on a payment card.

Source: Laws 2002, LB 276, § 4; Laws 2018, LB773, § 1.

28-634 Payment cards; prohibited acts relating to scanning device or encoding machine; violation; penalty.

(1) It is unlawful for a person to intentionally and knowingly:

(a) Use a scanning device to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on a payment card without the permission of the authorized user of the payment card, the issuer of the authorized user's payment card, or a merchant;

(b) Possess a scanning device with the intent to obtain information encoded on a payment card without the permission of the authorized user, the issuer of the authorized user's payment card, or a merchant or possess a scanning device with knowledge that some other person intends to use the scanning device to obtain information encoded on a payment card without the permission of the authorized user, the issuer of the authorized user's payment card, or a merchant;

(c) Use an encoding machine to place information encoded on a payment card onto a different card without the permission of the authorized user of the card from which the information was obtained, the issuer of the authorized user's payment card, or a merchant; or

(d) Possess an encoding machine with the intent to place information encoded on a payment card onto a different payment card without the permission of the user, the issuer of the authorized user's payment card, or a merchant.

(2) A violation of this section is a Class IV felony for the first offense and a Class IIIA felony for a second or subsequent offense.

Source: Laws 2002, LB 276, § 6; Laws 2018, LB773, § 2.

28-635 Repealed. Laws 2019, LB7, § 7.

28-641 Counterfeit airbags; act, how cited.

Sections 28-641 to 28-644 shall be known and may be cited as the Counterfeit Airbag Prevention Act.

Source: Laws 2019, LB7, § 2.

28-642 Counterfeit airbags; terms, defined.

For purposes of the Counterfeit Airbag Prevention Act, unless the context otherwise requires:

(1) Airbag means a motor vehicle inflatable occupant restraint system device that is part of a supplemental restraint system;

(2) Counterfeit supplemental restraint system component means a supplemental restraint system component that displays a mark identical or substantially similar to the genuine mark of a motor vehicle manufacturer or a supplier

of parts to the manufacturer of a motor vehicle without authorization from such manufacturer or supplier;

(3) Nonfunctional airbag means an airbag that meets any of the following criteria:

(a) The airbag was previously deployed or damaged;

(b) The airbag has an electric fault that is detected by the motor vehicle's diagnostic system when the installation procedure is completed and (i) the motor vehicle is returned to the customer who requested the work to be performed or (ii) ownership is intended to be transferred;

(c) The airbag includes a part or object installed in a motor vehicle to mislead the owner or operator of the motor vehicle into believing that a functional airbag has been installed; or

(d) The airbag is subject to the prohibitions of subsection (j) of 49 U.S.C. 30120, as such section existed on January 1, 2019; and

(4) Supplemental restraint system means an inflatable restraint system as defined in 49 C.F.R. 571.208, as such regulation existed on January 1, 2019, designed for use in conjunction with an active safety system. A supplemental restraint system includes one or more airbags and all components required to ensure that an airbag works as designed by the motor vehicle manufacturer, including both of the following:

(a) The airbag operates as necessary in the event of a crash; and

(b) The airbag is designed in accordance with federal motor vehicle safety standards for the specific make, model, and year of the motor vehicle in which it is or will be installed.

Source: Laws 2019, LB7, § 3.

28-643 Counterfeit airbags; prohibited acts.

A person violates the Counterfeit Airbag Prevention Act if the person does any of the following:

(1) Knowingly and intentionally manufactures, imports, installs, reinstalls, distributes, sells, or offers for sale any device intended to replace a supplemental restraint system component in any motor vehicle if the device is a counterfeit supplemental restraint system component or a nonfunctional airbag or does not meet federal safety requirements as provided in 49 C.F.R. 571.208, as such regulation existed on January 1, 2019;

(2) Knowingly and intentionally sells, installs, or reinstalls a device that causes a motor vehicle's diagnostic system to fail to warn when the motor vehicle is equipped with a counterfeit supplemental restraint system component or a nonfunctional airbag or when no airbag is installed;

(3) Knowingly and intentionally represents to another person that a counterfeit supplemental restraint system component or nonfunctional airbag installed in a motor vehicle is not a counterfeit supplemental restraint system component or a nonfunctional airbag; or

(4) Causes another person to violate this section or assists another person in violating this section.

Source: Laws 2019, LB7, § 4.

28-644 Counterfeit airbags; violations; penalties.

(1) Except as otherwise provided in this section, a violation of the Counterfeit Airbag Prevention Act is a Class IV felony.

(2) A violation of the act is a Class IIIA felony if the defendant has been previously convicted of a violation of the act.

(3) A violation of the act is a Class III felony if the violation resulted in an individual suffering bodily injury.

(4) A violation of the act is a Class IIA felony if the violation resulted in an individual suffering serious bodily injury.

(5) A violation of the act is a Class II felony if the violation resulted in the death of an individual.

Source: Laws 2019, LB7, § 5.

28-645 Criminal impersonation by stolen valor; penalty; restitution.

(1) A person commits the offense of criminal impersonation by stolen valor if such person:

(a)(i) Pretends to be an active member or veteran of the United States Navy, Army, Air Force, Marines, Coast Guard, or Space Force, including armed forces reserves and the National Guard, through the unauthorized manufacture, sale, possession, or use of military regalia or gear, including the wearing of military uniforms or the use of falsified military identification; and

(ii) Does an act in such fictitious capacity with the intent to:

(A) Gain a pecuniary benefit for such person or another person; and

(B) Deceive or harm another person; or

(b) With the intent to deceive or harm another, fraudulently represents such person to be a recipient of the Congressional Medal of Honor, Distinguished Service Cross, Navy Cross, Air Force Cross, Silver Star, Purple Heart, Combat Infantryman Badge, Combat Action Badge, Combat Medical Badge, Combat Action Ribbon, Air Force Combat Action Medal, or another similar award or honor and obtains money, property, or anything of value through such fraudulent representation.

(2) A violation of this section is a Class I misdemeanor.

(3) A person found guilty of violating this section may, in addition to the penalty under subsection (2) of this section, be ordered to make restitution pursuant to sections 29-2280 to 29-2289.

Source: Laws 2022, LB922, § 7.

ARTICLE 7

OFFENSES INVOLVING THE FAMILY RELATION

Section

28-707 Child abuse; privileges not available; penalties.

(1) A person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be:

(a) Placed in a situation that endangers his or her life or physical or mental health;

(b) Cruelly confined or cruelly punished;

(c) Deprived of necessary food, clothing, shelter, or care;

(d) Placed in a situation to be sexually exploited through sex trafficking of a minor as defined in section 28-830 or by allowing, encouraging, or forcing such minor child to engage in debauchery, public indecency, or obscene or pornographic photography, films, or depictions;

(e) Placed in a situation to be sexually abused as defined in section 28-319, 28-319.01, or 28-320.01; or

(f) Placed in a situation to be a trafficking victim as defined in section 28-830.

(2) The statutory privilege between patient and physician, between client and professional counselor, and between husband and wife shall not be available for excluding or refusing testimony in any prosecution for a violation of this section.

(3) Child abuse is a Class I misdemeanor if the offense is committed negligently and does not result in serious bodily injury as defined in section 28-109 or death.

(4) Child abuse is a Class IIIA felony if the offense is committed knowingly and intentionally and does not result in serious bodily injury as defined in section 28-109 or death.

(5) Child abuse is a Class IIIA felony if the offense is committed negligently and results in serious bodily injury as defined in section 28-109.

(6) Child abuse is a Class IIA felony if the offense is committed negligently and results in the death of such child.

(7) Child abuse is a Class II felony if the offense is committed knowingly and intentionally and results in serious bodily injury as defined in such section.

(8) Child abuse is a Class IB felony if the offense is committed knowingly and intentionally and results in the death of such child.

(9) For purposes of this section, negligently refers to criminal negligence and means that a person knew or should have known of the danger involved and acted recklessly, as defined in section 28-109, with respect to the safety or health of the minor child.

Source: Laws 1977, LB 38, § 146; Laws 1982, LB 347, § 10; Laws 1993, LB 130, § 3; Laws 1993, LB 430, § 3; Laws 1994, LB 908, § 1; Laws 1996, LB 645, § 15; Laws 1997, LB 364, § 9; Laws 2006, LB 1199, § 9; Laws 2010, LB507, § 3; Laws 2012, LB799, § 2; Laws 2013, LB255, § 1; Laws 2015, LB605, § 44; Laws 2019, LB519, § 9.

Cross References

Appointment of guardian ad litem, see section 43-272.01.
Sex Offender Registration Act, see section 29-4001.

28-710 Act, how cited; terms, defined.

(1) Sections 28-710 to 28-727 shall be known and may be cited as the Child Protection and Family Safety Act.

(2) For purposes of the Child Protection and Family Safety Act:

(a) Alternative response means a comprehensive assessment of (i) child safety, (ii) the risk of future child abuse or neglect, (iii) family strengths and needs, and (iv) the provision of or referral for necessary services and support. Alternative response is an alternative to traditional response and does not include an investigation or a formal determination as to whether child abuse or neglect has occurred, and the subject of the report shall not be entered into the central registry of child protection cases maintained pursuant to section 28-718;

(b) Child abuse or neglect means knowingly, intentionally, or negligently causing or permitting a minor child to be:

(i) Placed in a situation that endangers his or her life or physical or mental health;

(ii) Cruelly confined or cruelly punished;

(iii) Deprived of necessary food, clothing, shelter, or care;

(iv) Left unattended in a motor vehicle if such minor child is six years of age or younger;

(v) Placed in a situation to be sexually abused;

(vi) Placed in a situation to be sexually exploited through sex trafficking of a minor as defined in section 28-830 or by allowing, encouraging, or forcing such person to engage in debauchery, public indecency, or obscene or pornographic photography, films, or depictions; or

(vii) Placed in a situation to be a trafficking victim as defined in section 28-830;

(c) Child advocacy center means a community-based organization that (i) provides an appropriate site for conducting forensic interviews as defined in section 28-728 and referring victims of child abuse or neglect and appropriate caregivers for such victims to needed evaluation, services, and supports, (ii) assists county attorneys in facilitating case reviews, developing and updating

protocols, and arranging training opportunities for the teams established pursuant to sections 28-728 and 28-729, and (iii) is a member, in good standing, of a state chapter as defined in 34 U.S.C. 20302;

(d) Comprehensive assessment means an analysis of child safety, risk of future child abuse or neglect, and family strengths and needs on a report of child abuse or neglect using an evidence-informed and validated tool. Comprehensive assessment does not include a finding as to whether the child abuse or neglect occurred but does determine the need for services and support, if any, to address the safety of children and the risk of future abuse or neglect;

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

(f) Investigation means fact gathering by the department, using an evidence-informed and validated tool, or by law enforcement related to the current safety of a child and the risk of future child abuse or neglect that determines whether child abuse or neglect has occurred and whether child protective services are needed;

(g) Kin caregiver means a person with whom a child in foster care has been placed or with whom a child is residing pursuant to a temporary living arrangement in a non-court-involved case, who has previously lived with or is a trusted adult that has a preexisting, significant relationship with the child or with a sibling of such child placed pursuant to section 43-1311.02;

(h) Law enforcement agency means the police department or town marshal in incorporated municipalities, the office of the sheriff in unincorporated areas, and the Nebraska State Patrol;

(i) Non-court-involved case means an ongoing case opened by the department following a report of child abuse or neglect in which the department has determined that ongoing services are required to maintain the safety of a child or alleviate the risk of future abuse or neglect and in which the family voluntarily engages in child protective services without a filing in a juvenile court;

(j) Out-of-home child abuse or neglect means child abuse or neglect occurring outside of a child's family home, including in day care homes, foster homes, day care centers, residential child-caring agencies as defined in section 71-1926, other child care facilities or institutions, and the community. Out-of-home child abuse or neglect also includes cases in which the subject of the report of child abuse or neglect is not a member of the child's household, no longer has access to the child, is unknown, or cannot be identified;

(k) Relative caregiver means a person with whom a child is placed by the department and who is related to the child, or to a sibling of such child pursuant to section 43-1311.02, by blood, marriage, or adoption or, in the case of an Indian child, is an extended family member as defined in section 43-1503;

(l) Report means any communication received by the department or a law enforcement agency pursuant to the Child Protection and Family Safety Act that describes child abuse or neglect and contains sufficient content to identify the child who is the alleged victim of child abuse or neglect;

(m) Review, Evaluate, and Decide Team means an internal team of staff within the department and shall include no fewer than two supervisors or administrators and two staff members knowledgeable on the policies and practices of the department, including, but not limited to, the structured review

process. County attorneys, child advocacy centers, or law enforcement agency personnel may attend team reviews upon request of a party;

(n) School employee means a person nineteen years of age or older who is employed by a public, private, denominational, or parochial school approved or accredited by the State Department of Education;

(o) Student means a person less than nineteen years of age enrolled in or attending a public, private, denominational, or parochial school approved or accredited by the State Department of Education, or who was such a person enrolled in or who attended such a school within ninety days of any violation of section 28-316.01;

(p) Traditional response means an investigation by a law enforcement agency or the department pursuant to section 28-713 which requires a formal determination of whether child abuse or neglect has occurred; and

(q) Subject of the report of child abuse or neglect or subject of the report means the person or persons identified in the report as responsible for the child abuse or neglect.

Source: Laws 1977, LB 38, § 149; Laws 1979, LB 505, § 1; Laws 1982, LB 522, § 3; Laws 1985, LB 447, § 10; Laws 1988, LB 463, § 42; Laws 1992, LB 1184, § 9; Laws 1994, LB 1035, § 2; Laws 1996, LB 1044, § 71; Laws 1997, LB 119, § 1; Laws 2005, LB 116, § 1; Laws 2013, LB265, § 29; Laws 2014, LB853, § 1; Laws 2019, LB519, § 10; Laws 2020, LB881, § 9; Laws 2020, LB1061, § 1.

28-710.01 Legislative declarations.

(1) The Legislature declares that the public policy of the State of Nebraska is to protect children whose health or welfare may be jeopardized by abuse or neglect. The Legislature recognizes that most families want to keep their children safe, but circumstances or conditions sometimes interfere with their ability to do so. Families and children are best served by interventions that engage their protective capacities and address immediate safety concerns and ongoing risks of child abuse or neglect. In furtherance of this public policy and the family policy and principles set forth in sections 43-532 and 43-533, it is the intent of the Legislature to strengthen the family and make the home, school, and community safe for children by promoting responsible child care in all settings and to provide, when necessary, a safe temporary or permanent home environment for abused or neglected children.

(2) In addition, it is the policy of this state to: Require the reporting of child abuse or neglect in home, school, and community settings; provide for alternative response to reports as permitted by law and the rules and regulations of the department; provide for traditional response to reports as required by law and the rules and regulations of the department; and provide protective and supportive services designed to preserve and strengthen the family in appropriate cases.

Source: Laws 2014, LB853, § 2; Laws 2020, LB1061, § 2.

28-712 Reports of child abuse or neglect; department; determination; alternative response; department; use; advisory committee; recommendations; rules and regulations.

(1) Upon receipt of a report pursuant to section 28-711, the department shall determine whether to (a) accept the report for traditional response and an investigation pursuant to section 28-713, (b) accept the report for alternative response pursuant to section 28-712.01, (c) accept the report for screening by the Review, Evaluate, and Decide Team to determine eligibility for alternative response, or (d) classify the report as requiring no further action by the department.

(2)(a) The Nebraska Children's Commission shall appoint an advisory committee to examine the department's alternative response to reports of child abuse or neglect and to make recommendations to the Legislature, the department, and the commission regarding (i) the receipt and screening of reports of child abuse or neglect by the department, (ii) the ongoing use of alternative response, (iii) the ongoing use of traditional response, and (iv) the provision of services within alternative response and non-court-involved cases to ensure child safety, to reduce the risk of child abuse or neglect, and to engage families. The advisory committee may request, receive, and review data from the department regarding such processes.

(b) The members of the advisory committee shall include, but not be limited to, a representative of (i) the department, (ii) law enforcement agencies, (iii) county attorneys or other prosecutors, (iv) the state chapter of child advocacy centers as defined in 34 U.S.C. 20302, (v) attorneys for parents, (vi) guardians ad litem, (vii) a child welfare advocacy organization, (viii) families with experience in the child welfare system, (ix) family caregivers, (x) the Foster Care Review Office, and (xi) the office of Inspector General of Nebraska Child Welfare. Members of the advisory committee shall be appointed for terms of two years. The Nebraska Children's Commission shall appoint the chairperson of the advisory committee and may fill vacancies on the advisory committee as they occur.

(3) The department shall adopt and promulgate rules and regulations to carry out this section and sections 28-710.01, 28-712.01, and 28-713. Such rules and regulations shall include, but not be limited to, provisions on (a) the transfer of cases from alternative response to traditional response, (b) notice to families subject to a comprehensive assessment and served through alternative response of the alternative response process and their rights, including the opportunity to challenge agency determinations, (c) the provision of services through alternative response, and (d) the collection, sharing, and reporting of data.

Source: Laws 2014, LB853, § 3; Laws 2017, LB225, § 1; Laws 2020, LB1061, § 3.

28-712.01 Reports of child abuse or neglect; alternative response assigned; criteria; Review, Evaluate, and Decide Team; duties; department; duties; Inspector General's review.

(1)(a) The department may assign a report for alternative response consistent with the Child Protection and Family Safety Act.

(b) No report involving any of the following shall be assigned to alternative response but shall be immediately forwarded to law enforcement or the county attorney:

(i) Murder in the first or second degree as defined in section 28-303 or 28-304 or manslaughter as defined in section 28-305;

(ii) Assault in the first, second, or third degree or assault by strangulation or suffocation as defined in section 28-308, 28-309, 28-310, or 28-310.01;

(iii) Sexual abuse, including acts prohibited by section 28-319, 28-319.01, 28-320, 28-320.01, 28-320.02, 28-322.01, 28-322.02, 28-322.03, 28-322.04, 28-322.05, 28-703, or 28-707;

(iv) Labor trafficking of a minor or sex trafficking of a minor as defined in section 28-830;

(v) Neglect of a minor child that results in serious bodily injury as defined in section 28-109, requires hospitalization of the child, or results in an injury to the child that requires ongoing medical care, behavioral health care, or physical or occupational therapy, including a growth delay, which may be referred to as failure to thrive, that has been diagnosed by a physician and is due to parental neglect;

(vi) Physical abuse to the head or torso of a child or physical abuse that results in bodily injury;

(vii) An allegation that requires a forensic interview at a child advocacy center or coordination with the child abuse and neglect investigation team pursuant to section 28-728;

(viii) Out-of-home child abuse or neglect;

(ix) An allegation being investigated by a law enforcement agency at the time of the assignment;

(x) A history of termination of parental rights;

(xi) Absence of a caretaker without having given an alternate caregiver authority to make decisions and grant consents for necessary care, treatment, and education of a child or without having made provision to be contacted to make such decisions or grant such consents;

(xii) Domestic violence involving a caretaker in situations in which the alleged perpetrator has access to the child or caretaker;

(xiii) A household member illegally manufactures methamphetamine or opioids;

(xiv) A child has had contact with methamphetamine or other nonprescribed opioids, including a positive drug screening or test; or

(xv) For a report involving an infant, a household member tests positive for methamphetamine or nonprescribed opioids at the birth of such infant.

(c) The department may adopt and promulgate rules and regulations to (i) provide additional ineligibility criteria for assignment to alternative response and (ii) establish additional criteria requiring review by the Review, Evaluate, and Decide Team.

(d) A report that includes any of the following may be eligible for alternative response but shall first be reviewed by the Review, Evaluate, and Decide Team prior to assignment to alternative response:

(i) Domestic assault as defined in section 28-323 or domestic violence in the family home;

(ii) Use of alcohol or controlled substances as defined in section 28-401 or 28-405 by a caregiver that impairs the caregiver's ability to care and provide safety for the child; or

(iii) A family member residing in the home or a caregiver that has been the subject of a report accepted for traditional response or assigned to alternative response in the past six months.

(2) The Review, Evaluate, and Decide Team shall convene to review reports pursuant to the department's rules, regulations, and policies, to evaluate the information, and to determine assignment for alternative response or traditional response. The team shall utilize consistent criteria to review the severity of the allegation of child abuse or neglect, access to the perpetrator, vulnerability of the child, family history including previous reports, parental cooperation, parental or caretaker protective factors, and other information as deemed necessary. At the conclusion of the review, the report shall be assigned to either traditional response or alternative response. Decisions of the team shall be made by consensus. If the team cannot come to consensus, the report shall be assigned for a traditional response.

(3) In the case of an alternative response, the department shall complete a comprehensive assessment. The department shall transfer the case being given alternative response to traditional response if the department determines that a child is unsafe or if the concern for the safety of the child is due to a temporary living arrangement. Upon completion of the comprehensive assessment, if it is determined that the child is safe, participation in services offered to the family receiving an alternative response is voluntary, the case shall not be transferred to traditional response based upon the family's failure to enroll or participate in such services, and the subject of the report shall not be entered into the central registry of child protection cases maintained pursuant to section 28-718.

(4) The department shall, by the next working day after receipt of a report of child abuse or neglect, enter into the tracking system of child protection cases maintained pursuant to section 28-715 all reports of child abuse or neglect received under this section that are opened for alternative response and any action taken.

(5) The department shall make available to the appropriate investigating law enforcement agency, child advocacy center, and county attorney a copy of all reports relative to a case of suspected child abuse or neglect. Aggregate, nonidentifying data regarding reports of child abuse or neglect receiving an alternative response shall be made available quarterly to requesting agencies outside the department. Such alternative response data shall include, but not be limited to, the nature of the initial child abuse or neglect report, the age of the child or children, the nature of services offered, the location of the cases, the number of cases per month, and the number of alternative response cases that were transferred to traditional response. Other than the office of Inspector General of Nebraska Child Welfare, the Public Counsel, law enforcement agency personnel, child advocacy center employees, and county attorneys, no other agency or individual shall be provided specific, identifying reports of child abuse or neglect being given alternative response. The office of Inspector General of Nebraska Child Welfare shall have access to all reports relative to cases of suspected child abuse or neglect subject to traditional response and those subject to alternative response. The department and the office shall develop procedures allowing for the Inspector General's review of cases subject to alternative response. The Inspector General shall include in the report

pursuant to section 43-4331 a summary of all cases reviewed pursuant to this subsection.

Source: Laws 2014, LB853, § 4; Laws 2017, LB225, § 2; Laws 2020, LB1061, § 4.

28-713 Reports of child abuse or neglect; law enforcement agency; department; duties; rules and regulations.

(1) Unless a report is assigned to alternative response, upon the receipt of a call reporting child abuse and neglect as required by section 28-711, it is the duty of the law enforcement agency to investigate the report, to take immediate steps to protect the child, and to institute legal proceedings consistent with section 43-247 if the child is seriously endangered in the child's surroundings and immediate removal is necessary for the protection of the child. The law enforcement agency may request assistance from the department during the investigation and shall, by the next working day, notify either the hotline established under section 28-711 or the department of receipt of the report, including whether or not an investigation is being undertaken by the law enforcement agency. A copy of all reports, whether or not an investigation is being undertaken, shall be provided to the department.

(2)(a) When a report is assigned for traditional response, the department shall utilize an evidence-informed and validated tool to assess the safety of the child at the time of the assessment, the risk of future child abuse or neglect, the need for services to protect and assist the child and to preserve the family, and whether the case shall be entered into the central registry pursuant to section 28-720. As part of such investigation, the department may request assistance from the appropriate law enforcement agency or refer the matter to the county attorney to initiate legal proceedings.

(b) If in the course of an investigation the department finds a child is seriously endangered in the child's surroundings and immediate removal is necessary for the protection of the child, the department shall make an immediate request for the county attorney to institute legal proceedings consistent with section 43-247.

(3) When a report contains an allegation of out-of-home child abuse or neglect, a law enforcement agency or the department shall immediately notify each person having custody of each child who has allegedly been abused or neglected that such report has been made unless the person to be notified is the subject of such report. The department or the law enforcement agency shall provide such person with information about the nature of the alleged child abuse or neglect and any other necessary information. The department shall also provide such social services as are necessary and appropriate under the circumstances to protect and assist the child and to preserve the family.

(4)(a) In situations of alleged out-of-home child abuse or neglect, if the subject of the report of child abuse or neglect is a school employee and the child is a student in the school to which such school employee is assigned for work, the department shall immediately notify the Commissioner of Education of receipt of the report, including whether or not an investigation is being undertaken by the law enforcement agency or the department.

(b) In situations of alleged out-of-home child abuse or neglect, if the subject of the report of child abuse or neglect is a child care provider or a child care staff member as defined by subdivision (5)(k) of section 71-1912, the Division of

Children and Family Services of the Department of Health and Human Services shall immediately notify the Division of Public Health of the Department of Health and Human Services of receipt of the report, including whether or not an investigation is being undertaken by the law enforcement agency or the department.

(5) The department shall, by the next working day after receiving a report of child abuse or neglect under this section, make a written report or a summary on forms provided by the department to the proper law enforcement agency in the county and enter in the tracking system of child protection cases maintained pursuant to section 28-715 all reports of child abuse or neglect opened for investigation and any action taken.

(6) The department shall, upon request, make available to the appropriate investigating law enforcement agency and the county attorney a copy of all reports relative to a case of suspected child abuse or neglect.

(7)(a) In addition to the responsibilities under subsections (1) through (6) of this section, upon the receipt of any report that a child is a reported or suspected victim of sex trafficking of a minor or labor trafficking of a minor as defined in section 28-830 and without regard to the subject of the report, the department shall:

(i) Assign the case to staff for an in-person investigation. The department shall assign a report for investigation regardless of whether or not the subject of the report is a member of the child's household or family or whether the subject is known or unknown, including cases of out-of-home child abuse and neglect;

(ii) Conduct an in-person investigation and appropriately coordinate with law enforcement agencies, the local child advocacy center, and the child abuse and neglect investigation team under section 28-729;

(iii) Use specialized screening and assessment instruments to identify whether the child is a victim of sex trafficking of a minor or labor trafficking of a minor or at high risk of becoming such a victim and determine the needs of the child and family to prevent or respond to abuse, neglect, and exploitation. On or before December 1, 2019, the department shall develop and adopt these instruments in consultation with knowledgeable organizations and individuals, including representatives of child advocacy centers, behavioral health providers, child welfare and juvenile justice service providers, law enforcement representatives, and prosecutors; and

(iv) Provide for or refer and connect the child and family to services deemed appropriate by the department in the least restrictive environment, or provide for safe and appropriate placement, medical services, mental health care, or other needs as determined by the department based upon the department's assessment of the safety, risk, and needs of the child and family to respond to or prevent abuse, neglect, and exploitation.

(b) On or before July 1, 2020, the department shall adopt rules and regulations on the process of investigation, screening, and assessment of reports of child abuse or neglect and the criteria for opening an ongoing case upon allegations of sex trafficking of a minor or labor trafficking of a minor.

(8) When a preponderance of the evidence indicates that a child is a victim of abuse or neglect as a result of being a trafficking victim as defined in section 28-830, the department shall identify the child as a victim of trafficking, regardless of whether the subject of the report is a member of the child's

household or family or whether the subject is known or unknown. The child shall be included in the department's data and reporting on the numbers of child victims of abuse, neglect, and trafficking.

Source: Laws 1977, LB 38, § 152; Laws 1979, LB 505, § 4; Laws 1982, LB 522, § 5; Laws 1988, LB 463, § 45; Laws 1992, LB 1184, § 10; Laws 1996, LB 1044, § 72; Laws 1997, LB 119, § 2; Laws 1997, LB 307, § 13; Laws 2005, LB 116, § 3; Laws 2007, LB296, § 37; Laws 2014, LB853, § 5; Laws 2019, LB519, § 11; Laws 2020, LB881, § 10; Laws 2020, LB1061, § 5; Laws 2022, LB1173, § 7; Laws 2024, LB874, § 1.
Effective date July 19, 2024.

28-713.01 Cases of child abuse or neglect; completion of investigation; notice; when; right to amend or expunge information.

(1) Upon completion of the investigation pursuant to section 28-713:

(a) In situations of alleged out-of-home child abuse or neglect, the person or persons having custody of the allegedly abused or neglected child or children shall be given written notice of the results of the investigation and any other information the law enforcement agency or department deems necessary. Such notice and information shall be sent by first-class mail;

(b) The subject of the report of child abuse or neglect shall be given written notice of the determination of the case and whether the subject of the report of child abuse or neglect will be entered into the central registry of child protection cases maintained pursuant to section 28-718 under the criteria provided in section 28-720; and

(c) If the subject of the report of child abuse or neglect is a school employee and the child is a student in the school to which such school employee is assigned for work, the notice described in subdivision (1)(b) of this section shall also be sent to the Commissioner of Education.

(2) If the subject of the report will be entered into the central registry, the notice to the subject shall be sent by certified mail with return receipt requested or first-class mail to the last-known address of the subject of the report of child abuse or neglect and shall include:

(a) The nature of the report;

(b) The classification of the report under section 28-720;

(c) Notification of the right of the subject of the report of child abuse or neglect to request the department to amend or expunge identifying information from the report or to remove the substantiated report from the central registry in accordance with section 28-723; and

(d) If the subject of the report of child abuse or neglect is a minor child who is twelve years of age or older but younger than nineteen years of age:

(i) Notification of the mandatory expungement hearing to be held according to section 28-721, a waiver form to waive the hearing, and an explanation of the hearing process;

(ii) An explanation of the implications of being entered in the central registry as a subject;

(iii) Notification of any other procedures determined appropriate in rules and regulations adopted and promulgated by the department; and

(iv) Provision of a copy of all notice materials required to be provided to the subject under this subsection to the minor child's attorney of record, parent or guardian, and guardian ad litem, if applicable.

(3) If the subject of the report will not be entered into the central registry, the notice to the subject shall be sent by first-class mail and shall include:

(a) The nature of the report; and

(b) The classification of the report under section 28-720.

Source: Laws 1994, LB 1035, § 3; Laws 1997, LB 119, § 3; Laws 2005, LB 116, § 4; Laws 2012, LB1051, § 17; Laws 2014, LB853, § 6; Laws 2015, LB292, § 1; Laws 2020, LB881, § 11.

28-713.02 Non-court-involved cases; right of parent; caregiver authority; department; powers and duties.

(1) In all non-court-involved cases in which a child lives temporarily with a kin caregiver or a relative caregiver until reunification can be safely achieved:

(a) A parent shall have the right to have his or her child returned to such parent's home upon demand unless the child is seriously endangered by the child's surroundings and removal is necessary for the child's protection; and

(b) The kin caregiver or the relative caregiver shall have temporary parental authority to exercise powers regarding the care, custody, and property of the child except (i) the power to consent to marriage and adoption of the child and (ii) for other limitations placed on the delegation of parental authority to the kin caregiver or the relative caregiver by the parent.

(2) If a child is seriously endangered and removal is necessary, the department shall inform the parent that he or she may be referred for a court-involved case or for a petition to be filed pursuant to subdivision (3)(a) of section 43-247.

(3) The department may reimburse a kin caregiver or a relative caregiver for facilitating services for the child and shall notify such caregiver if such caregiver is eligible for the child-only Temporary Assistance for Needy Families program established in 42 U.S.C. 601 et seq., and any other public benefit for which such caregiver may be eligible, and shall assist such caregiver in applying for such program or benefit.

(4) In all non-court-involved cases, the department shall provide a written notice of rights to any parent, and, if applicable, to any kin caregiver or relative caregiver, that complies with due process and includes notice (a) of the specific factual basis of the department's involvement, (b) of the possibility that a petition under section 43-247 could be filed in the future if it is determined that the safety of the child is not or cannot be assured, and (c) that the participation of the parent, kin caregiver, or relative caregiver in receiving prevention services could be relevant evidence presented in any future proceedings.

(5) Nothing in this section shall be construed to affect the otherwise existing rights of a child or parent who is involved in a non-court-involved case.

Source: Laws 2020, LB1061, § 6.

28-713.03 Rules and regulations.

(1) The department shall adopt and promulgate rules and regulations consistent with Laws 2020, LB1061, and shall revoke any rules and regulations inconsistent with Laws 2020, LB1061, by July 1, 2021.

(2) The department shall adopt and promulgate rules and regulations regarding (a) the maximum time allowed between receiving a report of child abuse or neglect and an assigned caseworker making contact with the affected family, (b) the maximum amount of time between receipt of a report and the completion of an assessment or investigation, (c) the transfer of cases from alternative response to traditional response, (d) the criteria and process to be used by the Review, Evaluate, and Decide Team, and (e) the process used to accept and categorize reports, including the operation of the hotline established under section 28-711.

(3) The department shall adopt and promulgate rules and regulations describing the process for non-court-involved cases, the right of any child, parent, kin caregiver, or relative caregiver to an administrative appeal of any department action or inaction in a non-court-involved case, and the process for finding that a child is seriously endangered.

Source: Laws 2020, LB1061, § 7.

28-716 Person participating in an investigation or the making of a report or providing information or assistance; immune from liability; civil or criminal.

Any person participating in an investigation or the making of a report of child abuse or neglect required by section 28-711 pursuant to or participating in a judicial proceeding resulting therefrom or providing information or assistance, including a medical evaluation or consultation in connection with an investigation, a report, or a judicial proceeding pursuant to a report of child abuse or neglect, shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed, except for maliciously false statements.

Source: Laws 1977, LB 38, § 155; Laws 1994, LB 1035, § 5; Laws 2005, LB 116, § 7; Laws 2020, LB1148, § 3.

28-718 Child protection cases; central registry; name-change order; treatment; fee; waiver.

(1) There shall be a central registry of child protection cases maintained in the department containing records of all reports of child abuse or neglect opened for investigation as provided in section 28-713 and classified as either court substantiated or agency substantiated as provided in section 28-720.

(2) The department shall determine whether a name-change order received from the clerk of a district court pursuant to section 25-21,271 is for a person on the central registry of child protection cases and, if so, shall include the changed name with the former name in the registry and file or cross-reference the information under both names.

(3) The department may charge a reasonable fee in an amount established by the department in rules and regulations to recover expenses in carrying out central registry records checks. The fee shall not exceed three dollars for each request to check the records of the central registry. The department shall remit the fees to the State Treasurer for credit to the Health and Human Services Cash Fund. The department may waive the fee if the requesting party shows the fee would be an undue financial hardship. The department shall use the fees to

defray costs incurred to carry out such records checks. The department may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 1979, LB 505, § 6; Laws 2005, LB 116, § 9; Laws 2009, LB122, § 1; Laws 2010, LB147, § 3; Laws 2014, LB853, § 7; Laws 2017, LB225, § 3.

28-719 Child abuse and neglect records; access; when.

Upon complying with identification requirements established by regulation of the department, or when ordered by a court of competent jurisdiction, any person legally authorized by section 28-722, 28-726, or 28-727 to have access to records relating to child abuse and neglect may request and shall be immediately provided the information requested in accordance with the requirements of the Child Protection and Family Safety Act. Except for such information provided to department personnel and county attorneys, such information shall not include the name and address of the person making the report of child abuse or neglect. The names and other identifying data and the dates and the circumstances of any persons requesting or receiving information from the central registry of child protection cases maintained pursuant to section 28-718 shall be entered in the central registry record.

Source: Laws 1979, LB 505, § 7; Laws 2005, LB 116, § 10; Laws 2014, LB853, § 8; Laws 2020, LB1148, § 4.

28-726 Information; access.

Except as provided in this section and sections 28-722 and 81-3126, no person, official, or agency shall have access to information in the tracking system of child protection cases maintained pursuant to section 28-715 or in records in the central registry of child protection cases maintained pursuant to section 28-718 unless in furtherance of purposes directly connected with the administration of the Child Protection and Family Safety Act. Such persons, officials, and agencies having access to such information shall include, but not be limited to:

(1) A law enforcement agency investigating a report of known or suspected child abuse or neglect;

(2) A county attorney in preparation of a child abuse or neglect petition or termination of parental rights petition;

(3) A physician who has before him or her a child whom he or she reasonably suspects may be abused or neglected;

(4) An agency having the legal responsibility or authorization to care for, treat, or supervise an abused or neglected child or a parent, a guardian, or other person responsible for the abused or neglected child's welfare who is the subject of the report of child abuse or neglect;

(5) Any person engaged in bona fide research or auditing. No information identifying the subjects of the report of child abuse or neglect shall be made available to the researcher or auditor;

(6) The Foster Care Review Office and the designated local foster care review board when the information relates to a child in a foster care placement as defined in section 43-1301. The information provided to the office and local board shall not include the name or identity of any person making a report of suspected child abuse or neglect;

(7) 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, as the act existed on January 1, 2005, and the Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. 10801, as the act existed on September 1, 2001, acting upon a complaint received from or on behalf of a person with developmental disabilities or mental illness;

(8) The person or persons having custody of the abused or neglected child in situations of alleged out-of-home child abuse or neglect;

(9) The department, as required or authorized by state law, federal law, federal regulation, or applicable federal program provisions and in furtherance of its programs;

(10) A probation officer administering juvenile intake services pursuant to section 29-2260.01, conducting court-ordered predispositional investigations prior to disposition, or supervising a juvenile upon disposition; and

(11) A child advocacy center pursuant to team protocols and in connection with a specific case under review or investigation by a child abuse and neglect investigation team or a child abuse and neglect treatment team convened by a county attorney.

Source: Laws 1979, LB 505, § 14; Laws 1982, LB 522, § 9; Laws 1988, LB 463, § 47; Laws 1990, LB 1222, § 1; Laws 1992, LB 643, § 2; Laws 1994, LB 1035, § 7; Laws 1997, LB 119, § 4; Laws 2001, LB 214, § 2; Laws 2002, LB 642, § 8; Laws 2005, LB 116, § 18; Laws 2007, LB296, § 39; Laws 2008, LB782, § 3; Laws 2012, LB998, § 1; Laws 2013, LB561, § 1; Laws 2014, LB853, § 16; Laws 2020, LB1148, § 5.

28-728 Legislative findings and intent; child abuse and neglect investigation team; child advocacy center; child abuse and neglect treatment team; powers and duties.

(1) The Legislature finds that child abuse and neglect are community problems requiring a coordinated response by law enforcement, child advocacy centers, prosecutors, the Department of Health and Human Services, and other agencies or entities designed to protect children. It is the intent of the Legislature to create a child abuse and neglect investigation team in each county or contiguous group of counties and to create a child abuse and neglect treatment team in each county or contiguous group of counties.

(2) Each county or contiguous group of counties will be assigned by the Department of Health and Human Services to a child advocacy center. The purpose of a child advocacy center is to provide a child-focused location for conducting forensic interviews and medical evaluations for alleged child victims of abuse and neglect and for coordinating a multidisciplinary team response that supports the physical, emotional, and psychological needs of children who are alleged victims of abuse or neglect. Each child advocacy center shall meet accreditation criteria set forth by the National Children's Alliance. Nothing in this section shall prevent a child from receiving treatment or other services at a child advocacy center which has received or is in the process of receiving accreditation.

(3) Each county attorney or the county attorney representing a contiguous group of counties is responsible for convening the child abuse and neglect

investigation team and ensuring that protocols are established and implemented. A representative of the child advocacy center assigned to the team shall assist the county attorney in facilitating case review, developing and updating protocols, and arranging training opportunities for the team. Each team must have protocols which, at a minimum, shall include procedures for:

(a) Mandatory reporting of child abuse and neglect as outlined in section 28-711 to include training to professionals on identification and reporting of abuse;

(b) Assigning roles and responsibilities between law enforcement and the Department of Health and Human Services for the initial response;

(c) Outlining how reports will be shared between law enforcement and the Department of Health and Human Services under sections 28-712.01 and 28-713;

(d) Coordinating the investigative response including, but not limited to:

(i) Defining cases that require a priority response;

(ii) Contacting the reporting party;

(iii) Arranging for a video-recorded forensic interview at a child advocacy center for children who are three to eighteen years of age and are alleged to be victims of sexual abuse or serious physical abuse or neglect, have witnessed a violent crime, are found in a drug-endangered environment, or have been recovered from a kidnapping;

(iv) Assessing the need for and arranging, when indicated, a medical evaluation of the alleged child victim;

(v) Assessing the need for and arranging, when indicated, appropriate mental health services for the alleged child victim or nonoffender caregiver;

(vi) Conducting collateral interviews with other persons with information pertinent to the investigation including other potential victims;

(vii) Collecting, processing, and preserving physical evidence including photographing the crime scene as well as any physical injuries as a result of the alleged child abuse and neglect; and

(viii) Interviewing the alleged perpetrator;

(e) Reducing the risk of harm to alleged child abuse and neglect victims;

(f) Ensuring that the child is in safe surroundings, including removing the perpetrator when necessary or arranging for temporary custody of the child when the child is seriously endangered in his or her surroundings and immediate removal appears to be necessary for the child's protection as provided in section 43-248;

(g) Sharing of case information between team members; and

(h) Outlining what cases will be reviewed by the investigation team including, but not limited to:

(i) Cases of sexual abuse, serious physical abuse and neglect, drug-endangered children, and serious or ongoing domestic violence;

(ii) Cases determined by the Department of Health and Human Services to be high or very high risk for further maltreatment; and

(iii) Any other case referred by a member of the team when a system-response issue has been identified.

(4) Each county attorney or the county attorney representing a contiguous group of counties is responsible for convening the child abuse and neglect treatment team and ensuring that protocols are established and implemented. A representative of the child advocacy center appointed to the team shall assist the county attorney in facilitating case review, developing and updating protocols, and arranging training opportunities for the team. Each team must have protocols which, at a minimum, shall include procedures for:

(a) Case coordination and assistance, including the location of services available within the area;

(b) Case staffings and the coordination, development, implementation, and monitoring of treatment or safety plans particularly in those cases in which ongoing services are provided by the Department of Health and Human Services or a contracted agency but the juvenile court is not involved;

(c) Reducing the risk of harm to child abuse and neglect victims;

(d) Assisting those child abuse and neglect victims who are abused and neglected by perpetrators who do not reside in their homes; and

(e) Working with multiproblem status offenders and delinquent youth.

(5) For purposes of sections 28-728 to 28-730, forensic interview means a video-recorded interview of an alleged child victim conducted at a child advocacy center by a professional with specialized training designed to elicit details about alleged incidents of abuse or neglect, and such interview may result in intervention in criminal or juvenile court.

Source: Laws 1992, LB 1184, § 1; Laws 1996, LB 1044, § 73; Laws 1999, LB 594, § 6; Laws 2006, LB 1113, § 24; Laws 2007, LB296, § 40; Laws 2012, LB993, § 1; Laws 2014, LB853, § 17; Laws 2020, LB1148, § 6.

28-730 Records and information; access; disclosure; limitation; review of cases; immunity; violation; penalty; video recording of forensic interviews; maintain; release or use; prohibited; exceptions.

(1) Notwithstanding any other provision of law regarding the confidentiality of records and when not prohibited by the federal Privacy Act of 1974, as amended, juvenile court records and any other pertinent information that may be in the possession of school districts, law enforcement agencies, county attorneys, the Attorney General, the Department of Health and Human Services, child advocacy centers, and other team members concerning a child whose case is being investigated or discussed by a child abuse and neglect investigation team or a child abuse and neglect treatment team shall be shared with the respective team members as part of the discussion and coordination of efforts for investigative or treatment purposes. Upon request by a team, any individual or agency with information or records concerning a particular child shall share all relevant information or records with the team as determined by the team pursuant to the appropriate team protocol. Only a team which has accepted the child's case for investigation or treatment shall be entitled to access to such information.

(2) All information acquired by a team member or other individuals pursuant to protocols developed by the team shall be confidential and shall not be disclosed except to the extent necessary to perform case consultations, to carry out a treatment plan or recommendations, or for use in a legal proceeding

instituted by a county attorney or the Child Protection Division of the office of the Attorney General. Information, documents, or records otherwise available from the original sources shall not be immune from discovery or use in any civil or criminal action merely because the information, documents, or records were presented during a case consultation if the testimony sought is otherwise permissible and discoverable. Any person who presented information before the team or who is a team member shall not be prevented from testifying as to matters within the person's knowledge.

(3) Each team may review any case arising under the Nebraska Criminal Code when a child is a victim or any case arising under the Nebraska Juvenile Code. A member of a team who participates in good faith in team discussion or any person who in good faith cooperates with a team by providing information or records about a child whose case has been accepted for investigation or treatment by a team shall be immune from any civil or criminal liability. The provisions of this subsection or any other section granting or allowing the grant of immunity from liability shall not be extended to any person alleged to have committed an act of child abuse or neglect.

(4) A member of a team who publicly discloses information regarding a case consultation in a manner not consistent with sections 28-728 to 28-730 shall be guilty of a Class III misdemeanor.

(5) A child advocacy center shall maintain the video recording of all forensic interviews conducted at that child advocacy center. Such maintenance shall be in accordance with child abuse and neglect investigation team protocols established pursuant to section 28-728. The recording may be maintained digitally if adequate security measures are in place to ensure no unauthorized access.

(6) Information obtained through forensic interviews may be shared with members of child abuse and neglect investigation teams and child abuse and neglect treatment teams.

(7) A custodian of a video recording of a forensic interview shall not release or use the video recording or copies of such recording or consent, by commission or omission, to the release or use of the video recording or copies to or by any other party without a court order, notwithstanding any consent or release by the child victim or child witness, except that:

(a) The child advocacy center where a forensic interview is conducted may use the video recording for purposes of supervision and peer review required to meet national accreditation standards;

(b) Any custodian shall release or consent to the release or use of the video recording upon request to law enforcement agencies authorized to investigate, or agencies authorized to prosecute, any juvenile or criminal conduct described in the forensic interview;

(c) Any custodian shall release or consent to the release or use of the video recording upon request pursuant to a request under the Office of Inspector General of Nebraska Child Welfare Act;

(d) Any custodian shall provide secure access to view a video recording of a forensic interview upon request by a representative of the Department of Health and Human Services for purposes of classifying cases of child abuse and neglect pursuant to section 28-720 or determining the risk of harm to the child and needed social services of the family pursuant to section 28-713. Such

representative shall be subject to the same release and use restrictions as any custodian under this subsection; and

(e) Any custodian shall release or consent to the release or use of the video recording pursuant to a court order issued under section 29-1912 or 29-1926.

Source: Laws 1992, LB 1184, § 3; Laws 1996, LB 1044, § 75; Laws 2006, LB 1113, § 26; Laws 2020, LB1148, § 7.

Cross References

Nebraska Juvenile Code, see section 43-2,129.
Office of Inspector General of Nebraska Child Welfare Act, see section 43-4301.

ARTICLE 8
OFFENSES RELATING TO MORALS

Section
28-802. Pandering; penalty.
28-806. Public indecency; penalty.
28-813.01. Sexually explicit conduct; visual depiction; unlawful; penalty; affirmative defense; forfeiture of property.
28-814. Criminal prosecutions; trial by jury; waiver; instructions to jury; expert witness.
28-830. Human trafficking; forced labor or services; terms, defined.
28-831. Human trafficking; labor trafficking or sex trafficking; labor trafficking of a minor or sex trafficking of a minor; prohibited acts; penalties.

28-802 Pandering; penalty.

(1) A person commits pandering if such person:

(a) Entices another person to become a prostitute;

(b) Procures or harbors therein an inmate for a house of prostitution or for any place where prostitution is practiced or allowed;

(c) Inveigles, entices, persuades, encourages, or procures any person to come into or leave this state for the purpose of prostitution or debauchery; or

(d) Receives or gives or agrees to receive or give any money or other thing of value for procuring or attempting to procure any person to become a prostitute or commit an act of prostitution or come into this state or leave this state for the purpose of prostitution or debauchery.

(2) Pandering is a Class II felony.

Source: Laws 1977, LB 38, § 158; Laws 2012, LB1145, § 1; Laws 2013, LB255, § 4; Laws 2015, LB294, § 10; Laws 2017, LB289, § 7.

Cross References

Sex Offender Registration Act, see section 29-4001.

28-806 Public indecency; penalty.

(1) A person, eighteen years of age or over, commits public indecency if such person performs or procures, or assists any other person to perform, in a public place and where the conduct may reasonably be expected to be viewed by members of the public:

(a) An act of sexual penetration; or

(b) An exposure of the genitals of the body done with intent to affront or alarm any person; or

(c) A lewd fondling or caressing of the body of another person of the same or opposite sex.

(2) Public indecency is a Class II misdemeanor.

(3) It shall not be a violation of this section for an individual to breast-feed a child in a public place.

Source: Laws 1977, LB 38, § 162; Laws 2019, LB209, § 4.

28-813.01 Sexually explicit conduct; visual depiction; unlawful; penalty; affirmative defense; forfeiture of property.

(1) It shall be unlawful for a person nineteen years of age or older to knowingly possess any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers. Violation of this subsection is a Class IIA felony.

(2) It shall be unlawful for a person under nineteen years of age to knowingly and intentionally possess any visual depiction of sexually explicit conduct which has a child other than the defendant as one of its participants or portrayed observers. Violation of this subsection is a Class I misdemeanor. A second or subsequent conviction under this subsection is a Class IV felony.

(3) It shall be an affirmative defense to a charge made pursuant to subsection (2) of this section that:

(a)(i) The defendant was less than nineteen years of age; (ii) the visual depiction of sexually explicit conduct portrays a child who is fifteen years of age or older; (iii) the visual depiction was knowingly and voluntarily generated by the child depicted therein; (iv) the visual depiction was knowingly and voluntarily provided by the child depicted in the visual depiction; (v) the visual depiction contains only one child; (vi) the defendant has not provided or made available the visual depiction to another person except the child depicted who originally sent the visual depiction to the defendant; and (vii) the defendant did not coerce the child in the visual depiction to either create or send the visual depiction; or

(b)(i) The defendant was less than eighteen years of age; (ii) the difference in age between the defendant and the child portrayed is less than four years; (iii) the visual depiction was knowingly and voluntarily generated by the child depicted therein; (iv) the visual depiction was knowingly and voluntarily provided by the child depicted in the visual depiction; (v) the visual depiction contains only one child; (vi) the defendant has not provided or made available the visual depiction to another person except the child depicted who originally sent the visual depiction to the defendant; and (vii) the defendant did not coerce the child in the visual depiction to either create or send the visual depiction.

(4) Any person who violates subsection (1) or (2) of this section and has previously been convicted of a violation of this section or section 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, 28-319.01, 28-320.01, 28-833, 28-1463.03, or 28-1463.05 or subsection (1) or (2) of section 28-320 shall be guilty of a Class IC felony for each offense.

(5) In addition to the penalties provided in this section, a sentencing court may order that any money, securities, negotiable instruments, firearms, conveyances, or electronic communication devices as defined in section 28-833 or any equipment, components, peripherals, software, hardware, or accessories related to electronic communication devices be forfeited as a part of the sentence

imposed if it finds by clear and convincing evidence adduced at a separate hearing in the same prosecution, conducted pursuant to section 28-1601, that any or all such property was derived from, used, or intended to be used to facilitate a violation of this section.

(6) The definitions in section 28-1463.02 shall apply to this section.

Source: Laws 1988, LB 117, § 6; Laws 2003, LB 111, § 1; Laws 2009, LB97, § 15; Laws 2015, LB605, § 45; Laws 2016, LB1106, § 7; Laws 2019, LB630, § 3.

Cross References

Sex Offender Registration Act, see section 29-4001.

28-814 Criminal prosecutions; trial by jury; waiver; instructions to jury; expert witness.

(1) Criminal prosecutions involving the ultimate issue of obscenity, as distinguished from the issue of probable cause, shall be tried by jury, unless the defendant shall waive a jury trial in writing or by statement in open court entered on the record.

(2) The judge shall instruct the jury that the guidelines in determining whether a work, material, conduct, or live exhibition is obscene are: (a) The average person applying contemporary community standards would find the work taken as a whole goes substantially beyond contemporary limits of candor in description or presentation of such matters and predominantly appeals to the prurient, shameful, or morbid interest; (b) the work depicts in a patently offensive way sexual conduct specifically referred to in sections 28-807 to 28-829; (c) the work as a whole lacks serious literary, artistic, political, or scientific value; and (d) in applying these guidelines to the determination of whether or not the work, material, conduct, or live exhibition is obscene, each element of each guideline must be established beyond a reasonable doubt.

(3) In any proceeding, civil or criminal, under sections 28-807 to 28-829, where there is an issue as to whether or not the matter is obscene, either party shall have the right to introduce, in addition to all other relevant evidence, the testimony of expert witnesses on such issue as to any artistic, literary, scientific, political, or other societal value in the determination of the issue of obscenity.

Source: Laws 1977, LB 38, § 170; Laws 2018, LB193, § 49.

28-830 Human trafficking; forced labor or services; terms, defined.

For purposes of sections 28-830 and 28-831, the following definitions apply:

(1) Actor means a person who solicits, procures, or supervises the services or labor of another person;

(2) Commercial sexual activity means any sex act on account of which anything of value is given, promised to, or received by any person;

(3) Debt bondage means inducing another person to provide:

(a) Commercial sexual activity in payment toward or satisfaction of a real or purported debt; or

(b) Labor or services in payment toward or satisfaction of a real or purported debt if:

(i) The reasonable value of the labor or services is not applied toward the liquidation of the debt; or

(ii) The length of the labor or services is not limited and the nature of the labor or services is not defined;

(4) Financial harm means theft by extortion as described by section 28-513;

(5) Forced labor or services means labor or services that are performed or provided by another person and are obtained or maintained through:

(a) Inflicting or threatening to inflict serious personal injury, as defined by section 28-318, on another person;

(b) Physically restraining or threatening to physically restrain the other person;

(c) Abusing or threatening to abuse the legal process against another person to cause arrest or deportation for violation of federal immigration law;

(d) Controlling or threatening to control another person's access to a controlled substance listed in Schedule I, II or III of section 28-405;

(e) Exploiting another person's substantial functional impairment as defined in section 28-368 or substantial mental impairment as defined in section 28-369;

(f) Knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document or any other actual or purported government identification document of the other person; or

(g) Causing or threatening to cause financial harm to another person, including debt bondage;

(6) Labor or services means work or activity of economic or financial value;

(7) Labor trafficking means knowingly recruiting, enticing, harboring, transporting, providing, or obtaining by any means or attempting to recruit, entice, harbor, transport, provide, or obtain by any means a person eighteen years of age or older intending or knowing that the person will be subjected to forced labor or services;

(8) Labor trafficking of a minor means knowingly recruiting, enticing, harboring, transporting, providing, or obtaining by any means or attempting to recruit, entice, harbor, transport, provide, or obtain by any means a minor intending or knowing that the minor will be subjected to forced labor or services;

(9) Maintain means, in relation to labor or services, to secure continued performance thereof, regardless of any initial agreement by the other person to perform such type of service;

(10) Minor means a person younger than eighteen years of age;

(11) Sex trafficking means knowingly recruiting, enticing, harboring, transporting, providing, soliciting, or obtaining by any means or knowingly attempting to recruit, entice, harbor, transport, provide, solicit, or obtain by any means a person eighteen years of age or older for the purpose of having such person engage without consent, as defined in section 28-318, in commercial sexual activity, sexually explicit performance, or the production of pornography or to cause or attempt to cause a person eighteen years of age or older to engage without consent, as defined in section 28-318, in commercial sexual activity, sexually explicit performance, or the production of pornography;

(12) Sex trafficking of a minor means knowingly recruiting, enticing, harboring, transporting, providing, soliciting, or obtaining by any means or knowingly attempting to recruit, entice, harbor, transport, provide, solicit, or obtain by

any means a minor for the purpose of having such minor engage in commercial sexual activity, sexually explicit performance, or the production of pornography or to cause or attempt to cause a minor to engage in commercial sexual activity, sexually explicit performance, or the production of pornography;

(13) Sexually explicit performance means a live or public play, dance, show, or other exhibition intended to arouse or gratify sexual desire or to appeal to prurient interests; and

(14) Trafficking victim means a person subjected to any act or acts prohibited by section 28-831.

Source: Laws 2006, LB 1086, § 10; Laws 2013, LB1, § 1; Laws 2013, LB255, § 6; Laws 2014, LB998, § 4; Laws 2017, LB289, § 8.

28-831 Human trafficking; labor trafficking or sex trafficking; labor trafficking of a minor or sex trafficking of a minor; prohibited acts; penalties.

(1) Any person who engages in labor trafficking of a minor or sex trafficking of a minor is guilty of a Class IB felony.

(2) Any person who engages in labor trafficking or sex trafficking is guilty of a Class II felony.

(3) Any person, other than a trafficking victim, who knowingly benefits from or participates in a venture which has, as part of the venture, an act that is in violation of this section is guilty of a Class IIA felony.

(4) It is not a defense in a prosecution under this section (a) that consent was given by the minor victim, (b) that the defendant believed that the minor victim gave consent, or (c) that the defendant believed that the minor victim was an adult.

Source: Laws 2006, LB 1086, § 11; Laws 2013, LB255, § 7; Laws 2014, LB998, § 5; Laws 2015, LB294, § 12; Laws 2017, LB289, § 9.

ARTICLE 9

OFFENSES INVOLVING INTEGRITY AND EFFECTIVENESS OF GOVERNMENT OPERATION

Section

28-902 Physical injury related to criminal offense; report by health care provider; sexual assault; duties of health care provider; law enforcement agency; duties; violation; penalty.

(1) Except as provided in subsection (2) of this section, every health care provider shall immediately report to law enforcement every case in which the health care provider is consulted for medical care for physical injury which appears to have been received in connection with, or as a result of, the commission of a criminal offense. Such report shall include the name of the victim, a brief description of the victim's physical injury, and, if ascertainable, the victim's residential address and the location of the offense. Any other law or rule of evidence relative to confidential communications is suspended insofar as compliance with this section is concerned.

(2) When a health care provider is consulted for medical care for physical injury which reasonably appears to have been received in connection with, or as a result of, the commission of an actual or attempted sexual assault and the victim was eighteen years of age or older at the time of such actual or attempted sexual assault, the health care provider shall:

(a) Provide the victim with information detailing the reporting options available under subdivision (2)(b) of this section;

(b) Ask the victim either:

(i) To provide written consent to report such actual or attempted sexual assault as provided in subsection (1) of this section. If the victim provides such written consent, the health care provider shall make the report required by subsection (1) of this section and submit to law enforcement a sexual assault evidence collection kit if one has been obtained; or

(ii) To sign a written acknowledgment that such actual or attempted sexual assault will not be reported except as provided in subdivision (2)(c) or subsection (3) of this section, but that the health care provider will submit to law enforcement a sexual assault evidence collection kit, if one has been obtained, using an anonymous reporting protocol. A health care provider may use the anonymous reporting protocol developed by the Attorney General under section 84-218 or may use a different anonymous reporting protocol;

(c) Regardless of the victim's decision under subdivision (2)(b) of this section, if the victim is suffering from a serious bodily injury, or any bodily injury where a deadly weapon was used to inflict such injury, which appears to have been received in connection with, or as a result of, the commission of an actual or attempted sexual assault, the health care provider shall report such injury to law enforcement as provided in subsection (1) of this section; and

(d) Unless declined by the victim, refer him or her to an advocate.

(3) When a health care provider is consulted for medical care for physical injury which reasonably appears to have been received in connection with, or as a result of, the commission of an actual or attempted sexual assault, the

health care provider shall, regardless of the victim's age or the victim's decision under subdivision (2)(b) of this section, provide law enforcement with a sexual assault evidence collection kit if one has been obtained.

(4) A law enforcement agency receiving a sexual assault evidence collection kit under this section shall preserve such kit for twenty years after the date of receipt or as otherwise ordered by a court.

(5) Any health care provider who knowingly fails to make any report required by subsection (1) of this section is guilty of a Class III misdemeanor. If multiple health care providers are involved in the consultation of a person in a given occurrence, this section does not require each health care provider to make a separate report, so long as one of such health care providers makes the report required by this section.

(6) For purposes of this section:

(a) Advocate has the same meaning as in section 29-4302;

(b) Anonymous reporting protocol means a reporting protocol that allows the identity of the victim, his or her personal or identifying information, and the details of the sexual assault or attempted sexual assault to remain confidential and undisclosed by the health care provider, other than submission to law enforcement of any sexual assault evidence collection kit, unless and until the victim consents to the release of such information;

(c) Health care provider means any of the following individuals who are licensed, certified, or registered to perform specified health services consistent with state law: A physician, physician assistant, nurse, or advanced practice registered nurse;

(d) Law enforcement means a law enforcement agency in the county in which the consultation occurred; and

(e) Victim means the person seeking medical care.

Source: Laws 1977, LB 38, § 187; Laws 2018, LB1132, § 1.

28-907 False reporting; penalty.

(1) A person commits the offense of false reporting if he or she:

(a) Furnishes material information he or she knows to be false to any peace officer or other official with the intent to instigate an investigation of an alleged criminal matter or to impede the investigation of an actual criminal matter;

(b) Furnishes information he or she knows to be false alleging the existence of the need for the assistance of an emergency medical service or emergency care provider or an emergency in which human life or property are in jeopardy to any hospital, emergency medical service, or other person or governmental agency;

(c) Furnishes any information, or causes such information to be furnished or conveyed by electric, electronic, telephonic, or mechanical means, knowing the same to be false concerning the need for assistance of a fire department or any personnel or equipment of such department;

(d) Furnishes any information he or she knows to be false concerning the location of any explosive in any building or other property to any person; or

(e) Furnishes material information he or she knows to be false to any governmental department or agency with the intent to instigate an investigation

or to impede an ongoing investigation and which actually results in causing or impeding such investigation.

(2)(a) False reporting pursuant to subdivisions (1)(a) through (d) of this section is a Class I misdemeanor.

(b) False reporting pursuant to subdivision (1)(e) of this section is an infraction.

Source: Laws 1977, LB 38, § 192; Laws 1982, LB 347, § 12; Laws 1994, LB 907, § 1; Laws 1997, LB 138, § 36; Laws 2020, LB1002, § 4.

28-915 Perjury; subornation of perjury; penalty.

(1) A person is guilty of perjury if, in any (a) official proceeding he or she makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material and he or she does not believe it to be true or (b) official proceeding in the State of Nebraska he or she makes a false statement in any unsworn declaration meeting the requirements of the Uniform Unsworn Foreign Declarations Act under penalty of perjury when the statement is material and he or she does not believe it to be true. Perjury is a Class III felony.

(2) A person is guilty of subornation of perjury if he or she persuades, procures, or suborns any other person to commit perjury. Subornation of perjury is a Class III felony.

(3) A falsification shall be material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It shall not be a defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation shall be a question of law.

(4) It shall not be a defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made upon oath or affirmation at any time when the actor presents it as being so verified shall be deemed to have been duly sworn or affirmed. A document purporting to meet the requirements of the Uniform Unsworn Foreign Declarations Act shall be deemed to have been made under penalty of perjury.

(5) No person shall be guilty of an offense under this section if he or she retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

(6) When the defendant made inconsistent statements under oath or equivalent affirmation, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant. In such case it shall not be necessary for the prosecution to prove which statement was false but only that one or the other was false and not believed by the defendant to be true.

(7) No person shall be convicted of an offense under this section when proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant.

Source: Laws 1977, LB 38, § 200; Laws 1987, LB 451, § 3; Laws 2017, LB57, § 1.

Cross References

Uniform Unsworn Foreign Declarations Act, see section 49-1801.

28-915.01 False statement under oath or affirmation; penalty; applicability of section.

(1) A person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, or makes a false statement in an unsworn declaration that meets the requirements of the Uniform Unsworn Foreign Declarations Act, when he or she does not believe the statement to be true, is guilty of a Class I misdemeanor if the falsification:

(a) Occurs in an official proceeding; or

(b) Is intended to mislead a public servant in performing his or her official function.

(2) A person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, or makes a false statement in an unsworn declaration that meets the requirements of the Uniform Unsworn Foreign Declarations Act, when he or she does not believe the statement to be true, is guilty of a Class II misdemeanor if the statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.

(3) Subsections (4) through (7) of section 28-915 shall apply to subsections (1) and (2) of this section.

(4) This section shall not apply to reports, statements, affidavits, or other documents made or filed pursuant to the Nebraska Political Accountability and Disclosure Act.

Source: Laws 1987, LB 451, § 4; Laws 2007, LB464, § 1; Laws 2013, LB79, § 1; Laws 2017, LB57, § 2.

Cross References

Nebraska Political Accountability and Disclosure Act, see section 49-1401.
Uniform Unsworn Foreign Declarations Act, see section 49-1801.

28-916 Terms, defined.

As used in sections 28-916 to 28-923, unless the context otherwise requires:

(1) Juror means any person who is a member of any petit jury or grand jury, impaneled by any court of this state or by any public servant authorized by law to impanel a jury. The word juror also includes any person who has been drawn or summoned to attend as a potential juror;

(2) Testimony means oral or written statements, documents, or any other evidence that may be offered by or through a witness in an official proceeding; and

(3) Official proceeding means a proceeding heard or which may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with any such proceeding.

Source: Laws 1977, LB 38, § 201; Laws 2020, LB387, § 40.

28-916.01 Terms, defined.

As used in this section and sections 28-915, 28-915.01, 28-919, and 28-922, unless the context otherwise requires:

(1) Administrative proceeding shall mean any proceeding, other than a judicial proceeding, the outcome of which is required to be based on a record or documentation prescribed by law, or in which law or regulation is particularized in application to individuals;

(2) Benefit shall mean gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he or she is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose;

(3) Government shall include any branch, subdivision, or agency of the government of the state or any locality within it;

(4) Harm shall mean loss, disadvantage, or injury, or anything so regarded by the person affected, including loss, disadvantage, or injury to any other person or entity in whose welfare he or she is interested;

(5) Pecuniary benefit shall mean benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain;

(6) Public servant shall mean any officer or employee of government, including legislators and judges, and any person participating as juror, advisor, consultant, or otherwise, in performing a governmental function, but the term shall not include witnesses;

(7) Official proceeding shall mean a proceeding heard or which may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with any such proceeding; and

(8) Statement shall mean any representation, but shall include a representation of opinion, belief, or other state of mind only if the representation clearly relates to state of mind apart from or in addition to any facts which are the subject of the representation.

Source: Laws 1987, LB 451, § 2; Laws 2019, LB496, § 1.

28-919 Tampering with witness or informant; jury tampering; penalty.

(1) A person commits the offense of tampering with a witness or informant if, believing that an official proceeding or investigation of a criminal or civil matter is pending or about to be instituted, he or she attempts to induce or otherwise cause a witness or informant to:

(a) Testify or inform falsely;

(b) Withhold any testimony, information, document, or thing;

(c) Elude legal process summoning him or her to testify or supply evidence; or

(d) Absent himself or herself from any proceeding or investigation to which he or she has been legally summoned.

(2) A person commits the offense of jury tampering if, with intent to influence a juror's vote, opinion, decision, or other action in a case, he or she attempts

directly or indirectly to communicate with a juror other than as a part of the proceedings in the trial of the case.

(3) Tampering with witnesses or informants is a Class IV felony, except that if such offense involves a pending criminal proceeding which alleges a violation of another offense classified:

(a) As a Class II misdemeanor or a lower classification or a violation of a city or village ordinance, the offense is a Class I misdemeanor; or

(b) As a Class II felony or a higher classification, the offense is a Class II felony.

(4) Jury tampering is a Class IV felony, except that if such offense involves a pending criminal proceeding which alleges a violation of another offense classified as a Class II felony or a higher classification, the offense is a Class II felony.

Source: Laws 1977, LB 38, § 204; Laws 1994, LB 906, § 1; Laws 2019, LB496, § 2.

28-922 Tampering with physical evidence; penalty; physical evidence, defined.

(1) A person commits the offense of tampering with physical evidence if, believing that an official proceeding is pending or about to be instituted and acting without legal right or authority, he or she:

(a) Destroys, mutilates, conceals, removes, or alters physical evidence with the intent to impair its verity or availability in the pending or prospective official proceeding; or

(b) Knowingly makes, presents, or offers any false physical evidence with intent that it be introduced in the pending or prospective official proceeding.

(2) Physical evidence, as used in this section, shall mean any article, object, document, record, or other thing of physical substance.

(3) Tampering with physical evidence is a Class IV felony, except that if such offense involves a pending criminal proceeding which alleges a violation of another offense classified:

(a) As a Class II misdemeanor or a lower classification or a violation of a city or village ordinance, the offense is a Class I misdemeanor; or

(b) As a Class II felony or a higher classification, the offense is a Class II felony.

Source: Laws 1977, LB 38, § 207; Laws 2019, LB496, § 3.

28-929 Assault on an officer, an emergency responder, certain employees, or a health care professional in the first degree; penalty.

(1) A person commits the offense of assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the first degree if:

(a) He or she intentionally or knowingly causes serious bodily injury:

(i) To a peace officer, a probation officer, a firefighter, an emergency care provider, or an employee of the Department of Correctional Services;

(ii) To an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act; or

(iii) To a health care professional; and

(b) The offense is committed while such officer, firefighter, emergency care provider, or employee is engaged in the performance of his or her official duties or while the health care professional is on duty at a hospital or a health clinic.

(2) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the first degree shall be a Class ID felony.

Source: Laws 1982, LB 465, § 3; Laws 2005, LB 538, § 1; Laws 2009, LB63, § 7; Laws 2010, LB771, § 4; Laws 2012, LB677, § 1; Laws 2014, LB811, § 17; Laws 2020, LB1002, § 5.

Cross References

Sex Offender Commitment Act, see section 71-1201.

28-929.01 Assault on an emergency care provider or a health care professional; terms, defined.

For purposes of sections 28-929, 28-929.02, 28-930, 28-931, and 28-931.01:

(1) Emergency care provider means (a) an emergency medical responder; (b) an emergency medical technician; (c) an advanced emergency medical technician; (d) a community paramedic; (e) a critical care paramedic; or (f) a paramedic, as those persons are licensed and classified under the Emergency Medical Services Practice Act;

(2) Health care professional means a physician or other health care practitioner who is licensed, certified, or registered to perform specified health services consistent with state law who practices at a hospital or a health clinic;

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

(4) Hospital has the definition found in section 71-419.

Source: Laws 2012, LB677, § 4; Laws 2014, LB811, § 18; Laws 2020, LB1002, § 6.

Cross References

Emergency Medical Services Practice Act, see section 38-1201.

28-929.02 Assault on a health care professional; hospital and health clinic; sign required.

Every hospital and health clinic shall display at all times in a prominent place a printed sign with a minimum height of twenty inches and a minimum width of fourteen inches, with each letter to be a minimum of one-fourth inch in height, which shall read as follows:

WARNING: ASSAULTING A HEALTH CARE PROFESSIONAL WHO IS ENGAGED IN THE PERFORMANCE OF HIS OR HER OFFICIAL DUTIES, INCLUDING STRIKING A HEALTH CARE PROFESSIONAL WITH ANY BODILY FLUID, IS A SERIOUS CRIME WHICH MAY BE PUNISHABLE AS A FELONY.

Source: Laws 2012, LB677, § 5; Laws 2018, LB913, § 1.

28-930 Assault on an officer, an emergency responder, certain employees, or a health care professional in the second degree; penalty.

(1) A person commits the offense of assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the second degree if:

(a) He or she:

(i) Intentionally or knowingly causes bodily injury with a dangerous instrument:

(A) To a peace officer, a probation officer, a firefighter, an emergency care provider, or an employee of the Department of Correctional Services;

(B) To an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act; or

(C) To a health care professional; or

(ii) Recklessly causes bodily injury with a dangerous instrument:

(A) To a peace officer, a probation officer, a firefighter, an emergency care provider, or an employee of the Department of Correctional Services;

(B) To an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act; or

(C) To a health care professional; and

(b) The offense is committed while such officer, firefighter, emergency care provider, or employee is engaged in the performance of his or her official duties or while the health care professional is on duty at a hospital or a health clinic.

(2) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the second degree shall be a Class II felony.

Source: Laws 1982, LB 465, § 4; Laws 2005, LB 538, § 2; Laws 2009, LB63, § 8; Laws 2010, LB771, § 5; Laws 2012, LB677, § 2; Laws 2014, LB811, § 19; Laws 2020, LB1002, § 7.

Cross References

Sex Offender Commitment Act, see section 71-1201.

28-931 Assault on an officer, an emergency responder, certain employees, or a health care professional in the third degree; penalty.

(1) A person commits the offense of assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the third degree if:

(a) He or she intentionally, knowingly, or recklessly causes bodily injury:

(i) To a peace officer, a probation officer, a firefighter, an emergency care provider, or an employee of the Department of Correctional Services;

(ii) To an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act; or

(iii) To a health care professional; and

(b) The offense is committed while such officer, firefighter, emergency care provider, or employee is engaged in the performance of his or her official duties or while the health care professional is on duty at a hospital or a health clinic.

(2) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the third degree shall be a Class IIIA felony.

Source: Laws 1982, LB 465, § 5; Laws 1997, LB 364, § 11; Laws 2005, LB 538, § 3; Laws 2010, LB771, § 6; Laws 2012, LB677, § 3; Laws 2014, LB811, § 20; Laws 2020, LB1002, § 8.

Cross References

Sex Offender Commitment Act, see section 71-1201.

28-931.01 Assault on an officer, an emergency responder, certain employees, or a health care professional using a motor vehicle; penalty.

(1) A person commits the offense of assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional using a motor vehicle if:

(a) By using a motor vehicle to run over or to strike an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional or by using a motor vehicle to collide with an officer's, an emergency responder's, a state correctional employee's, a Department of Health and Human Services employee's, or a health care professional's motor vehicle, he or she intentionally and knowingly causes bodily injury:

(i) To a peace officer, a probation officer, a firefighter, an emergency care provider, or an employee of the Department of Correctional Services;

(ii) To an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act; or

(iii) To a health care professional; and

(b) The offense is committed while such officer, firefighter, emergency care provider, or employee is engaged in the performance of his or her official duties or while the health care professional is on duty at a hospital or a health clinic.

(2) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional using a motor vehicle shall be a Class IIIA felony.

Source: Laws 1995, LB 371, § 31; Laws 1997, LB 364, § 12; Laws 2005, LB 538, § 4; Laws 2010, LB771, § 7; Laws 2014, LB811, § 21; Laws 2020, LB1002, § 9.

Cross References

Sex Offender Commitment Act, see section 71-1201.

28-934 Assault with a bodily fluid against a public safety officer; penalty; order to collect evidence.

(1) Any person who knowingly and intentionally strikes any public safety officer with any bodily fluid is guilty of assault with a bodily fluid against a public safety officer.

(2) Except as provided in subsection (3) of this section, assault with a bodily fluid against a public safety officer is a Class I misdemeanor.

(3) Assault with a bodily fluid against a public safety officer is a Class IIIA felony if the person committing the offense strikes with a bodily fluid the eyes, mouth, or skin of a public safety officer and knew the source of the bodily fluid was infected with the human immunodeficiency virus, hepatitis B, or hepatitis C at the time the offense was committed.

(4) Upon a showing of probable cause by affidavit to a judge of this state that an offense as defined in subsection (1) of this section has been committed and that identifies the probable source of the bodily fluid or bodily fluids used to commit the offense, the judge shall grant an order or issue a search warrant authorizing the collection of any evidence, including any bodily fluid or medical records or the performance of any medical or scientific testing or analysis, that may assist with the determination of whether or not the person committing the offense or the person from whom the person committing the offense obtained the bodily fluid or bodily fluids is infected with the human immunodeficiency virus, hepatitis B, or hepatitis C.

(5) As used in this section:

(a) Bodily fluid means any naturally produced secretion or waste product generated by the human body and shall include, but not be limited to, any quantity of human blood, urine, saliva, mucus, vomitus, seminal fluid, or feces; and

(b) Public safety officer includes any of the following persons who are engaged in the performance of their official duties at the time of the offense: A peace officer; a probation officer; a firefighter; an emergency care provider as defined in section 28-929.01; a health care professional as defined in section 28-929.01; an employee of a county, city, or village jail; an employee of the Department of Correctional Services; an employee of the secure youth confinement facility operated by the Department of Correctional Services, if the person committing the offense is committed to such facility; an employee of a youth rehabilitation and treatment center; or an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act.

Source: Laws 2011, LB226, § 2; Laws 2014, LB811, § 22; Laws 2018, LB913, § 2; Laws 2020, LB1002, § 10; Laws 2021, LB273, § 1.

Cross References

Sex Offender Commitment Act, see section 71-1201.

28-936 Electronic communication device; possession within facility; provided to inmate; penalty; seizure; disposition.

(1) A person commits an offense if he or she intentionally introduces within a facility, or intentionally provides an inmate of a facility with, any electronic communication device. An inmate commits an offense if he or she intentionally procures, makes, or otherwise provides himself or herself with, or has in his or her possession, any electronic communication device.

(2) This section does not apply to:

(a) An attorney or an attorney's agent visiting an inmate who is a client of such attorney;

(b) The Public Counsel or any employee of his or her office;

(c) A peace officer acting under his or her authority;

(d) An emergency responder or a firefighter responding to emergency incidents within a facility; or

(e) Any person acting with the permission of the Director of Correctional Services or in accordance with rules, regulations, or policies of the Department of Correctional Services.

(3) This section does not prohibit a member of the Legislature from bringing an electronic communication device into a facility. However, a member of the Legislature shall not intentionally provide an inmate of a facility with an electronic communication device.

(4) For purposes of this section:

(a) Facility has the same meaning as in section 83-170; and

(b) Electronic communication device means any device which, in its ordinary and intended use, transmits by electronic means writings, sounds, visual images, or data of any nature to another electronic communication device. Electronic communication device does not include any device provided to an inmate by the Department of Correctional Services.

(5) A violation of this section is a Class I misdemeanor.

(6) An electronic communication device involved in a violation of this section shall be subject to seizure by the Department of Correctional Services or a peace officer, and disposition may be made in accordance with the method of disposition directed for contraband in sections 29-818 and 29-820.

Source: Laws 2019, LB686, § 3; Laws 2024, LB631, § 23.
Effective date July 19, 2024.

ARTICLE 10

OFFENSES AGAINST ANIMALS

Section

28-1008 Terms, defined.

For purposes of sections 28-1008 to 28-1017, 28-1019, and 28-1020:

(1) Abandon means to leave any animal in one's care, whether as owner or custodian, for any length of time without making effective provision for its food, water, or other care as is reasonably necessary for the animal's health;

(2) Animal means any vertebrate member of the animal kingdom. Animal does not include an uncaptured wild creature or a livestock animal as defined in section 54-902;

(3) Cruelly mistreat means to knowingly and intentionally kill, maim, disfigure, torture, beat, kick, hit, strike in any manner, mutilate, burn, scald, or otherwise inflict harm upon any animal;

(4) Cruelly neglect means to fail to provide any animal in one's care, whether as owner or custodian, with food, water, or other care as is reasonably necessary for the animal's health;

(5) Humane killing means the destruction of an animal by a method which causes the animal a minimum of pain and suffering;

(6) Law enforcement officer means any member of the Nebraska State Patrol, any county or deputy sheriff, any member of the police force of any city or village, or any other public official authorized by a city or village to enforce state or local animal control laws, rules, regulations, or ordinances. Law enforcement officer also includes a special investigator appointed as a deputy state sheriff as authorized pursuant to section 81-201 while acting within the authority of the Director of Agriculture under the Commercial Dog and Cat Operator Inspection Act;

(7) Mutilation means intentionally causing permanent injury, disfigurement, degradation of function, incapacitation, or imperfection to an animal. Mutilation does not include conduct performed by a veterinarian licensed to practice veterinary medicine and surgery in this state or conduct that conforms to accepted veterinary practices;

(8) Owner or custodian means any person owning, keeping, possessing, harboring, or knowingly permitting an animal to remain on or about any premises owned or occupied by such person;

(9) Police animal means a horse or dog owned or controlled by the State of Nebraska or any county, city, or village for the purpose of assisting a law enforcement officer in the performance of his or her official enforcement duties;

(10) Repeated beating means intentional successive strikes to an animal by a person resulting in serious injury or illness or death to the animal;

(11) Serious injury or illness includes any injury or illness to any animal which creates a substantial risk of death or which causes broken bones, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ; and

(12) Torture means intentionally subjecting an animal to extreme pain, suffering, or agony. Torture does not include conduct performed by a veterinarian licensed to practice veterinary medicine and surgery in this state or conduct that conforms to accepted veterinary practices.

Source: Laws 1990, LB 50, § 1; Laws 1995, LB 283, § 2; Laws 2003, LB 273, § 4; Laws 2006, LB 856, § 11; Laws 2007, LB227, § 1; Laws 2008, LB764, § 2; Laws 2008, LB1055, § 2; Laws 2009, LB494, § 1; Laws 2010, LB865, § 13; Laws 2012, LB721, § 2; Laws 2015, LB360, § 2; Laws 2022, LB851, § 1.

Cross References

Commercial Dog and Cat Operator Inspection Act, see section 54-625.

28-1009 Abandonment; cruel neglect; harassment of a police animal; penalty.

(1) A person who intentionally, knowingly, or recklessly abandons or cruelly neglects an animal is guilty of a Class I misdemeanor unless the abandonment or cruel neglect results in serious injury or illness or death of the animal, in which case it is a Class IV felony.

(2)(a) Except as provided in subdivision (b) of this subsection, a person who cruelly mistreats an animal is guilty of a Class I misdemeanor for the first offense and a Class IIIA felony for any subsequent offense.

(b) A person who cruelly mistreats an animal is guilty of a Class IIIA felony if such cruel mistreatment involves the knowing and intentional torture, repeated beating, or mutilation of the animal.

(3) A person commits harassment of a police animal if he or she knowingly and intentionally teases or harasses a police animal in order to distract, agitate, or harm the police animal for the purpose of preventing such animal from performing its legitimate official duties. Harassment of a police animal is a Class IV misdemeanor unless the harassment is the proximate cause of the death of the police animal, in which case it is a Class IIIA felony.

(4) A person convicted of a Class I misdemeanor under this section may also be subject to section 28-1019. A person convicted of a felony under this section shall also be subject to section 28-1019.

Source: Laws 1990, LB 50, § 2; Laws 1995, LB 283, § 3; Laws 2002, LB 82, § 6; Laws 2003, LB 273, § 5; Laws 2007, LB227, § 2; Laws 2013, LB329, § 3; Laws 2014, LB674, § 1; Laws 2015, LB605, § 49; Laws 2022, LB829, § 1.

28-1009.01 Violence on a service animal; interference with a service animal; penalty.

(1) A person commits the offense of violence on a service animal when he or she (a) intentionally injures, harasses, or threatens to injure or harass or (b) attempts to intentionally injure, harass, or threaten an animal that he or she knows or has reason to believe is a service animal for a blind or visually impaired person, a deaf or hard of hearing person, or a physically limited person.

(2) A person commits the offense of interference with a service animal when he or she (a) intentionally impedes, interferes, or threatens to impede or interfere or (b) attempts to intentionally impede, interfere, or threaten to impede or interfere with an animal that he or she knows or has reason to believe is a service animal for a blind or visually impaired person, a deaf or hard of hearing person, or a physically limited person.

(3) Evidence that the defendant initiated or continued conduct toward an animal as described in subsection (1) or (2) of this section after being requested to avoid or discontinue such conduct by the blind, visually impaired, deaf or hard of hearing, or physically limited person being served or assisted by the animal shall create a rebuttable presumption that the conduct of the defendant was initiated or continued intentionally.

(4) For purposes of this section:

(a) Blind person means a person with totally impaired vision or with vision, with or without correction, which is so severely impaired that the primary means of receiving information is through other sensory input, including, but not limited to, braille, mechanical reproduction, synthesized speech, or readers;

(b) Deaf person means a person with totally impaired hearing or with hearing, with or without amplification, which is so severely impaired that the primary means of receiving spoken language is through other sensory input,

including, but not limited to, lip reading, sign language, finger spelling, or reading;

(c) Hard of hearing person means a person who is unable to hear air conduction thresholds at an average of forty decibels or greater in the person's better ear;

(d) Physically limited person means a person having limited ambulatory abilities, including, but not limited to, having a permanent impairment or condition that requires the person to use a wheelchair or to walk with difficulty or insecurity to the extent that the person is insecure or exposed to danger; and

(e) Visually impaired person means a person having a visual acuity of 20/200 or less in the person's better eye with correction or having a limitation to the person's field of vision so that the widest diameter of the visual field subtends an angular distance not greater than twenty degrees.

(5) Violence on a service animal or interference with a service animal is a Class III misdemeanor.

Source: Laws 1997, LB 814, § 1; Laws 2008, LB806, § 11; Laws 2019, LB248, § 5.

28-1012 Law enforcement officer; powers and duties; immunity; seizure; court powers.

(1) A law enforcement officer who has reason to believe that an animal has been abandoned or is being cruelly neglected or cruelly mistreated may seek a warrant authorizing entry upon private property to inspect, care for, or impound the animal.

(2) It shall be the duty of a law enforcement officer who has reason to believe that an animal has been abandoned or is being cruelly neglected or cruelly mistreated to make prompt investigation of such violation. A law enforcement officer may, in lieu of making an arrest, issue a citation to the owner or custodian as prescribed in sections 29-422 to 29-429.

(3) Any equipment, device, or other property or things involved in a violation of section 28-1009 or 28-1010 shall be subject to seizure, and distribution or disposition may be made in such manner as the court may direct. Any animal involved in a violation of section 28-1009 or 28-1010 shall be subject to seizure. Distribution or disposition shall be made under section 28-1012.01 as the court may direct.

(4) Any law enforcement officer acting under this section shall not be liable for damage to property if such damage is not the result of the officer's negligence.

Source: Laws 1990, LB 50, § 4; Laws 1997, LB 551, § 3; Laws 2002, LB 82, § 7; Laws 2010, LB712, § 12; Laws 2015, LB360, § 4; Laws 2022, LB851, § 2.

28-1012.01 Animal seized; court powers; county attorney; duties; hearing; notice; animal abandoned or cruelly neglected or mistreated; bond or other security; appeal; section, how construed.

(1) Any animal seized under a search warrant or validly seized without a warrant may be kept on the property of the owner or custodian by the law enforcement officer seizing the animal. When a criminal complaint has been filed in connection with a seized animal, the court in which such complaint was

filed shall have exclusive jurisdiction for disposition of the animal and to determine any rights therein, including questions respecting the title, possession, control, and disposition thereof as provided in this section.

(2) Within ten business days after the date an animal has been seized pursuant to section 28-1006 or 28-1012, the county attorney of the county where the animal was seized shall file an application with the court having appropriate jurisdiction for a hearing to determine the disposition and the cost for the care of the animal. Notice of such hearing shall be given to the owner or custodian from whom such animal was seized and to any holder of a lien or security interest of record in such animal specifying the date, time, and place of such hearing. Such notice shall be served by personal or residential service or by certified mail. If such notice cannot be served by such methods, service may be made by publication in the county where such animal was seized. Such publication shall be made after application and order of the court. The hearing shall be held as soon as practicable and not more than ten business days after the date of application for the hearing unless otherwise determined and ordered by the court.

(3) If the court finds that probable cause exists that an animal has been abandoned or cruelly neglected or mistreated, the court may:

(a) Order immediate forfeiture of the animal to the agency that took custody of the animal and authorize appropriate disposition of the animal including adoption, donation to a suitable shelter, humane destruction, or any other manner of disposition approved by the court. The court may consider adoption alternatives through humane societies or comparable institutions and the protection of such animal's welfare. For a humane society or comparable institution to be considered as an adoption alternative under this subsection, it must first be licensed by the Department of Agriculture as having passed the inspection requirements in the Commercial Dog and Cat Operator Inspection Act and paid the fee for inspection under the act. The court may prohibit an adopting or purchasing party from selling such animal for a period not to exceed one year;

(b) Issue an order to the owner or custodian setting forth the conditions under which custody of the animal shall be returned to the owner or custodian from whom the animal was seized or to any other person claiming an interest in the animal. Such order may include any management actions deemed necessary and prudent by the court, including reducing the number of animals harbored or owned by the owner or custodian by humane destruction or forfeiture and securing necessary care, including veterinary care, sufficient for the maintenance of any remaining animals; or

(c) Order the owner or custodian from whom the animal was seized to post a bond or other security or to otherwise order payment in an amount that is sufficient to reimburse all reasonable expenses, as determined by the court, for the care of the animal including veterinary care incurred by the agency from the date of seizure and necessitated by the possession of the animal. Payments shall be for a succeeding thirty-day period with the first payment due on or before the tenth day following the hearing. Payments for each subsequent thirty-day period, if any, shall be due on or before the tenth day of such period. The bond or security shall be placed with, or payments ordered under this subdivision shall be paid to, the agency that took custody of the animal. The agency shall provide an accounting of expenses to the court when the animal is

no longer in the custody of the agency or upon request by the court. The county attorney of the county where the animal was seized may apply to the court for a subsequent hearing under this section at any time. The hearing shall be held as soon as practicable and not more than ten business days after the date of application for the hearing unless otherwise determined and ordered by the court. When all expenses covered by the bond or security are exhausted and subsequent bond or security has not been posted, or if a person becomes delinquent in his or her payments for the expenses of the animal, the animal shall be forfeited to the agency.

(4) If custody of an animal is returned to the owner or custodian prior to seizure, any proceeds of a bond or security or any payment or portion of payment ordered under this section not used for the care of the animal during the time the animal was held by the agency shall be returned to the owner or custodian.

(5) Nothing in this section shall prevent the humane destruction of a seized animal at any time as determined necessary by a licensed veterinarian or as authorized by court order.

(6) An appeal may be filed within ten days after a hearing held under this section. Any person filing an appeal shall post a bond or security sufficient to pay reasonable costs of care of the animal for thirty days. Such bond or surety shall be required for each succeeding thirty-day period until the appeal is final.

(7) If the owner or custodian from whom the animal was seized is found not guilty in an associated criminal proceeding, all funds paid for the expenses of the animal remaining after the actual expenses incurred by the agency have been paid shall be returned to the owner or custodian.

(8) This section shall not preempt any ordinance of a city of the metropolitan or primary class.

Source: Laws 2015, LB360, § 5; Laws 2022, LB829, § 2.

Cross References

Commercial Dog and Cat Operator Inspection Act, see section 54-625.

28-1019 Conviction; order prohibiting ownership, possession, or residing with animal; duration; violation; penalty; seizure of animal.

(1)(a) If a person is convicted of a felony under section 28-1005 or 28-1009, the sentencing court shall order such person not to own, possess, or reside with any animal for at least five years after the date of conviction, but such time restriction shall not exceed fifteen years. Any person violating such court order shall be guilty of a Class I misdemeanor.

(b) If a person is convicted of a Class I misdemeanor under section 28-1005.01 or 28-1009 or a Class III misdemeanor under section 28-1010, the sentencing court may order such person not to own, possess, or reside with any animal after the date of conviction, but such time restriction, if any, shall not exceed five years. Any person violating such court order shall be guilty of a Class IV misdemeanor.

(c) Any animal involved in a violation of a court order under subdivision (a) or (b) of this subsection shall be subject to seizure by law enforcement. Distribution or disposition shall be made under section 28-1012.01.

(2) This section shall not apply to any person convicted under section 28-1005, 28-1005.01, or 28-1009 if a licensed physician confirms in writing that

ownership or possession of or residence with an animal is essential to the health of such person.

Source: Laws 2008, LB1055, § 3; Laws 2010, LB252, § 5; Laws 2010, LB712, § 13; Laws 2014, LB674, § 2; Laws 2015, LB360, § 10; Laws 2022, LB829, § 3.

ARTICLE 11
GAMBLING

Section
28-1101. Terms, defined.
28-1105. Possession of gambling records; penalty.
28-1105.01. Gambling debt collection; penalty.
28-1107. Possession of a gambling device; penalty; affirmative defense.
28-1113. Article, how construed.

28-1101 Terms, defined.

As used in this article, unless the context otherwise requires:

(1) A person advances gambling activity if, acting other than as a player, he or she engages in conduct that materially aids any form of gambling activity. Conduct of this nature includes, but shall not be limited to, conduct directed toward (a) the creation or establishment of the particular game, contest, scheme, device, or activity involved, (b) the acquisition or maintenance of premises, paraphernalia, equipment, or apparatus therefor, or (c) engaging in the procurement, sale, or offering for sale within this state of any chance, share, or interest in a lottery of another state or government whether or not such chance, share, or interest is an actual lottery ticket, receipt, contingent promise to pay, order to purchase, or other record of such interest except as provided in the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, the Nebraska Racetrack Gaming Act, or section 9-701;

(2) Bookmaking shall mean advancing gambling activity by unlawfully accepting bets from members of the public as a business upon the outcome of future contingent events;

(3) A person profits from gambling activity if, other than as a player, he or she accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he or she participates or is to participate in the proceeds of gambling activity;

(4) A person engages in gambling if he or she bets something of value upon the outcome of a future event, which outcome is determined by an element of chance, or upon the outcome of a game, contest, or election, or conducts or participates in any bingo, lottery by the sale of pickle cards, lottery, raffle, gift enterprise, or other scheme not authorized or conducted in accordance with the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, the Nebraska Racetrack Gaming Act, or section 9-701, but a person does not engage in gambling by:

(a) Entering into a lawful business transaction;

(b) Playing an amusement device or a coin-operated mechanical game which confers as a prize an immediate, unrecorded right of replay not exchangeable for something of value;

(c) Conducting or participating in a prize contest; or

(d) Conducting or participating in any bingo, lottery by the sale of pickle cards, lottery, raffle, game of chance, or gift enterprise conducted in accordance with the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, the Nebraska Racetrack Gaming Act, or section 9-701;

(5) Gambling device shall mean any device, machine, paraphernalia, writing, paper, instrument, article, or equipment that is used or usable for engaging in gambling, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine. Gambling device shall also include any mechanical gaming device, computer gaming device, electronic gaming device, or video gaming device which has the capability of awarding something of value, free games redeemable for something of value, instant-win tickets which also provide the possibility of participating in a subsequent drawing or event, or tickets or stubs redeemable for something of value, except as authorized in the furtherance of parimutuel wagering. Supplies, equipment, cards, tickets, stubs, and other items used in any bingo, lottery by the sale of pickle cards, other lottery, raffle, game of chance, or gift enterprise conducted in accordance with the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, the Nebraska Racetrack Gaming Act, or section 9-701 are not gambling devices within this definition;

(6) Something of value shall mean any money or property, any token, object, or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein, or involving extension of a service or entertainment; and

(7) Prize contest shall mean any competition in which one or more competitors are awarded something of value as a consequence of winning or achieving a certain result in the competition and (a) the value of such awards made to competitors participating in the contest does not depend upon the number of participants in the contest or upon the amount of consideration, if any, paid for the opportunity to participate in the contest or upon chance and (b) the value or identity of such awards to be made to competitors is published before the competition begins.

Source: Laws 1977, LB 38, § 217; Laws 1978, LB 900, § 1; Laws 1979, LB 152, § 1; Laws 1983, LB 259, § 36; Laws 1983, LB 374, § 1; Laws 1984, LB 744, § 1; Laws 1984, LB 949, § 72; Laws 1986, LB 1027, § 192; Laws 1991, LB 849, § 64; Laws 1993, LB 138, § 66; Laws 1995, LB 343, § 6; Initiative Law 2020, No. 430, § 8.

Cross References

Constitutional provisions, see Article III, section 24, Constitution of Nebraska.
Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Racetrack Gaming Act, see section 9-1101.

Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

28-1105 Possession of gambling records; penalty.

(1) A person commits the offense of possession of gambling records if, other than as a player, he or she knowingly possesses any writing, paper, instrument, or article which is:

(a) Of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise and such writing, paper, instrument, or article has been used for the purpose of recording, memorializing, or registering any bet, wager, or other gambling information; or

(b) Of a kind commonly used in the operation, promotion, or playing of a lottery or mutuel scheme or enterprise or other scheme not conducted pursuant to the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, the Nebraska Racetrack Gaming Act, or section 9-701 and such writing, paper, instrument, or article has been used for the purpose of recording, memorializing, or registering any bet, wager, or other gambling information not permitted by such acts or section.

(2) Possession of gambling records in the first degree is a Class II misdemeanor.

Source: Laws 1977, LB 38, § 221; Laws 1979, LB 152, § 5; Laws 1983, LB 259, § 37; Laws 1985, LB 408, § 39; Laws 1986, LB 1027, § 193; Laws 1991, LB 849, § 65; Laws 1993, LB 138, § 67; Initiative Law 2020, No. 430, § 9.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Racetrack Gaming Act, see section 9-1101.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

28-1105.01 Gambling debt collection; penalty.

(1) A person commits the offense of gambling debt collection if he or she employs any force or intimidation or threatens force or intimidation in order to collect any debt which results from gambling as described in sections 28-1101 to 28-1109 and 28-1117.

(2) Gambling debt collection is a Class III felony.

Source: Laws 1979, LB 152, § 6; Laws 2024, LB1204, § 9.
Effective date July 19, 2024.

28-1107 Possession of a gambling device; penalty; affirmative defense.

(1) A person commits the offense of possession of a gambling device if he or she manufactures, sells, transports, places, possesses, or conducts or negotiates any transaction affecting or designed to affect ownership, custody, or use of any gambling device, knowing that it shall be used in the advancement of unlawful gambling activity.

(2) The owner or operator of a retail establishment who is not a manufacturer, distributor, or seller of mechanical amusement devices as defined under the Mechanical Amusement Device Tax Act, shall have an affirmative defense to possession of a gambling device described in subsection (1) of this section if the device bears an unexpired mechanical amusement device decal as required by such act. However, such affirmative defense may be overcome if the owner or operator had actual knowledge that operation of the device constituted unlawful gambling activity at any time such device was operated on the premises of the retail establishment.

(3) Notwithstanding any other provisions of this section, any mechanical game or device classified by the federal government as an illegal gambling device and requiring a federal Gambling Device Tax Stamp as required by the Internal Revenue Service in its administration of 26 U.S.C. 4461 and 4462, amended July 1, 1965, by Public Law 89-44, is hereby declared to be illegal.

(4) Possession of a gambling device is a Class II misdemeanor.

Source: Laws 1977, LB 38, § 223; Laws 1978, LB 900, § 2; Laws 1979, LB 152, § 7; Laws 1987, LB 523, § 4; Laws 2019, LB538, § 1.

Cross References

Mechanical Amusement Device Tax Act, see section 77-3011.

28-1113 Article, how construed.

Nothing in this article shall be construed to:

(1) Apply to or prohibit wagering on the results of horseraces by the parimutuel or certificate method when conducted by licensees within the racetrack enclosure at licensed horserace meetings;

(2) Prohibit or punish the conducting or participating in any bingo, lottery by the sale of pickle cards, lottery, raffle, or gift enterprise when conducted in accordance with the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or section 9-701; or

(3) Apply to or prohibit the operation of games of chance, whether using a gambling device or otherwise, by authorized gaming operators within licensed racetrack enclosures or the participation or playing of such games of chance, whether participated in or played using a gambling device or otherwise, by individuals twenty-one years of age or older within licensed racetrack enclosures as provided in the Nebraska Racetrack Gaming Act.

Source: Laws 1977, LB 38, § 229; Laws 1979, LB 164, § 19; Laws 1983, LB 259, § 38; Laws 1984, LB 949, § 73; Laws 1986, LB 1027, § 195; Laws 1991, LB 849, § 66; Laws 1993, LB 138, § 68; Initiative Law 2020, No. 430, § 10.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Racetrack Gaming Act, see section 9-1101.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

ARTICLE 12

OFFENSES AGAINST PUBLIC HEALTH AND SAFETY

28-1201 Terms, defined; applicability.

For purposes of sections 28-1201 to 28-1212.04, unless the context otherwise requires:

(1) Case means (a) a hard-sided or soft-sided box, container, or receptacle intended or designed for the primary purpose of storing or transporting a firearm or (b) the firearm manufacturer's original packaging;

(2) Concealed handgun means a handgun that is entirely obscured from view. If any part of the handgun is capable of being seen or observed by another person, it is not a concealed handgun;

(3) Firearm means any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive or frame or receiver of any such weapon;

(4) Fugitive from justice means any person who has fled or is fleeing from any peace officer to avoid prosecution or incarceration for a felony;

(5) Handgun means any firearm with a barrel less than sixteen inches in length or any firearm designed to be held and fired by the use of a single hand;

(6) Home school means a school which: (a) Elects pursuant to section 79-1601 not to meet accreditation or approval requirements; and (b) is located in a personal residence;

(7) Juvenile means any person under the age of eighteen years;

(8) Knife means:

(a) Any dagger, dirk, knife, or stiletto with a blade over three and one-half inches in length and which, in the manner it is used or intended to be used, is capable of producing death or serious bodily injury; or

(b) Any other dangerous instrument which is capable of inflicting cutting, stabbing, or tearing wounds and which, in the manner it is used or intended to be used, is capable of producing death or serious bodily injury;

(9) Knuckles and brass or iron knuckles means any instrument that consists of finger rings or guards made of a hard substance and that is designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with a fist enclosed in the knuckles;

(10) Machine gun means any firearm, whatever its size and usual designation, that shoots automatically more than one shot, without manual reloading, by a single function of the trigger;

(11)(a) Minor means a person who is under twenty-one years of age.

(b) Minor does not include a person who is eighteen years of age or older if the person is (i) a member of the armed forces of the United States, active or reserve, National Guard of this state, or Reserve Officers' Training Corps or (ii) a peace officer or other duly authorized law enforcement officer;

(12)(a) Prohibited person means:

(i) A person prohibited from possessing a firearm or ammunition by state law, including, but not limited to, section 28-1206; or

(ii) A person prohibited from possessing a firearm or ammunition by 18 U.S.C. 922(d) or (g), as such section existed on January 1, 2023.

(b) This definition does not apply to the use of the term prohibited person in section 28-1206;

(13) Qualified law enforcement officer and qualified retired law enforcement officer have the same meanings as in 18 U.S.C. 926B and 926C, respectively, as such sections existed on January 1, 2023;

(14)(a) School means a public, private, denominational, or parochial elementary, vocational, or secondary school, a private postsecondary career school as defined in section 85-1603, a community college, a public or private college, a junior college, or a university.

(b) School does not include a home school;

(15) Short rifle means a rifle having a barrel less than sixteen inches long or an overall length of less than twenty-six inches; and

(16) Short shotgun means a shotgun having a barrel or barrels less than eighteen inches long or an overall length of less than twenty-six inches.

Source: Laws 1977, LB 38, § 233; Laws 1994, LB 988, § 2; Laws 2009, LB63, § 9; Laws 2009, LB430, § 6; Laws 2017, LB558, § 1; Laws 2018, LB990, § 2; Laws 2023, LB77, § 7; Laws 2024, LB1329, § 1.
Effective date July 19, 2024.

28-1202 Minor or prohibited person; carrying concealed weapon; penalty.

(1) A minor or a prohibited person shall not carry a weapon or weapons concealed on or about his or her person, such as a handgun, a knife, brass or iron knuckles, or any other deadly weapon.

(2) A violation of this section is a Class I misdemeanor for a first offense and a Class IV felony for a second or subsequent offense.

Source: Laws 1977, LB 38, § 234; Laws 1984, LB 1095, § 1; Laws 2006, LB 454, § 22; Laws 2009, LB63, § 10; Laws 2021, LB236, § 3; Laws 2023, LB77, § 8.

28-1202.01 Carrying concealed handgun; locations; restrictions; posting of prohibition; violation; penalty; affirmative defense; applicability.

(1) Except as otherwise provided in this section and section 28-1204.04, a person, other than a minor or a prohibited person, may carry a concealed handgun anywhere in Nebraska, with or without a permit under the Concealed Handgun Permit Act.

(2) Except as provided in subsection (10) of this section, a person shall not carry a concealed handgun into or onto any place or premises where the person, persons, entity, or entities in control of the place or premises or employer in control of the place or premises has prohibited the carrying of concealed handguns into or onto the place or premises.

(3) Except as provided in subsection (10) of this section, a person shall not carry a concealed handgun into or onto any: Police, sheriff, or Nebraska State Patrol station or office; detention facility, prison, or jail; courtroom or building which contains a courtroom; polling place during a bona fide election; meeting of the governing body of a county, public school district, municipality, or other political subdivision; meeting of the Legislature or a committee of the Legislature; financial institution; professional or semiprofessional athletic event; building, grounds, vehicle, or sponsored activity or athletic event of any school; place of worship; hospital, emergency room, or trauma center; political rally or fundraiser; establishment having a license issued under the Nebraska Liquor Control Act that derives over one-half of its total income from the sale of alcoholic liquor; place where the possession or carrying of a firearm is prohibited by state or federal law; or any other place or premises where handguns are prohibited by state law.

(4)(a) A financial institution may authorize its security personnel to carry concealed handguns in the financial institution while on duty so long as each member of the security personnel, as authorized, is not otherwise prohibited by state law from possessing or carrying a concealed handgun and is in compliance with sections 28-1202.02 to 28-1202.04.

(b) A place of worship may authorize its security personnel to carry concealed handguns on its property if:

(i) Each member of the security personnel, as authorized, is not otherwise prohibited by state law from possessing or carrying a concealed handgun and is in compliance with sections 28-1202.02 to 28-1202.04;

(ii) Written notice is given to the congregation; and

(iii) For leased property, the carrying of concealed handguns on the property does not violate the terms of any real property lease agreement between the place of worship and the lessor.

(5) If a person, persons, entity, or entities in control of the place or premises or an employer in control of the place or premises prohibits the carrying of concealed handguns into or onto the place or premises and such place or premises are open to the public, a person does not violate this section unless

the person, persons, entity, or entities in control of the place or premises or employer in control of the place or premises has posted conspicuous notice that carrying a concealed handgun is prohibited in or on the place or premises or has made a request, directly or through an authorized representative or management personnel, that the person remove the concealed handgun from the place or premises.

(6) A person carrying a concealed handgun in a vehicle or on his or her person while riding in or on a vehicle into or onto any parking area, which is open to the public, used by any location listed in subsection (2) or (3) of this section, does not violate this section if, prior to exiting the vehicle, the handgun is locked inside the glove box, trunk, or other compartment of the vehicle, a storage box securely attached to the vehicle, or, if the vehicle is a motorcycle, other than an autocycle, a hardened compartment securely attached to the motorcycle. This subsection does not apply to any parking area used by such location when the carrying of a concealed handgun into or onto such parking area is prohibited by federal law.

(7) An employer may prohibit employees or other persons from carrying concealed handguns in vehicles owned by the employer.

(8) A violation of this section is a Class III misdemeanor for a first offense and a Class I misdemeanor for any second or subsequent offense.

(9)(a) Except as provided in subdivision (9)(b) of this section, it is an affirmative defense to a violation of subsection (3) of this section that the defendant was engaged in any lawful business, calling, or employment at the time the defendant was carrying a concealed handgun and the circumstances in which the defendant was placed at the time were such as to justify a prudent person in carrying a concealed handgun for the defense of his or her person, property, or family.

(b) The affirmative defense provided for in this subsection:

(i) Does not prevent a prosecution for a violation of section 28-1204.04; and

(ii) Is not available if the defendant refuses to remove the concealed handgun from the place or premises after a person in control of the place or premises has made a request, directly or through an authorized representative or management personnel, that the defendant remove the concealed handgun from the place or premises.

(10) Subsections (2) and (3) of this section do not apply to a qualified law enforcement officer or qualified retired law enforcement officer carrying a concealed handgun pursuant to 18 U.S.C. 926B or 926C, respectively, as such sections existed on January 1, 2023.

(11) Action taken in compliance with section 28-1204.04 shall not be a violation of this section.

Source: Laws 2006, LB 454, § 15; Laws 2007, LB97, § 1; Laws 2009, LB430, § 12; Laws 2018, LB909, § 120; R.S.1943, (2018), § 69-2441; Laws 2023, LB77, § 9; Laws 2024, LB1329, § 2. Effective date July 19, 2024.

Cross References

Concealed Handgun Permit Act, see section 69-2427.
Nebraska Liquor Control Act, see section 53-101.

28-1202.02 Carrying concealed handgun; consumption of alcohol or controlled substance; effect; applicability; violation; penalty.

(1) Except as provided in subsections (2), (3), and (4) of this section, a person not otherwise prohibited by state law from possessing or carrying a concealed handgun shall not carry a concealed handgun while such person:

(a) Is consuming alcohol; or

(b) Has remaining in such person's blood, urine, or breath any previously consumed alcohol or any controlled substance as defined in section 28-401.

(2) A person does not violate this section if the controlled substance in such person's blood, urine, or breath was lawfully obtained and was taken in therapeutically prescribed amounts.

(3) A person does not violate this section if:

(a) Such person is storing or transporting a handgun in a motor vehicle for any lawful purpose or transporting a handgun directly to or from a motor vehicle to or from any place where such handgun may be lawfully possessed or carried by such person; and

(b) Such handgun is unloaded, kept separate from ammunition, and enclosed in a case.

(4) This section does not apply to a qualified law enforcement officer or qualified retired law enforcement officer carrying a concealed handgun pursuant to 18 U.S.C. 926B or 926C, respectively, as such sections existed on January 1, 2023.

(5) A violation of this section is a Class III misdemeanor for a first offense and a Class I misdemeanor for any second or subsequent offense.

Source: Laws 2023, LB77, § 10.

28-1202.03 Carrying concealed handgun; identification document, required; applicability; violation; penalty.

(1)(a) This section applies to a person who is not otherwise prohibited by state law from possessing or carrying a concealed handgun.

(b) This section does not apply to a qualified law enforcement officer or qualified retired law enforcement officer carrying a concealed handgun pursuant to 18 U.S.C. 926B or 926C, respectively, as such sections existed on January 1, 2023.

(2) Except as provided in subsection (3) of this section, any time a person is carrying a concealed handgun, such person shall also carry such person's identification document. The person shall display the identification document when asked to do so by a peace officer or by emergency services personnel.

(3) A person is not required to comply with this section if:

(a) Such person is storing or transporting a handgun in a motor vehicle for any lawful purpose or transporting a handgun directly to or from a motor vehicle to or from any place where such handgun may be lawfully possessed or carried by such person;

(b) Such handgun is unloaded, kept separate from ammunition, and enclosed in a case.

(4) For purposes of this section:

(a) Emergency services personnel means a volunteer or paid firefighter or rescue squad member or a person licensed to provide emergency medical services pursuant to the Emergency Medical Services Practice Act or authorized to provide emergency medical services pursuant to the EMS Personnel Licensure Interstate Compact; and

(b) Identification document means a valid:

(i) Driver's or operator's license;

(ii) State identification card;

(iii) Military identification card;

(iv) Alien registration card;

(v) Passport; or

(vi) Tribal enrollment card; and

(c) Tribal enrollment card means an identification document:

(i) Issued by a tribe which is recognized by a state or the federal government; and

(ii) Which contains a photograph of the person identified and such person's date of birth.

(5) A violation of this section is a Class III misdemeanor for a first offense and a Class I misdemeanor for any second or subsequent offense.

Source: Laws 2023, LB77, § 11; Laws 2024, LB1288, § 1.
Operative date July 19, 2024.

Cross References

Emergency Medical Services Practice Act, see section 38-1201.
EMS Personnel Licensure Interstate Compact, see section 38-3801.

28-1202.04 Carrying concealed handgun; contact with peace officer or emergency services personnel; procedures for securing handgun; applicability; violation; penalty.

(1)(a) This section applies to a person who is not otherwise prohibited by state law from possessing or carrying a concealed handgun.

(b) This section does not apply to a qualified law enforcement officer or qualified retired law enforcement officer carrying a concealed handgun pursuant to 18 U.S.C. 926B or 926C, respectively, as such sections existed on January 1, 2023.

(2) Except as provided in subsection (5) of this section, whenever a person who is carrying a concealed handgun is contacted by a peace officer or by emergency services personnel, the person shall immediately inform the peace officer or emergency services personnel that the person is carrying a concealed handgun.

(3) Except as provided in subsection (5) of this section, during contact with a person carrying a concealed handgun, a peace officer or emergency services personnel may secure the handgun or direct that it be secured during the duration of the contact if the peace officer or emergency services personnel determines that it is necessary for the safety of any person present, including the peace officer or emergency services personnel. The person shall submit to the order to secure the handgun.

(4)(a) When the peace officer has determined that the person is not a threat to the safety of any person present, including the peace officer, and the person has not committed any other violation that would result in his or her arrest, the peace officer shall return the handgun to the person before releasing the person from the scene and breaking contact.

(b) When emergency services personnel have determined that the person is not a threat to the safety of any person present, including emergency services personnel, and if the person is physically and mentally capable of possessing the handgun, the emergency services personnel shall return the handgun to the person before releasing the person from the scene and breaking contact. If the person is transported for treatment to another location, the handgun shall be turned over to any peace officer. The peace officer shall provide a receipt which includes the make, model, caliber, and serial number of the handgun.

(5) A person is not required to comply with subsections (2) and (3) of this section if:

(a) Such person is storing or transporting a handgun in a motor vehicle for any lawful purpose or transporting a handgun directly to or from a motor vehicle to or from any place where such handgun may be lawfully possessed or carried by such person; and

(b) Such handgun is unloaded, kept separate from ammunition, and enclosed in a case.

(6) For purposes of this section:

(a) Contact with a peace officer means any time a peace officer personally stops, detains, questions, or addresses a person for an official purpose or in the course of his or her official duties, and contact with emergency services personnel means any time emergency services personnel provide treatment to a person in the course of their official duties; and

(b) Emergency services personnel has the same meaning as in section 28-1202.03.

(7) A violation of:

(a) Subsection (2) of this section is a Class III misdemeanor for a first offense, a Class I misdemeanor for a second offense, and a Class IV felony for a third or subsequent offense; and

(b) Subsection (3) of this section is a Class I misdemeanor.

Source: Laws 2006, LB 454, § 14; R.S.1943, (2018), § 69-2440; Laws 2023, LB77, § 12.

28-1204.04 Unlawful possession of a firearm at a school; penalty; exceptions; confiscation of certain firearms; disposition.

(1) Any person who possesses a firearm in a school, on school grounds, in a school-owned vehicle, or at a school-sponsored activity or athletic event is guilty of the offense of unlawful possession of a firearm at a school. Unlawful possession of a firearm at a school is a Class IV felony.

(2) Subsection (1) of this section does not apply to:

(a) The issuance of firearms to or possession by members of the armed forces of the United States, active or reserve, National Guard of this state, or Reserve Officers' Training Corps or peace officers or other duly authorized law enforcement officers when on duty or training;

(b) The possession of firearms by peace officers or other duly authorized law enforcement officers;

(c) The carrying of firearms by qualified law enforcement officers or qualified retired law enforcement officers carrying pursuant to 18 U.S.C. 926B or 926C, respectively, as such sections existed on January 1, 2023;

(d) Possession of a firearm by a person who is employed or contracted by a school to provide school security or school event control services pursuant to a written policy adopted by such school that complies with subdivision (3)(a) of this section. This subdivision does not apply to a public elementary or secondary school in a Class III, IV, or V school district as defined in section 79-102;

(e) Firearms which may lawfully be possessed by the person receiving instruction, for instruction under the immediate supervision of an adult instructor;

(f) Firearms which may lawfully be possessed by a member of a college or university firearm team, to include rifle, pistol, and shotgun disciplines, within the scope of such person's duties as a member of the team;

(g) Firearms which may lawfully be possessed by a person employed by a college or university in this state as part of an agriculture or a natural resources program of such college or university, within the scope of such person's employment;

(h) Firearms contained within a private vehicle operated by a nonstudent adult which are not loaded and (i) are enclosed in a case or (ii) are in a locked firearm rack that is on a motor vehicle;

(i) Firearms which may lawfully be possessed by a person for the purpose of using them, with the approval of the school, in a historical reenactment, in a hunter education program, or as part of an honor guard; or

(j) A handgun carried as a concealed handgun by a person other than a minor or prohibited person in a vehicle or on his or her person while riding in or on a vehicle into or onto any parking area, which is open to the public and used by a school if, prior to exiting the vehicle, the handgun is locked inside the glove box, trunk, or other compartment of the vehicle, a storage box securely attached to the vehicle, or, if the vehicle is a motorcycle, other than an autocycle, a hardened compartment securely attached to the motorcycle while the vehicle is in or on such parking area.

(3)(a) A school board or other governing body of a school or school district may authorize the carrying of firearms by authorized security personnel in a school, on school grounds, in a school-owned vehicle, or at a school-sponsored activity or athletic event by adopting a written policy governing such conduct. Such written policy shall, at a minimum, include requirements for personal qualifications, training, appropriate firearms and ammunition, and appropriate use of force. This subdivision does not apply to a public elementary or secondary school in a Class III, IV, or V school district as defined in section 79-102.

(b) The State Board of Education shall, in consultation with the Nebraska State Patrol, develop a model policy relating to the authorization of the carrying of firearms by authorized security personnel as described in subdivision (3)(a) of this section. The policy shall include, but need not be limited to, the appropriate number of training hours required of such security personnel.

(4) Any firearm possessed in violation of subsection (1) of this section shall be confiscated without warrant by a peace officer or may be confiscated without warrant by school administrative or teaching personnel. Any firearm confiscated by school administrative or teaching personnel shall be delivered to a peace officer as soon as practicable.

(5) Any firearm confiscated by or given to a peace officer pursuant to subsection (4) of this section shall be declared a common nuisance and shall be held by the peace officer prior to his or her delivery of the firearm to the property division of the law enforcement agency which employs the peace officer. The property division of such law enforcement agency shall hold such firearm for as long as the firearm is needed as evidence. After the firearm is no longer needed as evidence, it shall be destroyed in such manner as the court may direct.

(6)(a) Whenever a firearm is confiscated and held pursuant to this section or section 28-1204.02, the peace officer who received such firearm shall cause to be filed within ten days after the confiscation a petition for destruction of such firearm. The petition shall be filed in the district court of the county in which the confiscation is made. The petition shall describe the firearm held, state the name of the owner, if known, allege the essential elements of the violation which caused the confiscation, and conclude with a prayer for disposition and destruction in such manner as the court may direct.

(b) At any time after the confiscation of the firearm and prior to court disposition, the owner of the firearm seized may petition the district court of the county in which the confiscation was made for possession of the firearm. The court shall release the firearm to such owner only if the claim of ownership can reasonably be shown to be true and either:

(i) The owner of the firearm can show that the firearm was taken from his or her property or place of business unlawfully or without the knowledge and consent of the owner and that such property or place of business is different from that of the person from whom the firearm was confiscated; or

(ii) The owner of the firearm is acquitted of the charge of unlawful possession of a handgun in violation of section 28-1204, unlawful transfer of a firearm to a juvenile, or unlawful possession of a firearm at a school.

(c) No firearm having significant antique value or historical significance as determined by the Nebraska State Historical Society shall be destroyed. If a firearm has significant antique value or historical significance, it shall be sold at auction and the proceeds shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1994, LB 988, § 6; Laws 2002, LB 82, § 8; Laws 2009, LB63, § 13; Laws 2009, LB430, § 8; Laws 2011, LB512, § 1; Laws 2014, LB390, § 1; Laws 2018, LB321, § 1; Laws 2018, LB909, § 1; Laws 2024, LB1329, § 3.
Effective date July 19, 2024.

Cross References

Concealed Handgun Permit Act, see section 69-2427.

28-1204.05 Unlawful possession of a firearm by a prohibited juvenile offender; penalty; exceptions; reinstatement of right to possess firearm; procedure; court; considerations; order; how construed.

(1) Except as provided in subsections (3) and (4) of this section, a person under the age of twenty-five years who knowingly possesses a firearm commits the offense of possession of a firearm by a prohibited juvenile offender if he or she has previously been adjudicated an offender in juvenile court for an act which would constitute a felony or an act which would constitute a misdemeanor crime of domestic violence.

(2) Possession of a firearm by a prohibited juvenile offender is a Class IV felony for a first offense and a Class IIIA felony for a second or subsequent offense.

(3) Subsection (1) of this section does not apply to the possession of firearms by members of the armed forces of the United States, active or reserve, National Guard of this state, or Reserve Officers Training Corps or peace officers or other duly authorized law enforcement officers when on duty or training.

(4)(a) Prior to reaching the age of twenty-five years, a person subject to the prohibition of subsection (1) of this section may file a petition for exemption from such prohibition and thereby have his or her right to possess a firearm reinstated. A petitioner who is younger than nineteen years of age shall petition the juvenile court in which he or she was adjudicated for the underlying offense. A petitioner who is nineteen years of age or older shall petition the district court in the county in which he or she resides.

(b) In determining whether to grant a petition filed under subdivision (4)(a) of this section, the court shall consider:

(i) The behavior of the person after the underlying adjudication;

(ii) The likelihood that the person will engage in further criminal activity; and

(iii) Any other information the court considers relevant.

(c) The court may grant a petition filed under subdivision (4)(a) of this section and issue an order exempting the person from the prohibition of subsection (1) of this section when in the opinion of the court the order will be in the best interests of the person and consistent with the public welfare.

(5) The fact that a person subject to the prohibition under subsection (1) of this section has reached the age of twenty-five or that a court has granted a petition under subdivision (4)(a) of this section shall not be construed to mean that such adjudication has been set aside. Nothing in this section shall be construed to authorize the setting aside of such an adjudication or conviction except as otherwise provided by law.

(6) For purposes of this section, misdemeanor crime of domestic violence has the same meaning as in section 28-1206.

Source: Laws 2018, LB990, § 3.

28-1205 Use of a deadly weapon to commit a felony; possession of a deadly weapon during the commission of a felony; carrying a firearm or destructive device during the commission of a dangerous misdemeanor; penalty; separate and distinct offense; proof of possession.

(1)(a) Any person who uses a firearm, a knife, brass or iron knuckles, or any other deadly weapon to commit any felony which may be prosecuted in a court of this state commits the offense of use of a deadly weapon to commit a felony.

(b) Use of a deadly weapon, other than a firearm, to commit a felony is a Class II felony.

(c) Use of a deadly weapon, which is a firearm, to commit a felony is a Class IC felony.

(2)(a) Any person who possesses a firearm, a knife, brass or iron knuckles, or a destructive device during the commission of any felony which may be prosecuted in a court of this state commits the offense of possession of a deadly weapon during the commission of a felony.

(b) Possession of a deadly weapon, other than a firearm, during the commission of a felony is a Class III felony.

(c) Possession of a deadly weapon, which is a firearm, during the commission of a felony is a Class II felony.

(3)(a) Any person who carries a firearm or a destructive device during the commission of a dangerous misdemeanor commits the offense of carrying a firearm or destructive device during the commission of a dangerous misdemeanor.

(b) A violation of this subsection is a:

(i) Class I misdemeanor for a first or second offense; and

(ii) A Class IV felony for any third or subsequent offense.

(4) A violation of this section shall be treated as a separate and distinct offense from the underlying crimes being committed, and a sentence imposed under this section shall be consecutive to any other sentence imposed.

(5) Possession of a deadly weapon may be proved through evidence demonstrating either actual or constructive possession of a firearm, a knife, brass or iron knuckles, or a destructive device during, immediately prior to, or immediately after the commission of a felony.

(6) For purposes of this section:

(a) Dangerous misdemeanor means a misdemeanor violation of any of the following offenses:

(i) Stalking under section 28-311.03;

(ii) Knowing violation of a harassment protection order under section 28-311.09;

(iii) Knowing violation of a sexual assault protection order under section 28-311.11;

(iv) Domestic assault under section 28-323;

(v) Assault of an unborn child in the third degree under section 28-399;

(vi) Theft by shoplifting under section 28-511.01;

(vii) Unauthorized use of a propelled vehicle under section 28-516;

(viii) Criminal mischief under section 28-519 if such violation arises from an incident involving the commission of a misdemeanor crime of domestic violence;

(ix) Impersonating a police officer under section 28-610;

(x) Resisting arrest under section 28-904;

(xi) Operating a motor vehicle or vessel to avoid arrest under section 28-905;

(xii) Obstructing a peace officer under section 28-906;

(xiii) Knowing violation of a domestic abuse protection order under section 42-924; or

(xiv) Any attempt under section 28-201 to commit an offense described in subdivisions (6)(a)(i) through (xiii) of this section;

(b) Destructive device has the same meaning as in section 28-1213;

(c) Misdemeanor crime of domestic violence has the same meaning as in section 28-1206; and

(d) Use of a deadly weapon includes the discharge, employment, or visible display of any part of a firearm, a knife, brass or iron knuckles, any other deadly weapon, or a destructive device during, immediately prior to, or immediately after the commission of a felony or communication to another indicating the presence of a firearm, a knife, brass or iron knuckles, any other deadly weapon, or a destructive device during, immediately prior to, or immediately after the commission of a felony, regardless of whether such firearm, knife, brass or iron knuckles, deadly weapon, or destructive device was discharged, actively employed, or displayed.

Source: Laws 1977, LB 38, § 237; Laws 1995, LB 371, § 8; Laws 2009, LB63, § 14; Laws 2023, LB77, § 13.

28-1206 Possession of a deadly weapon by a prohibited person; penalty.

(1) A person commits the offense of possession of a deadly weapon by a prohibited person if he or she:

(a) Possesses a firearm, a knife, or brass or iron knuckles and he or she:

(i) Has previously been convicted of a felony;

(ii) Is a fugitive from justice;

(iii) Is the subject of a current and validly issued domestic violence protection order, harassment protection order, or sexual assault protection order and is knowingly violating such order; or

(iv) Is on probation pursuant to a deferred judgment for a felony under section 29-2292 or 29-4803; or

(b) Possesses a firearm or brass or iron knuckles and he or she has been convicted within the past seven years of a misdemeanor crime of domestic violence.

(2) The felony conviction may have been had in any court in the United States, the several states, territories, or possessions, or the District of Columbia.

(3)(a) Possession of a deadly weapon which is not a firearm by a prohibited person is a Class III felony.

(b) Possession of a deadly weapon which is a firearm by a prohibited person is a Class ID felony for a first offense and a Class IB felony for a second or subsequent offense.

(4) Subdivision (1)(a)(i) of this section shall not prohibit:

(a) Possession of archery equipment for lawful purposes; or

(b) If in possession of a recreational license, possession of a knife for purposes of butchering, dressing, or otherwise processing or harvesting game, fish, or furs.

(5)(a) For purposes of this section, misdemeanor crime of domestic violence means a crime that:

(i) Is classified as a misdemeanor under the laws of the United States or the District of Columbia or the laws of any state, territory, possession, or tribe;

(ii) Has, as an element, the use or attempted use of physical force or the threatened use of a deadly weapon; and

(iii) Is committed by another against his or her spouse, his or her former spouse, a person with whom he or she has a child in common whether or not they have been married or lived together at any time, or a person with whom he or she is or was involved in a dating relationship as defined in section 28-323.

(b) For purposes of this section, misdemeanor crime of domestic violence also includes the following offenses, if committed by a person against his or her spouse, his or her former spouse, a person with whom he or she is or was involved in a dating relationship as defined in section 28-323, or a person with whom he or she has a child in common whether or not they have been married or lived together at any time:

(i) Assault in the third degree under section 28-310;

(ii) Stalking under subsection (1) of section 28-311.04;

(iii) False imprisonment in the second degree under section 28-315;

(iv) First offense domestic assault in the third degree under subsection (1) of section 28-323; or

(v) Any attempt or conspiracy to commit any of such offenses.

(c) A person shall not be considered to have been convicted of a misdemeanor crime of domestic violence unless:

(i) The person was represented by counsel in the case or knowingly and intelligently waived the right to counsel in the case; and

(ii) In the case of a prosecution for a misdemeanor crime of domestic violence for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either:

(A) The case was tried to a jury; or

(B) The person knowingly and intelligently waived the right to have the case tried to a jury.

(6) In addition, for purposes of this section:

(a) Archery equipment means:

(i) A longbow, recurve bow, compound bow, or nonelectric crossbow that is drawn or cocked with human power and released by human power; and

(ii) Target or hunting arrows, including arrows with broad, fixed, or removable heads or that contain multiple sharp cutting edges;

(b) Domestic violence protection order means a protection order issued pursuant to section 42-924;

(c) Harassment protection order means a protection order issued pursuant to section 28-311.09 or that meets or exceeds the criteria set forth in section

28-311.10 regarding protection orders issued by a court in any other state or a territory, possession, or tribe;

(d) Recreational license means a state-issued license, certificate, registration, permit, tag, sticker, or other similar document or identifier evidencing permission to hunt, fish, or trap for furs in the State of Nebraska; and

(e) Sexual assault protection order means a protection order issued pursuant to section 28-311.11 or that meets or exceeds the criteria set forth in section 28-311.12 regarding protection orders issued by a court in any other state or a territory, possession, or tribe.

Source: Laws 1977, LB 38, § 238; Laws 1978, LB 748, § 19; Laws 1995, LB 371, § 9; Laws 2009, LB63, § 15; Laws 2010, LB771, § 10; Laws 2017, LB289, § 10; Laws 2017, LB478, § 1; Laws 2018, LB848, § 1; Laws 2019, LB686, § 4; Laws 2024, LB253, § 8. Operative date July 1, 2025.

28-1212.03 Stolen firearm; prohibited acts; violation; penalty.

(1) Any person who possesses, receives, retains, or disposes of a stolen firearm knowing that it has been or believing that it has been stolen shall be guilty of a Class IIA felony unless the firearm is possessed, received, retained, or disposed of with intent to restore it to the owner.

(2) Any person who possesses, receives, retains, or disposes of a stolen firearm when such person should have known, or had reasonable cause to believe, that such firearm has been stolen shall be guilty of a Class IIA felony unless the firearm is possessed, received, retained, or disposed of with intent to restore it to the owner.

Source: Laws 1991, LB 477, § 1; Laws 2009, LB63, § 19; Laws 2015, LB605, § 53; Laws 2020, LB582, § 1.

28-1241 Fireworks; definitions.

As used in sections 28-1239.01 and 28-1241 to 28-1252, unless the context otherwise requires:

(1) 1.3G explosives, also known as display fireworks or Class B fireworks or by United Nations shipping classification number UN0335, means any items classified as 1.3G explosives by the United States Department of Transportation in Title 49 of the Code of Federal Regulations, as such regulations existed on January 1, 2021;

(2) 1.4G explosives, also known as consumer fireworks or Class C fireworks or by United Nations shipping classification number UN0336, means any items classified as 1.4G explosives by the United States Department of Transportation in Title 49 of the Code of Federal Regulations, as such regulations existed on January 1, 2021;

(3) Distributor means any person engaged in the business of making sales of fireworks at wholesale in this state to any person engaged in the business of making sales of fireworks either as a jobber or as a retailer or both;

(4) Jobber means any person engaged in the business of making sales of fireworks at wholesale to any other person engaged in the business of making sales at retail;

(5) Retailer means any person engaged in the business of making sales of fireworks at retail to consumers or to persons other than distributors or jobbers;

(6) Sale includes barter, exchange, or gift or offer therefor and each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee;

(7) Fireworks means any composition or device designed for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation and which meets the definition of consumer or special fireworks set forth by the United States Department of Transportation in Title 49 of the Code of Federal Regulations;

(8)(a) Consumer fireworks means any device that (i) meets the requirements set forth in 16 C.F.R. parts 1500 and 1507, as such regulations existed on January 1, 2021, and (ii) is tested and approved by a nationally recognized testing facility or by the State Fire Marshal.

(b) 1.4G explosives shall be considered consumer fireworks.

(c) Consumer fireworks does not include:

(i) Wire sparklers; or

(ii) Fireworks that have been tested by the State Fire Marshal as a response to complaints and have been deemed to be unsafe; and

(9) Display fireworks means those materials manufactured exclusively for use in public exhibitions or displays of fireworks designed to produce visible or audible effects by combustion, deflagration, or detonation. Display fireworks includes, but is not limited to, firecrackers containing more than one hundred thirty milligrams of explosive composition, aerial shells containing more than forty grams of explosive composition, and other display pieces which exceed the limits for classification as consumer fireworks. 1.3G explosives shall be considered display fireworks. Display fireworks shall be considered an explosive as defined in section 28-1213 and shall be subject to sections 28-1213 to 28-1239, except that display fireworks may be purchased, received, and discharged by the holder of an approved display permit issued pursuant to section 28-1239.01.

Source: Laws 1977, LB 38, § 273; Laws 1986, LB 969, § 2; Laws 1988, LB 893, § 3; Laws 2006, LB 1007, § 2; Laws 2010, LB880, § 3; Laws 2021, LB152, § 1.

28-1243 Fireworks item deemed unsafe; quarantined; testing; test results; effect.

(1) If the State Fire Marshal deems any fireworks item to be unsafe pursuant to subdivision (8)(c)(ii) of section 28-1241, such fireworks item shall be quarantined from other fireworks. Any licensed distributor, jobber, or retailer may request, at the distributor's, jobber's, or retailer's expense, that such fireworks item be tested by an independent, nationally recognized testing facility to determine if such fireworks item meets the requirements set forth by the United States Consumer Product Safety Commission for 1.4G explosives. A copy of the results of all testing done pursuant to this section shall be provided to the State Fire Marshal.

(2) If such fireworks item is in compliance with such requirements and otherwise permitted under section 28-1241, such fireworks item that was

determined to be unsafe pursuant to subdivision (8)(c)(ii) of section 28-1241 shall be deemed a consumer firework and be permitted for retail sale or distribution.

(3) If such fireworks item is in compliance with such requirements but is otherwise not deemed consumer fireworks, such fireworks item shall not be sold at retail or distributed to retailers for sale in this state, but a distributor, jobber, or retailer may sell such fireworks item to another distributor or retailer in a state that permits the sale of such fireworks item.

(4) If such fireworks item is not in compliance with such requirements, then the distributor, jobber, or retailer shall destroy such fireworks item under the supervision of the State Fire Marshal. If such fireworks item is not destroyed under the supervision of the State Fire Marshal, notarized documentation shall be provided to the State Fire Marshal detailing and confirming the fireworks item's destruction.

Source: Laws 2010, LB880, § 4; Laws 2021, LB152, § 2.

28-1250 Fireworks; prohibited acts; violations; penalties; license suspension, cancellation, or revocation; appeal.

(1) Any person who violates any of the provisions of sections 28-1244 to 28-1249 commits a Class III misdemeanor. If such person is a licensed distributor or jobber, the State Fire Marshal may suspend, cancel, or revoke the license for up to three years. The suspension, cancellation, or revocation shall become effective upon the failure to timely appeal the decision under the Administrative Procedure Act.

(2) It shall be unlawful for any person, association, partnership, limited liability company, or corporation to have in his, her, or its possession any fireworks in violation of any of the provisions of sections 28-1244 to 28-1249. If any person shall have in his, her, or its possession any fireworks in violation of such sections, a warrant may be issued for the seizure of such fireworks and when the warrant is executed by the seizure of such fireworks, such fireworks shall be safely kept by the magistrate to be used as evidence. Upon conviction of the offender, the fireworks shall be destroyed, but if the offender is discharged, the fireworks shall be returned to the person in whose possession they were found. Nothing in such sections shall apply to the transportation of fireworks by regulated carriers.

Source: Laws 1977, LB 38, § 282; Laws 1993, LB 121, § 183; Laws 2010, LB880, § 9; Laws 2024, LB1069, § 1.
Effective date April 16, 2024.

Cross References

Administrative Procedure Act, see section 84-920.

28-1253 Liquefied petroleum gas; prohibited acts; violation; penalty; enforcement.

(1) The distribution, sale, or use of refrigerants containing liquefied petroleum gas for use in mobile air conditioning systems is prohibited.

(2) For purposes of this section:

(a) Liquefied petroleum gas means material composed predominantly of any of the following hydrocarbons or mixtures of such hydrocarbons: Propane, propylene, butanes (normal butane or isobutane), and butylenes;

(b) Mobile air conditioning system means mechanical vapor compression equipment which is used to cool the driver or passenger compartment of any motor vehicle; and

(c) Motor vehicle has the same meaning as in section 60-638.

(3) Any person violating this section is guilty of a Class IV misdemeanor.

(4) The State Fire Marshal may adopt and promulgate rules and regulations for enforcement of this section and, together with peace officers of the state and its political subdivisions, is charged with enforcement of this section.

Source: Laws 1999, LB 163, § 2; Laws 2021, LB37, § 1.

ARTICLE 13

MISCELLANEOUS OFFENSES

(c) TELEPHONE COMMUNICATIONS

(c) TELEPHONE COMMUNICATIONS

28-1310 Intimidation by telephone call or electronic communication; penalty.

(1) A person commits the offense of intimidation by telephone call or electronic communication if, with intent to intimidate, threaten, or harass an individual, the person telephones such individual or transmits an electronic communication directly to such individual, whether or not conversation or an electronic response ensues, and the person:

(a) Uses obscene language or suggests any obscene act;

(b) Threatens to inflict physical or mental injury to such individual or any other person or physical injury to the property of such individual or any other person; or

(c) Attempts to extort property, money, or other thing of value from such individual or any other person.

(2) The offense shall be deemed to have been committed either at the place where the call or electronic communication was initiated or where it was received.

(3) Intimidation by telephone call or electronic communication is a Class III misdemeanor.

(4) For purposes of this section, electronic communication means any writing, sound, visual image, or data of any nature that is received or transmitted by an electronic communication device as defined in section 28-833.

Source: Laws 1977, LB 38, § 294; Laws 2002, LB 1105, § 433; Laws 2018, LB773, § 3; Laws 2019, LB630, § 4.

(r) UNLAWFUL MEMBERSHIP RECRUITMENT

28-1351 Unlawful membership recruitment into an organization or association; penalty.

(1) A person commits the offense of unlawful membership recruitment into an organization or association when he or she knowingly and intentionally coerces, intimidates, threatens, or inflicts bodily harm upon another person in order to entice that other person to join or prevent that other person from leaving any organization, group, enterprise, or association whose members, individually or collectively, engage in or have engaged in any of the following criminal acts for the benefit of, at the direction of, or on behalf of the organization, group, enterprise, or association or any of its members:

(a) Robbery under section 28-324;

(b) Arson in the first, second, or third degree under section 28-502, 28-503, or 28-504, respectively;

(c) Burglary under section 28-507;

(d) Murder in the first degree, murder in the second degree, or manslaughter under section 28-303, 28-304, or 28-305, respectively;

(e) Violations of the Uniform Controlled Substances Act that involve possession with intent to deliver, distribution, delivery, or manufacture of a controlled substance;

(f) Unlawful use, possession, or discharge of a firearm or other deadly weapon under sections 28-1201 to 28-1212.04;

(g) Assault in the first degree or assault in the second degree under section 28-308 or 28-309, respectively;

(h) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the first, second, or third degree under section 28-929, 28-930, or 28-931, respectively, or assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional using a motor vehicle under section 28-931.01;

(i) Theft by unlawful taking or disposition under section 28-511;

(j) Theft by receiving stolen property under section 28-517;

(k) Theft by deception under section 28-512;

(l) Theft by extortion under section 28-513;

(m) Kidnapping under section 28-313;

(n) Any forgery offense under sections 28-602 to 28-605;

(o) Criminal impersonation under section 28-638;

(p) Tampering with a publicly exhibited contest under section 28-614;

(q) Unauthorized use of a financial transaction device or criminal possession of a financial transaction device under section 28-620 or 28-621, respectively;

(r) Pandering under section 28-802;

(s) Bribery, bribery of a witness, or bribery of a juror under section 28-917, 28-918, or 28-920, respectively;

(t) Tampering with a witness or an informant or jury tampering under section 28-919;

(u) Unauthorized application of graffiti under section 28-524;

(v) Dogfighting, cockfighting, bearbaiting, or pitting an animal against another under section 28-1005; or

(w) Promoting gambling in the first degree under section 28-1102.

(2) Unlawful membership recruitment into an organization or association is a Class IV felony.

Source: Laws 2009, LB63, § 21; Laws 2014, LB811, § 23; Laws 2018, LB990, § 4; Laws 2023, LB77, § 14.

Cross References

Uniform Controlled Substances Act, see section 28-401.01.

(s) PUBLIC PROTECTION ACT

28-1354 Terms, defined.

For purposes of the Public Protection Act:

(1) Enterprise means any individual, sole proprietorship, partnership, corporation, trust, association, or any legal entity, union, or group of individuals associated in fact although not a legal entity, and shall include illicit as well as licit enterprises as well as other entities;

(2) Pattern of racketeering activity means a cumulative loss for one or more victims or gains for the enterprise of not less than one thousand five hundred dollars resulting from at least two acts of racketeering activity, one of which occurred after August 30, 2009, and the last of which occurred within ten years, excluding any period of imprisonment, after the commission of a prior act of racketeering activity;

(3) Until January 1, 2017, person means any individual or entity, as defined in section 21-2014, holding or capable of holding a legal, equitable, or beneficial interest in property. Beginning January 1, 2017, person means any individual or entity, as defined in section 21-214, holding or capable of holding a legal, equitable, or beneficial interest in property;

(4) Prosecutor includes the Attorney General of the State of Nebraska, the deputy attorney general, assistant attorneys general, a county attorney, a deputy county attorney, or any person so designated by the Attorney General, a county attorney, or a court of the state to carry out the powers conferred by the act;

(5) Racketeering activity includes the commission of, criminal attempt to commit, conspiracy to commit, aiding and abetting in the commission of, aiding in the consummation of, acting as an accessory to the commission of, or the solicitation, coercion, or intimidation of another to commit or aid in the commission of any of the following:

(a) Offenses against the person which include: Murder in the first degree under section 28-303; murder in the second degree under section 28-304; manslaughter under section 28-305; assault in the first degree under section 28-308; assault in the second degree under section 28-309; assault in the third degree under section 28-310; terroristic threats under section 28-311.01; kidnapping under section 28-313; false imprisonment in the first degree under section 28-314; false imprisonment in the second degree under section 28-315; sexual assault in the first degree under section 28-319; and robbery under section 28-324;

(b) Offenses relating to controlled substances which include: To unlawfully manufacture, distribute, deliver, dispense, or possess with intent to manufacture, distribute, deliver, or dispense a controlled substance under subsection (1) of section 28-416; possession of marijuana weighing more than one pound under subsection (12) of section 28-416; possession of money used or intended to be used to facilitate a violation of subsection (1) of section 28-416 prohibited under subsection (17) of section 28-416; any violation of section 28-418; to unlawfully manufacture, distribute, deliver, or possess with intent to distribute or deliver an imitation controlled substance under section 28-445; possession of anhydrous ammonia with the intent to manufacture methamphetamine under section 28-451; and possession of ephedrine, pseudoephedrine, or phenylpropanolamine with the intent to manufacture methamphetamine under section 28-452;

(c) Offenses against property which include: Arson in the first degree under section 28-502; arson in the second degree under section 28-503; arson in the third degree under section 28-504; burglary under section 28-507; theft by unlawful taking or disposition under section 28-511; theft by shoplifting under section 28-511.01; theft by deception under section 28-512; theft by extortion under section 28-513; theft of services under section 28-515; theft by receiving stolen property under section 28-517; criminal mischief under section 28-519; and unlawfully depriving or obtaining property or services using a computer under section 28-1344;

(d) Offenses involving fraud which include: Burning to defraud an insurer under section 28-505; forgery in the first degree under section 28-602; forgery in the second degree under section 28-603; criminal possession of a forged instrument under section 28-604; criminal possession of written instrument forgery devices under section 28-605; criminal impersonation under section 28-638; identity theft under section 28-639; identity fraud under section 28-640; false statement or book entry under section 28-612; tampering with a publicly exhibited contest under section 28-614; issuing a false financial statement for purposes of obtaining a financial transaction device under section 28-619; unauthorized use of a financial transaction device under section 28-620; criminal possession of a financial transaction device under section 28-621; unlawful circulation of a financial transaction device in the first degree under section 28-622; unlawful circulation of a financial transaction device in the second degree under section 28-623; criminal possession of a blank financial transaction device under section 28-624; criminal sale of a blank financial transaction device under section 28-625; criminal possession of a financial transaction forgery device under section 28-626; unlawful manufacture of a financial transaction device under section 28-627; laundering of sales forms under section 28-628; unlawful acquisition of sales form processing services under section 28-629; unlawful factoring of a financial transaction device under section 28-630; and fraudulent insurance acts under section 28-631;

(e) Offenses involving governmental operations which include: Abuse of public records under section 28-911; perjury or subornation of perjury under section 28-915; bribery under section 28-917; bribery of a witness under section 28-918; tampering with a witness or informant or jury tampering under section 28-919; bribery of a juror under section 28-920; assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the first degree under section 28-929; assault on an officer, an emergency responder, a state

correctional employee, a Department of Health and Human Services employee, or a health care professional in the second degree under section 28-930; assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the third degree under section 28-931; and assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional using a motor vehicle under section 28-931.01;

(f) Offenses involving gambling which include: Promoting gambling in the first degree under section 28-1102; possession of gambling records under section 28-1105; gambling debt collection under section 28-1105.01; and possession of a gambling device under section 28-1107;

(g) Offenses relating to firearms, weapons, and explosives which include: Carrying a concealed weapon under section 28-1202; transportation or possession of machine guns, short rifles, or short shotguns under section 28-1203; unlawful possession of a handgun under section 28-1204; unlawful transfer of a firearm to a juvenile under section 28-1204.01; possession of a firearm by a prohibited juvenile offender under section 28-1204.05; using a deadly weapon to commit a felony, possession of a deadly weapon during the commission of a felony, or carrying a firearm or destructive device during the commission of a dangerous misdemeanor under section 28-1205; possession of a deadly weapon by a prohibited person under section 28-1206; possession of a defaced firearm under section 28-1207; defacing a firearm under section 28-1208; unlawful discharge of a firearm under section 28-1212.02; possession, receipt, retention, or disposition of a stolen firearm under section 28-1212.03; unlawful possession of explosive materials in the first degree under section 28-1215; unlawful possession of explosive materials in the second degree under section 28-1216; unlawful sale of explosives under section 28-1217; use of explosives without a permit under section 28-1218; obtaining an explosives permit through false representations under section 28-1219; possession of a destructive device under section 28-1220; threatening the use of explosives or placing a false bomb under section 28-1221; using explosives to commit a felony under section 28-1222; using explosives to damage or destroy property under section 28-1223; and using explosives to kill or injure any person under section 28-1224;

(h) Any violation of the Securities Act of Nebraska pursuant to section 8-1117;

(i) Any violation of the Nebraska Revenue Act of 1967 pursuant to section 77-2713;

(j) Offenses relating to public health and morals which include: Prostitution under section 28-801; pandering under section 28-802; keeping a place of prostitution under section 28-804; labor trafficking, sex trafficking, labor trafficking of a minor, or sex trafficking of a minor under section 28-831; a violation of section 28-1005; and any act relating to the visual depiction of sexually explicit conduct prohibited in the Child Pornography Prevention Act; and

(k) A violation of the Computer Crimes Act;

(6) State means the State of Nebraska or any political subdivision or any department, agency, or instrumentality thereof; and

(7) Unlawful debt means a debt of at least one thousand five hundred dollars:

(a) Incurred or contracted in gambling activity which was in violation of federal law or the law of the state or which is unenforceable under state or federal law in whole or in part as to principal or interest because of the laws relating to usury; or

(b) Which was incurred in connection with the business of gambling in violation of federal law or the law of the state or the business of lending money or a thing of value at a rate usurious under state law if the usurious rate is at least twice the enforceable rate.

Source: Laws 2009, LB155, § 4; Laws 2010, LB771, § 13; Laws 2013, LB255, § 8; Laws 2014, LB749, § 277; Laws 2014, LB811, § 24; Laws 2016, LB1094, § 10; Laws 2018, LB990, § 5; Laws 2023, LB77, § 15.

Cross References

Child Pornography Prevention Act, see section 28-1463.01.
Computer Crimes Act, see section 28-1341.
Nebraska Revenue Act of 1967, see section 77-2701.
Securities Act of Nebraska, see section 8-1123.

28-1356 Violation; penalty.

(1) A person who violates section 28-1355 shall be guilty of a Class III felony; however, such person shall be guilty of a Class IB felony if the violation is based upon racketeering activity which is punishable as a Class I, IA, or IB felony.

(2) In lieu of the fine authorized by section 28-105, any person convicted of engaging in conduct in violation of section 28-1355, through which pecuniary value was derived, or by which personal injury or property damage or other loss was caused, may be sentenced to pay a fine that does not exceed three times the gross value gained or three times the gross loss caused, whichever is greater, plus court costs and the costs of investigation and prosecution reasonably incurred. Any fine collected under this subsection shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2009, LB155, § 6; Laws 2015, LB268, § 10; Referendum 2016, No. 426.

Note: The changes made to section 28-1356 by Laws 2015, LB 268, section 10, have been omitted because of the vote on the referendum at the November 2016 general election.

ARTICLE 14

NONCODE PROVISIONS

(a) OFFENSES RELATING TO PROPERTY

Section
28-1402. Repealed. Laws 2021, LB169, § 1.
28-1403. Repealed. Laws 2021, LB169, § 1.
28-1404. Repealed. Laws 2021, LB169, § 1.
28-1405. Repealed. Laws 2021, LB169, § 1.

(c) TOBACCO, ELECTRONIC NICOTINE DELIVERY SYSTEMS, OR ALTERNATIVE NICOTINE PRODUCTS

28-1418. Tobacco; electronic nicotine delivery systems; alternative nicotine products; use by person under age of twenty-one years; penalty.
28-1418.01. Terms, defined.

(a) OFFENSES RELATING TO PROPERTY

28-1402 Repealed. Laws 2021, LB169, § 1.

28-1403 Repealed. Laws 2021, LB169, § 1.

28-1404 Repealed. Laws 2021, LB169, § 1.

28-1405 Repealed. Laws 2021, LB169, § 1.

(c) TOBACCO, ELECTRONIC NICOTINE DELIVERY SYSTEMS, OR ALTERNATIVE NICOTINE PRODUCTS

28-1418 Tobacco; electronic nicotine delivery systems; alternative nicotine products; use by person under age of twenty-one years; penalty.

Whoever, being a person under the age of twenty-one years, shall smoke cigarettes or cigars, use electronic nicotine delivery systems or alternative nicotine products, or use tobacco in any form whatever, in this state, shall be guilty of a Class V misdemeanor. Any person charged with a violation of this section may be free from prosecution if he or she furnishes evidence for the conviction of the person or persons selling or giving him or her the cigarettes, cigars, electronic nicotine delivery systems, alternative nicotine products, or tobacco.

Source: Laws 1911, c. 181, §§ 1, 2, 3, p. 561; R.S.1913, § 8846; C.S.1922, § 9847; C.S.1929, § 28-1021; R.S.1943, § 28-1020; Laws 1977,

LB 40, § 103; R.R.S.1943, § 28-1020, (1975); Laws 2014, LB863, § 16; Laws 2019, LB149, § 1; Laws 2019, LB397, § 1; Laws 2020, LB1064, § 1.

28-1418.01 Terms, defined.

For purposes of sections 28-1418 to 28-1429.07:

(1) Alternative nicotine product means any noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. Alternative nicotine product does not include any electronic nicotine delivery system, cigarette, cigar, or other tobacco product, or any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act;

(2) Cigarette means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco, (b) tobacco, in any form, that is functional in the product which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette, or (c) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subdivision (2)(a) of this section;

(3) Delivery sale means to sell, give, or furnish products (a) by mail or delivery service, (b) through the Internet or a computer network, (c) by telephone, or (d) through any other electronic method;

(4)(a) Electronic nicotine delivery system means any product or device containing nicotine, tobacco, or tobacco derivatives that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, to simulate smoking by delivering the nicotine, tobacco, or tobacco derivatives in vapor, fog, mist, gas, or aerosol form to a person inhaling from the product or device.

(b) Electronic nicotine delivery system includes, but is not limited to, the following:

(i) Any substance containing nicotine, tobacco, or tobacco derivatives, whether sold separately or sold in combination with a product or device that is intended to deliver to a person nicotine, tobacco, or tobacco derivatives in vapor, fog, mist, gas, or aerosol form;

(ii) Any product or device marketed, manufactured, distributed, or sold as an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, or similar products, names, descriptors, or devices; and

(iii) Any component, part, or accessory of such a product or device that is used during operation of the product or device when sold in combination with any substance containing nicotine, tobacco, or tobacco derivatives.

(c) Electronic nicotine delivery system does not include the following:

(i) An alternative nicotine product, cigarette, cigar, or other tobacco product, or any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act; or

(ii) Any component, part, or accessory of such a product or device that is used during operation of the product or device when not sold in combination with any substance containing nicotine, tobacco, or tobacco derivatives;

(5) Self-service display means a retail display that contains a tobacco product, a tobacco-derived product, an electronic nicotine delivery system, or an alternative nicotine product and is located in an area openly accessible to a retailer's customers and from which such customers can readily access the product without the assistance of a salesperson. Self-service display does not include a display case that holds tobacco products, tobacco-derived products, electronic nicotine delivery systems, or alternative nicotine products behind locked doors; and

(6) Tobacco specialty store means a retail store that (a) derives at least seventy-five percent of its revenue from tobacco products, tobacco-derived products, electronic nicotine delivery systems, or alternative nicotine products and (b) does not permit persons under the age of twenty-one years to enter the premises unless accompanied by a parent or legal guardian.

Source: Laws 2014, LB863, § 17; Laws 2019, LB149, § 2; Laws 2019, LB397, § 2; Laws 2020, LB1064, § 2; Laws 2024, LB1204, § 10. Effective date July 19, 2024.

28-1419 Tobacco; electronic nicotine delivery systems; alternative nicotine products; certain sales; penalty; compliance determination; assistance authorized; conditions.

(1) Whoever shall sell, give, or furnish, in any way, any tobacco in any form whatever, or any cigars, cigarettes, cigarette paper, electronic nicotine delivery systems, or alternative nicotine products, to any person under twenty-one years of age, is guilty of a Class III misdemeanor for each offense.

(2)(a) In order to further the public policy of deterring licensees or other persons from violating subsection (1) of this section, a person who is at least fifteen years of age but under twenty-one years of age may assist a peace officer in determining compliance with such subsection if:

(i) The parent or legal guardian of the person has given written consent for the person to participate in such compliance check if such person is under nineteen years of age;

(ii) The person is an employee, a volunteer, or an intern with a state or local law enforcement agency;

(iii) The person is acting within the scope of his or her assigned duties as part of a law enforcement investigation;

(iv) The person does not use or consume a tobacco product as part of such duties; and

(v) The person is not actively assigned to a diversion program, is not a party to a pending criminal proceeding or a proceeding pending under the Nebraska Juvenile Code, and is not on probation.

(b) Any person under the age of twenty-one years acting in accordance with and under the authority of this subsection shall not be in violation of section 28-1427.

Source: Laws 1885, c. 105, §§ 1, 2, p. 394; Laws 1903, c. 138, § 1, p. 643; R.S.1913, § 8847; C.S.1922, § 9848; C.S.1929, § 28-1022; R.S.

1943, § 28-1021; Laws 1977, LB 40, § 104; R.R.S.1943, § 28-1021, (1975); Laws 2014, LB863, § 18; Laws 2019, LB149, § 3; Laws 2019, LB397, § 3; Laws 2020, LB1064, § 3.

Cross References

Nebraska Juvenile Code, see section 43-2,129.

28-1420 License requisite for sale; violation; penalty.

(1) A person, partnership, limited liability company, or corporation shall not sell, keep for sale, or give away in course of trade, any cigars, tobacco, electronic nicotine delivery systems, cigarettes, or cigarette material to anyone without first obtaining a license as provided in sections 28-1421 and 28-1422.

(2) A wholesaler shall not sell or deliver any cigars, tobacco, electronic nicotine delivery systems, cigarettes, or cigarette material to any person, partnership, limited liability company, or corporation who, at the time of such sale or delivery, is not the recipient of a valid tobacco license for the current year to retail the same as provided in sections 28-1421 and 28-1422.

(3) A person, partnership, limited liability company, or corporation shall not purchase or receive, for purposes of resale, any cigars, tobacco, electronic nicotine delivery systems, cigarettes, or cigarette material if such person, partnership, limited liability company, or corporation is not the recipient of a valid tobacco license under sections 28-1421 and 28-1422 to retail such tobacco products at the time the same are purchased or received.

(4) A wholesaler or retailer shall not purchase or receive, for purposes of resale, any cigars, tobacco, electronic nicotine delivery systems, cigarettes, or cigarette material if the manufacturer of such products does not hold any license or certification required by the Tobacco Products Tax Act at the time such products are purchased or received.

(5) A tobacco product manufacturer shall not sell or deliver any cigars, tobacco, electronic nicotine delivery systems, cigarettes, or cigarette material to any wholesaler or retailer who, at the time of such sale or delivery, is not the recipient of a valid tobacco license under sections 28-1421 and 28-1422 for the current year to sell such products at wholesale or retail.

(6) A person found guilty of violating this section is guilty of a Class III misdemeanor for each offense.

Source: Laws 1919, c. 180, § 1, p. 401; C.S.1922, § 9849; C.S.1929, § 28-1023; Laws 1941, c. 50, § 1, p. 242; C.S.Supp.,1941, § 28-1023; R.S.1943, § 28-1022; Laws 1977, LB 40, § 105; R.R.S.1943, § 28-1022, (1975); Laws 1993, LB 121, § 187; Laws 2019, LB149, § 4; Laws 2019, LB397, § 4; Laws 2024, LB1204, § 11.
Effective date July 19, 2024.

Cross References

Tobacco Products Tax Act, see section 77-4001.

28-1421 License; where obtained; prohibited sales.

Licenses for the sale of cigars, tobacco, electronic nicotine delivery systems, cigarettes, and cigarette material to persons twenty-one years of age or over shall be issued to individuals, partnerships, limited liability companies, and corporations by the clerk or finance director of any city or village and by the

county clerk of any county upon application duly made as provided in section 28-1422. The sale of cigarettes or cigarette materials that contain perfumes or drugs in any form is prohibited and is not licensed by the provisions of this section. Only cigarettes and cigarette material containing pure white paper and pure tobacco shall be licensed.

Source: Laws 1919, c. 180, § 2, p. 401; C.S.1922, § 9850; C.S.1929, § 28-1024; R.S.1943, § 28-1023; Laws 1961, c. 128, § 1, p. 379; R.R.S.1943, § 28-1023, (1975); Laws 1993, LB 121, § 188; Laws 2019, LB149, § 5; Laws 2019, LB397, § 5; Laws 2020, LB1064, § 4.

28-1422 License for sale of tobacco; application; contents.

(1) Every person, partnership, limited liability company, or corporation desiring a license under sections 28-1420 to 28-1429 shall file with the clerk or finance department of the city, town, or village where his, her, their, or its place of business is located, if within the limits of a city, town, or village, or with the clerk of the county where such place of business is located, if outside the limits of any city, town, or village, a written application stating:

(a) The name of the person, partnership, limited liability company, or corporation for whom such license is desired;

(b) An email address for contacting such person, partnership, limited liability company, or corporation; and

(c) The exact location of the place of business.

(2) Each applicant shall also deposit with such application the amount of the license fee provided in section 28-1423.

(3) If the applicant is an individual, the application shall include the applicant's social security number.

(4) Any clerk or finance department that grants such a license shall notify the Tax Commissioner of such granting and transmit all applicable application materials received to the Tax Commissioner.

Source: Laws 1919, c. 180, § 3, p. 401; C.S.1922, § 9851; C.S.1929, § 28-1025; R.S.1943, § 28-1024; Laws 1961, c. 128, § 2, p. 379; R.R.S.1943, § 28-1024, (1975); Laws 1993, LB 121, § 189; Laws 1997, LB 752, § 85; Laws 2024, LB1204, § 12.
Effective date July 19, 2024.

28-1423 License; term; fees; false swearing; penalty.

The term for which such license shall run shall be from the date of filing such application and paying such license fee to and including December 31 of the calendar year in which application for such license is made, and the license fee for any person, partnership, limited liability company, or corporation selling at retail shall be twenty-five dollars in cities of the metropolitan class, fifteen dollars in cities of the primary and first classes, and ten dollars in cities of all other classes and in towns and villages and in locations outside of the limits of cities, towns, and villages. Any person, partnership, limited liability company, or corporation selling annually in the aggregate more than one hundred fifty thousand cigars, packages of cigarettes, electronic nicotine delivery systems, and packages of tobacco in any form, at wholesale, shall pay a license fee of one hundred dollars, and if such combined annual sales amount to less than

one hundred fifty thousand cigars, packages of cigarettes, electronic nicotine delivery systems, and packages of tobacco, the annual license fee shall be fifteen dollars. No wholesaler's license shall be issued in any year on a less basis than one hundred dollars per annum unless the applicant for the same shall file with such application a statement duly sworn to by himself or herself, or if applicant is a partnership, by a member of the firm, or if a limited liability company, by a member or manager of the company, or if a corporation, by an officer or manager thereof, that in the past such wholesaler's combined sales of cigars, packages of cigarettes, electronic nicotine delivery systems, and packages of tobacco in every form have not exceeded in the aggregate one hundred fifty thousand annually, and that such sales will not exceed such aggregate amount for the current year for which the license is to issue. Any person swearing falsely in such affidavit shall be guilty of perjury and upon conviction thereof shall be punished as provided by section 28-915 and such wholesaler's license shall be revoked until the full license fee is paid. If application for license is made after July 1 of any calendar year, the fee shall be one-half of the fee provided in this section.

Source: Laws 1919, c. 180, § 4, p. 402; C.S.1922, § 9852; Laws 1923, c. 136, § 1, p. 335; Laws 1927, c. 198, § 1, p. 565; C.S.1929, § 28-1026; R.S.1943, § 28-1025; Laws 1978, LB 748, § 20; R.R.S. 1943, § 28-1025, (1975); Laws 1993, LB 121, § 190; Laws 2019, LB149, § 6; Laws 2019, LB397, § 6.

28-1424 License; rights of licensee.

The license provided for in sections 28-1421 and 28-1422 shall, when issued, authorize the sale of cigars, tobacco, electronic nicotine delivery systems, cigarettes, and cigarette material by the licensee and employees, to persons twenty-one years of age or over, at the place of business described in such license for the term therein authorized, unless the license is forfeited as provided in section 28-1425.

Source: Laws 1919, c. 180, § 5, p. 402; C.S.1922, § 9853; C.S.1929, § 28-1027; R.S.1943, § 28-1026; Laws 1957, c. 100, § 2, p. 359; R.R.S.1943, § 28-1026, (1975); Laws 2019, LB149, § 7; Laws 2019, LB397, § 7; Laws 2020, LB1064, § 5.

28-1425 Licensees; sale of tobacco, electronic nicotine delivery systems, or alternative nicotine products to persons under the age of twenty-one years; penalty.

Any licensee who shall sell, give, or furnish in any way to any person under the age of twenty-one years, or who shall willingly allow to be taken from his or her place of business by any person under the age of twenty-one years, any cigars, tobacco, cigarettes, cigarette material, electronic nicotine delivery systems, or alternative nicotine products is guilty of a Class III misdemeanor. Any officer, director, or manager having charge or control, either separately or jointly with others, of the business of any corporation which violates sections 28-1419, 28-1420 to 28-1429, and 28-1429.03 to 28-1429.07, if he or she has knowledge of such violation, shall be subject to the penalties provided in this section. In addition to the penalties provided in this section, such licensee shall be subject to the additional penalty of a revocation and forfeiture of his, her, their, or its license, at the discretion of the court before whom the complaint for

violation of such sections may be heard. If such license is revoked and forfeited, all rights under such license shall at once cease and terminate and a new license shall not be issued until the expiration of the period provided for in section 28-1429.

Source: Laws 1919, c. 180, § 6, p. 402; C.S.1922, § 9854; C.S.1929, § 28-1028; R.S.1943, § 28-1027; Laws 1957, c. 100, § 3, p. 360; Laws 1977, LB 40, § 106; R.R.S.1943, § 28-1027, (1975); Laws 2014, LB863, § 19; Laws 2019, LB149, § 8; Laws 2019, LB397, § 8; Laws 2020, LB1064, § 6; Laws 2024, LB1204, § 13. Effective date July 19, 2024.

28-1427 Person misrepresenting age to obtain tobacco, electronic nicotine delivery systems, or alternative nicotine products; penalty.

Except as provided in subsection (2) of section 28-1419, any person under the age of twenty-one years who obtains cigars, tobacco, cigarettes, cigarette material, electronic nicotine delivery systems, or alternative nicotine products from a licensee by representing that he or she is of the age of twenty-one years or over is guilty of a Class V misdemeanor.

Source: Laws 1919, c. 180, § 8, p. 403; C.S.1922, § 9856; C.S.1929, § 28-1030; R.S.1943, § 28-1029; Laws 1947, c. 98, § 1, p. 281; Laws 1977, LB 40, § 107; R.R.S.1943, § 28-1029, (1975); Laws 2014, LB863, § 20; Laws 2019, LB149, § 9; Laws 2019, LB397, § 9; Laws 2020, LB1064, § 7.

28-1429 Revocation of tobacco license; reissue.

(1) If a license issued under sections 28-1420 to 28-1429 is revoked and forfeited as provided in section 28-1425 for a violation of section 28-1429.04 or 28-1429.05, no new license shall be issued to such licensee until the expiration of five years after the date of such revocation and forfeiture.

(2) If a license issued under sections 28-1420 to 28-1429 is revoked and forfeited as provided in section 28-1425 for any other violation of sections 28-1418 to 28-1429.03, 28-1429.06, and 28-1429.07, no new license shall be issued to such licensee until the expiration of one year after the date of such revocation and forfeiture except as otherwise provided in section 28-1423.

Source: Laws 1919, c. 180, § 10, p. 403; C.S.1922, § 9858; C.S.1929, § 28-1032; R.S.1943, § 28-1031; Laws 2024, LB1204, § 14. Effective date July 19, 2024.

28-1429.01 Vending machines; legislative findings.

The Legislature finds that the incumbent health risks associated with using tobacco products have been scientifically proven. The Legislature further finds that the growing number of young people who start using tobacco products is staggering, and even more abhorrent are the ages at which such use begins. The Legislature has established an age restriction on the use of tobacco products. To ensure that the use of tobacco products among young people is discouraged to the maximum extent possible, it is the intent of the Legislature to ban the use of vending machines and similar devices to dispense tobacco

products in facilities, buildings, or areas which are open to the general public within Nebraska.

Source: Laws 1992, LB 130, § 1; Laws 2019, LB149, § 10.

28-1429.02 Vending machines; restrictions on use; violation; penalty; local ordinances; authorized.

(1) Except as provided in subsection (2) of this section, it shall be unlawful to dispense cigarettes, other tobacco products, electronic nicotine delivery systems, or alternative nicotine products from a vending machine or similar device. Any person violating this section is guilty of a Class III misdemeanor. In addition, upon conviction for a second offense, the court shall order a six-month suspension of the offender's license to sell tobacco and electronic nicotine delivery systems, if any, and, upon conviction for a third or subsequent offense, the court shall order the permanent revocation of the offender's license to sell tobacco and electronic nicotine delivery systems, if any.

(2) Cigarettes, other tobacco products, electronic nicotine delivery systems, or alternative nicotine products may be dispensed from a vending machine or similar device when such machine or device is located in an area, office, business, plant, or factory which is not open to the general public or on the licensed premises of any establishment having a license issued under the Nebraska Liquor Control Act for the sale of alcoholic liquor for consumption on the premises when such machine or device is located in the same room in which the alcoholic liquor is dispensed.

(3) Nothing in this section shall be construed to restrict or prohibit a governing body of a city or village from establishing and enforcing ordinances at least as stringent as or more stringent than the provisions of this section.

Source: Laws 1992, LB 130, § 2; Laws 2014, LB863, § 21; Laws 2019, LB149, § 11; Laws 2019, LB397, § 10.

Cross References

Nebraska Liquor Control Act, see section 53-101.

28-1429.03 Self-service display; restrictions on use; violation; penalty.

(1) Except as provided in subsection (2) of this section and section 28-1429.02, it shall be unlawful to sell or distribute cigarettes, cigars, electronic nicotine delivery systems, alternative nicotine products, or tobacco in any form whatever through a self-service display. Any person violating this section is guilty of a Class III misdemeanor. In addition, upon conviction for a second or subsequent offense within a twelve-month period, the court shall order a six-month suspension of the license issued under section 28-1421.

(2) Cigarettes, cigars, electronic nicotine delivery systems, alternative nicotine products, or tobacco in any form whatever may be sold or distributed in a self-service display that is located in a tobacco specialty store or cigar shop as defined in section 53-103.08.

Source: Laws 2014, LB863, § 22; Laws 2015, LB118, § 1; Laws 2019, LB149, § 12; Laws 2019, LB397, § 11.

28-1429.04 Controlled substance or counterfeit substance; sales prohibited; violation; penalty.

A person holding a license under sections 28-1420 to 28-1429 who sells, gives, or furnishes in any way to any consumer in this state, or who willingly allows to be taken from such licensee's place of business by any person, any controlled substance or counterfeit substance, as such terms are defined in section 28-401, shall be, in addition to the penalties provided for in the Uniform Controlled Substances Act, subject to the additional penalty of revocation and forfeiture of such license as provided in sections 28-1425 and 28-1429 at the discretion of the court.

Source: Laws 2024, LB1204, § 15.
Effective date July 19, 2024.

Cross References

Uniform Controlled Substances Act, see section 28-401.01.

28-1429.05 Electronic nicotine delivery system; delivery sale; prohibited; violation; penalty.

(1) A person shall not, by delivery sale, sell, give, or furnish to any consumer in this state any electronic nicotine delivery system. A violation of this subsection is a Class I misdemeanor.

(2) Any common carrier that knowingly transports any electronic nicotine delivery system in any form for a person who is in violation of subsection (1) of this section is guilty of a Class I misdemeanor.

(3) In addition to any other penalty, a violation of this section shall constitute a deceptive trade practice under the Uniform Deceptive Trade Practices Act and shall be subject to any remedies or penalties available for a violation of such act.

(4) All electronic nicotine delivery systems that are sold, given, or furnished in violation of this section are subject to seizure, forfeiture, and destruction and shall not be purchased or sold in the state. The cost of such seizure, forfeiture, and destruction shall be borne by the person from whom the products are seized.

(5) This section does not apply to the following:

(a) The shipment of electronic nicotine delivery systems to a foreign trade zone that is established under 19 U.S.C. 81a et seq. and that is located in this state if the products are from outside of this country, were ordered by a distributor in another state, and are not distributed in this state;

(b) A government employee who is acting in the course of the employee's official duties; or

(c) The shipment of electronic nicotine delivery systems to a university that is acquiring the systems to conduct basic and applied research, if the systems are exempt from federal excise tax under 26 U.S.C. 5704(a).

Source: Laws 2024, LB1204, § 16.
Effective date July 19, 2024.

Cross References

Uniform Deceptive Trade Practices Act, see section 87-306.

28-1429.06 Electronic nicotine delivery system; e-liquid container; requirements.

(1) A person holding a license under sections 28-1420 to 28-1429 shall ensure that any e-liquid container for an electronic nicotine delivery system sold by such person:

(a) Meets any applicable packaging standards imposed by the federal Child Nicotine Poisoning Prevention Act of 2015, 15 U.S.C. 1472a; and

(b) Has a label that meets the nicotine addictiveness warning statement requirements set forth in 21 C.F.R. 1143.3.

(2) For purposes of this section, e-liquid container means a container holding any consumable material as defined in section 77-4003.01.

Source: Laws 2024, LB1204, § 17.
Effective date July 19, 2024.

28-1429.07 Electronic nicotine delivery system; restrictions on packaging and advertising.

A person holding a license under sections 28-1420 to 28-1429 shall not market, advertise, sell, or cause to be sold an electronic nicotine delivery system if the system's container, packaging, or advertising:

(1) Depicts a cartoon-like fictional character that mimics a character primarily aimed at entertaining minors;

(2) Imitates or mimics trademarks or trade dress of products that are or have been primarily marketed to minors;

(3) Includes a symbol that is primarily used to market products to minors;

(4) Includes an image of a celebrity; or

(5) Is designed to disguise the fact that it is an electronic nicotine delivery system.

Source: Laws 2024, LB1204, § 18.
Effective date July 19, 2024.

(k) CHILD PORNOGRAPHY PREVENTION ACT

28-1463.03 Visual depiction of sexually explicit conduct; prohibited acts.

(1) It shall be unlawful for a person to knowingly make, publish, direct, create, provide, or in any manner generate any visual depiction of sexually explicit conduct which has a child other than the defendant as one of its participants or portrayed observers.

(2) It shall be unlawful for a person knowingly to purchase, rent, sell, deliver, distribute, display for sale, advertise, trade, or provide to any person any visual depiction of sexually explicit conduct which has a child other than the defendant as one of its participants or portrayed observers.

(3) It shall be unlawful for a person to knowingly employ, force, authorize, induce, or otherwise cause a child to engage in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

(4) It shall be unlawful for a parent, stepparent, legal guardian, or any person with custody and control of a child, knowing the content thereof, to consent to such child engaging in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

Source: Laws 1978, LB 829, § 1; R.S.1943, (1979), § 28-1463; Laws 1985, LB 668, § 3; Laws 2009, LB97, § 18; Laws 2019, LB630, § 5.

Cross References

Registration of sex offenders, see sections 29-4001 to 29-4014.

28-1463.05 Visual depiction of sexually explicit acts related to possession; violation; penalty.

(1) It shall be unlawful for a person to knowingly possess with intent to rent, sell, deliver, distribute, trade, or provide to any person any visual depiction of sexually explicit conduct which has a child other than the defendant as one of its participants or portrayed observers.

(2)(a) Any person who is under nineteen years of age at the time he or she violates this section shall be guilty of a Class IIIA felony for each offense.

(b) Any person who is nineteen years of age or older at the time he or she violates this section shall be guilty of a Class IIA felony for each offense.

(c) Any person who violates this section and has previously been convicted of a violation of this section or section 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, 28-319.01, 28-320.01, 28-813, 28-833, or 28-1463.03 or subsection (1) or (2) of section 28-320 shall be guilty of a Class IC felony for each offense.

Source: Laws 1985, LB 668, § 4; Laws 1986, LB 788, § 2; Laws 2004, LB 943, § 7; Laws 2009, LB97, § 20; Laws 2015, LB605, § 58; Laws 2019, LB630, § 6.

Cross References

Registration of sex offenders, see sections 29-4001 to 29-4014.

ARTICLE 17
IMMUNITY IN CERTAIN CASES

Section
28-1701. Witness or victim of sexual assault; eligible alcohol or drug offense; immunity from arrest or prosecution; conditions.

28-1701 Witness or victim of sexual assault; eligible alcohol or drug offense; immunity from arrest or prosecution; conditions.

(1) A person shall not be arrested or prosecuted for an eligible alcohol or drug offense if such person witnessed or was the victim of a sexual assault and such person:

(a) Either:

(i) In good faith, reported such sexual assault to law enforcement; or

(ii) Requested emergency medical assistance for the victim of the sexual assault; and

(b) Evidence supporting the arrest or prosecution of the eligible alcohol or drug offense was obtained or discovered as a result of such person reporting such sexual assault to law enforcement or requesting emergency medical assistance.

(2) A person shall not be arrested or prosecuted for an eligible alcohol or drug offense if:

(a) Evidence supporting the arrest or prosecution of the person for the offense was obtained or discovered as a result of the investigation or prosecution of a sexual assault; and

(b) Such person cooperates with law enforcement in the investigation or prosecution of the sexual assault.

(3) For purposes of this section:

(a) Eligible alcohol or drug offense means:

(i) A violation of subsection (3) or (13) of section 28-416 or of section 28-441;

(ii) A violation of section 53-180.02 committed by a person older than eighteen years of age and under the age of twenty-one years, as described in subdivision (4)(a) of section 53-180.05;

(iii) A violation of a city or village ordinance similar to subdivision (3)(a)(i) or (ii) of this section; or

(iv) Attempt, conspiracy, solicitation, being an accessory to, aiding and abetting, aiding the consummation of, or compounding a felony with any of the offenses in subdivision (3)(a)(i), (ii), or (iii) of this section as the underlying offense; and

(b) Sexual assault means:

(i) A violation of section 28-316.01, 28-319, 28-319.01, 28-320, 28-320.01, 28-320.02, 28-322.01, 28-322.02, 28-322.03, 28-322.04, 28-322.05, 28-703, or 28-1463.03, sex trafficking or sex trafficking of a minor under section 28-831, or subdivision (1)(c) or (g) of section 28-386 or subdivision (1)(d), (e), or (f) of section 28-707; or

(ii) Attempt, conspiracy, solicitation, being an accessory to, aiding and abetting, aiding the consummation of, or compounding a felony with any of the offenses listed in subdivision (3)(b)(i) of this section as the underlying offense.

Source: Laws 2022, LB519, § 3.

CHAPTER 29
CRIMINAL PROCEDURE

Article.

ARTICLE 1
DEFINITIONS AND GENERAL RULES OF PROCEDURE

Section

29-110 Prosecutions; complaint, indictment, or information; filing; time limitations; exceptions.

(1) Except as otherwise provided by law, no person shall be prosecuted for any felony unless the indictment is found by a grand jury within three years next after the offense has been done or committed or unless a complaint for the same is filed before the magistrate within three years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

(2) Except as otherwise provided by law, no person shall be prosecuted, tried, or punished for any misdemeanor or other indictable offense below the grade of felony or for any fine or forfeiture under any penal statute unless the suit, information, or indictment for such offense is instituted or found within one year and six months from the time of committing the offense or incurring the fine or forfeiture or within one year for any offense the punishment of which is restricted by a fine not exceeding one hundred dollars and to imprisonment not exceeding three months.

(3) Except as otherwise provided by law, no person shall be prosecuted for kidnapping under section 28-313, false imprisonment under section 28-314 or 28-315, child abuse under section 28-707, pandering under section 28-802, debauching a minor under section 28-805, or an offense under section 28-813 when the victim is under sixteen years of age at the time of the offense (a) unless the indictment for such offense is found by a grand jury within seven years next after the offense has been committed or within seven years next after the victim's sixteenth birthday, whichever is later, or (b) unless a complaint for such offense is filed before the magistrate within seven years next after the offense has been committed or within seven years next after the victim's sixteenth birthday, whichever is later, and a warrant for the arrest of the defendant has been issued.

(4) Except as otherwise provided by law, no person shall be prosecuted for a violation of subsection (2) or (3) of section 28-831 (a) unless the indictment for such offense is found by a grand jury within seven years next after the offense has been committed or within seven years next after the victim's eighteenth birthday, whichever is later, or (b) unless a complaint for such offense is filed before the magistrate within seven years next after the offense has been committed or within seven years next after the victim's eighteenth birthday, whichever is later, and a warrant for the arrest of the defendant has been issued.

(5) Except as otherwise provided by law, no person shall be prosecuted for an offense under section 28-813.01 or 28-1463.05 (a) unless the indictment for

such offense is found by a grand jury within seven years next after the offense has been committed or within seven years next after the victim's eighteenth birthday, whichever is later, or (b) unless a complaint for such offense is filed before the magistrate within seven years next after the offense has been committed or within seven years next after the victim's eighteenth birthday, whichever is later, and a warrant for the arrest of the defendant has been issued.

(6) No person shall be prosecuted for a violation of the Securities Act of Nebraska under section 8-1117 unless the indictment for such offense is found by a grand jury within five years next after the offense has been done or committed or unless a complaint for such offense is filed before the magistrate within five years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

(7) No person shall be prosecuted for criminal impersonation under section 28-638, identity theft under section 28-639, or identity fraud under section 28-640 unless the indictment for such offense is found by a grand jury within five years next after the offense has been done or committed or unless a complaint for such offense is filed before the magistrate within five years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

(8) No person shall be prosecuted for a violation of section 68-1017 if the aggregate value of all funds and other benefits obtained or attempted to be obtained is five hundred dollars or more unless the indictment for such offense is found by a grand jury within five years next after the offense has been done or committed or unless a complaint for such offense is filed before the magistrate within five years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

(9) No person shall be prosecuted for knowing and intentional abuse, neglect, or exploitation of a vulnerable adult or senior adult under section 28-386 unless the indictment for such offense is found by a grand jury within six years next after the offense has been done or committed or unless a complaint for such offense is filed before the magistrate within six years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

(10) Except as otherwise provided by law, no person shall be prosecuted for an offense under section 28-717 (a) unless the indictment for such offense is found by a grand jury within one year and six months next after the offense has been committed or within one year and six months next after the child reaches the age of majority, whichever is later, or (b) unless a complaint for such offense is filed before the magistrate within one year and six months next after the offense has been committed or within one year and six months next after the child reaches the age of majority, whichever is later, and a warrant for the arrest of the defendant has been issued.

(11) There shall not be any time limitations for prosecution or punishment for treason, murder, arson, forgery, sexual assault in the first or second degree under section 28-319 or 28-320, sexual assault of a child in the second or third degree under section 28-320.01, incest under section 28-703, sexual assault of a child in the first degree under section 28-319.01, labor trafficking of a minor or sex trafficking of a minor under subsection (1) of section 28-831, or an offense under section 28-1463.03; nor shall there be any time limitations for prosecu-

tion or punishment for sexual assault in the third degree under section 28-320 when the victim is under sixteen years of age at the time of the offense.

(12) The time limitations prescribed in this section shall include all inchoate offenses pursuant to the Nebraska Criminal Code and compounding a felony pursuant to section 28-301.

(13) The time limitations prescribed in this section shall not extend to any person fleeing from justice.

(14) When any suit, information, or indictment for any crime or misdemeanor is limited by any statute to be brought or exhibited within any other time than is limited by this section, then the suit, information, or indictment shall be brought or exhibited within the time limited by such statute.

(15) If any suit, information, or indictment is quashed or the proceedings set aside or reversed on writ of error, the time during the pendency of such suit, information, or indictment so quashed, set aside, or reversed shall not be reckoned within this statute so as to bar any new suit, information, or indictment for the same offense.

(16) The changes made to this section by Laws 2004, LB 943, shall apply to offenses committed prior to April 16, 2004, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

(17) The changes made to this section by Laws 2005, LB 713, shall apply to offenses committed prior to September 4, 2005, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

(18) The changes made to this section by Laws 2009, LB 97, and Laws 2006, LB 1199, shall apply to offenses committed prior to May 21, 2009, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

(19) The changes made to this section by Laws 2010, LB809, shall apply to offenses committed prior to July 15, 2010, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

(20) The changes made to this section by Laws 2016, LB934, shall apply to offenses committed prior to April 19, 2016, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

(21) The changes made to this section by Laws 2019, LB519, shall apply to offenses committed prior to September 1, 2019, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

Source: G.S.1873, c. 58, § 256, p. 783; R.S.1913, § 8910; C.S.1922, § 9931; C.S.1929, § 29-110; R.S.1943, § 29-110; Laws 1965, c. 147, § 1, p. 489; Laws 1989, LB 211, § 1; Laws 1990, LB 1246, § 10; Laws 1993, LB 216, § 10; Laws 2004, LB 943, § 8; Laws 2005, LB 713, § 2; Laws 2006, LB 1199, § 10; Laws 2009, LB97, § 21; Laws 2009, LB155, § 17; Laws 2010, LB809, § 1; Laws 2016, LB934, § 10; Laws 2019, LB519, § 13; Laws 2020, LB881, § 13.

Cross References

Nebraska Criminal Code, see section 28-101.
Securities Act of Nebraska, see section 8-1123.

29-112 Felon; disqualified as juror or officeholder; warrant of discharge; effect; right to vote.

Any person sentenced to be punished for any felony, when the sentence is not reversed or annulled, is incompetent to be a juror or to hold any office of honor, trust, or profit within this state, unless such person receives from the Board of Pardons of this state a warrant of discharge, in which case such person shall be restored to such civil rights and privileges as enumerated or limited by the Board of Pardons. The warrant of discharge shall not release such person from the costs of conviction unless otherwise ordered by the Board of Pardons.

Any person sentenced to be punished for any felony, when the sentence is not reversed or annulled, is not qualified to vote until such person has completed the sentence, including any parole term. The disqualification is automatically removed at such time.

Source: G.S.1873, c. 58, § 258, p. 783; R.S.1913, § 8912; Laws 1919, c. 56, § 1, p. 160; C.S.1922, § 9933; C.S.1929, § 29-112; R.S.1943, § 29-112; Laws 1951, c. 86, § 1, p. 249; Laws 1959, c. 117, § 1, p. 448; Laws 2002, LB 1054, § 3; Laws 2005, LB 53, § 1; Laws 2024, LB20, § 1.
Effective date July 19, 2024.

Cross References

Constitutional provisions:
Board of Pardons, see Article IV, section 13, Constitution of Nebraska.
Disqualification from holding office, see Article XV, sections 1 and 2, Constitution of Nebraska.
Disqualification from voting, see Article VI, section 2, Constitution of Nebraska.
Disqualification from voting, see section 32-313.
Pardons and paroles, see sections 29-2246 et seq., 83-188 et seq., and 83-1,126 et seq.

29-113 Felon of other states; disqualified as juror or officeholder; right to vote.

Any person who has been convicted of a felony under the laws of any other state shall be deemed incompetent to be a juror or to hold any office of honor, trust, or profit within this state unless such person has been restored to civil rights under the laws of the state in which the felony was committed.

Any person who has been convicted of a felony under the laws of any other state is not qualified to vote until such person has completed his or her sentence, including any parole term.

Source: G.S.1873, c. 58, § 259, p. 783; R.S.1913, § 8913; C.S.1922, § 9934; C.S.1929, § 29-113; R.S.1943, § 29-113; Laws 1951, c. 86, § 2, p. 249; Laws 1969, c. 236, § 1, p. 871; Laws 1993, LB 31, § 4; Laws 2002, LB 1054, § 5; Laws 2005, LB 53, § 2; Laws 2024, LB20, § 2.
Effective date July 19, 2024.

29-119 Plea agreement; terms, defined.

For purposes of this section and sections 23-1201, 29-120, and 29-2261, unless the context otherwise requires:

(1) A plea agreement means that as a result of a discussion between the defense counsel and the prosecuting attorney:

(a) A charge is to be dismissed or reduced; or

(b) A defendant, if he or she pleads guilty to a charge, may receive less than the maximum penalty permitted by law; and

(2)(a) Victim means a person who has had a personal confrontation with an offender as a result of a homicide under sections 28-302 to 28-306, a first degree assault under section 28-308, a second degree assault under section 28-309, a third degree assault under section 28-310 when the victim is an intimate partner as defined in section 28-323, a first degree false imprisonment under section 28-314, a first degree sexual assault under section 28-319, a sexual assault of a child in the first degree under section 28-319.01, a second or third degree sexual assault under section 28-320, a sexual assault of a child in the second or third degree under section 28-320.01, domestic assault in the first, second, or third degree under section 28-323, or a robbery under section 28-324. Victim also includes a person who has suffered serious bodily injury as defined in section 28-109 as a result of a motor vehicle accident when the driver was charged with a violation of section 60-6,196 or 60-6,197 or with a violation of a city or village ordinance enacted in conformance with either section.

(b) In the case of a homicide, victim means the nearest surviving relative under the law as provided by section 30-2303 but does not include the alleged perpetrator of the homicide.

(c) In the case of a violation of section 28-813.01, 28-1463.03, 28-1463.04, or 28-1463.05, victim means a person who was a child as defined in section 28-1463.02 and a participant or portrayed observer in the visual depiction of sexually explicit conduct which is the subject of the violation and who has been identified and can be reasonably notified.

(d) In the case of a sexual assault of a child, a possession offense of a visual depiction of sexually explicit conduct, or a distribution offense of a visual depiction of sexually explicit conduct, victim means the child victim and the parents, guardians, or duly appointed legal representative of the child victim but does not include the alleged perpetrator of the crime.

(e) Victim also includes a person who was the victim of a theft under section 28-511, 28-512, 28-513, or 28-517 when (i) the value of the thing involved is five thousand dollars or more and (ii) the victim and perpetrator were intimate partners as defined in section 28-323.

(f) Victim also includes a sexual assault victim as defined in section 29-4309.

Source: Laws 1983, LB 78, § 1; Laws 1990, LB 87, § 2; Laws 1993, LB 370, § 10; Laws 1998, LB 309, § 2; Laws 2004, LB 270, § 3; Laws 2006, LB 1199, § 11; Laws 2010, LB728, § 8; Laws 2018, LB160, § 1; Laws 2019, LB125, § 1; Laws 2020, LB43, § 9.

29-121 Transferred to section 43-4903.

ARTICLE 2
POWERS AND DUTIES OF CERTAIN OFFICERS

Section
29-215. Law enforcement officers; jurisdiction; powers; contracts authorized.
29-217. Victim of certain criminal activity; visa; request for assistance; certifying agency or official; powers and duties.

29-215 Law enforcement officers; jurisdiction; powers; contracts authorized.

(1) A law enforcement officer has the power and authority to enforce the laws of this state and of the political subdivision which employs the law enforcement officer or otherwise perform the functions of that office anywhere within his or her primary jurisdiction.

(2) Any law enforcement officer who is within this state, but beyond his or her primary jurisdiction, has the power and authority to enforce the laws of this state or any legal ordinance of any city or incorporated village or otherwise perform the functions of his or her office, including the authority to arrest and detain suspects, as if enforcing the laws or performing the functions within his or her primary jurisdiction in the following cases:

(a) Any such law enforcement officer, if in a fresh attempt to apprehend a person suspected of committing a felony, may follow such person into any other jurisdiction in this state and there arrest and detain such person and return such person to the law enforcement officer's primary jurisdiction;

(b) Any such law enforcement officer, if in a fresh attempt to apprehend a person suspected of committing a misdemeanor or a traffic infraction, may follow such person anywhere in an area within twenty-five miles of the boundaries of the law enforcement officer's primary jurisdiction and there arrest and detain such person and return such person to the law enforcement officer's primary jurisdiction;

(c) Any such law enforcement officer shall have such enforcement and arrest and detention authority when responding to a call in which a local, state, or federal law enforcement officer is in need of assistance. A law enforcement officer in need of assistance shall mean (i) a law enforcement officer whose life is in danger or (ii) a law enforcement officer who needs assistance in making an arrest and the suspect (A) will not be apprehended unless immediately arrested, (B) may cause injury to himself or herself or others or damage to property unless immediately arrested, or (C) may destroy or conceal evidence of the commission of a crime; and

(d) Any municipality or county may, under the provisions of the Interlocal Cooperation Act or the Joint Public Agency Act, enter into a contract with any other municipality or county for law enforcement services or joint law enforcement services. Under such an agreement, law enforcement personnel may have such enforcement authority within the jurisdiction of each of the participating political subdivisions if provided for in the agreement. Unless otherwise provided in the agreement, each participating political subdivision shall provide liability insurance coverage for its own law enforcement personnel as provided in section 13-1802.

(3) When probable cause exists to believe that a person is operating or in the actual physical control of any motor vehicle, motorboat, personal watercraft, or aircraft while under the influence of alcoholic liquor or of any drug or otherwise in violation of section 28-1465, 28-1466, 28-1472, 37-1254.01, 37-1254.02, 60-4,163, 60-4,164, 60-6,196, 60-6,197, 60-6,211.01, or 60-6,211.02, the law enforcement officer has the power and authority to do any of the following or any combination thereof:

(a) Transport such person to a facility outside of the law enforcement officer's primary jurisdiction for appropriate chemical testing of the person;

(b) Administer outside of the law enforcement officer's primary jurisdiction any post-arrest test advisement to the person; or

(c) With respect to such person, perform other procedures or functions outside of the law enforcement officer's primary jurisdiction which are directly and solely related to enforcing the laws that concern a person operating or being in the actual physical control of any motor vehicle, motorboat, personal watercraft, or aircraft while under the influence of alcoholic liquor or of any other drug or otherwise in violation of section 28-1465, 28-1466, 28-1472, 37-1254.01, 37-1254.02, 60-4,163, 60-4,164, 60-6,196, 60-6,197, 60-6,211.01, or 60-6,211.02.

(4) For purposes of this section:

(a) Class I railroad has the same meaning as in section 81-1401;

(b) Law enforcement officer has the same meaning as peace officer as defined in section 49-801 and also includes conservation officers of the Game and Parks Commission and Class I railroad police officers; and

(c) Primary jurisdiction means the geographic area within the territorial limits of the state or political subdivision which employs the law enforcement officer.

Source: Laws 1994, LB 254, § 1; Laws 1999, LB 87, § 68; Laws 2003, LB 17, § 9; Laws 2011, LB667, § 5; Laws 2021, LB51, § 2.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.
Motor vehicle pursuit, see section 29-211.
Uniform Act on Fresh Pursuit, see section 29-421.

29-217 Victim of certain criminal activity; visa; request for assistance; certifying agency or official; powers and duties.

(1) For purposes of this section:

(a) Certifying agency means a state or local law enforcement agency, prosecutor, or other authority that has responsibility for the investigation or prosecution of qualifying criminal activity, as described in 8 C.F.R. 214.14(a)(2);

(b) Certifying official means the head of the certifying agency or any person in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency, as described in 8 C.F.R. 214.14(a)(3);

(c) Form I-914B means Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, of the Department of Homeland Security, United States Citizenship and Immigration Services;

(d) Form I-918B means Form I-918, Supplement B, U Nonimmigrant Status Certification, of the Department of Homeland Security, United States Citizenship and Immigration Services;

(e) Investigation or prosecution has the same meaning as in 8 C.F.R. 214.14;

(f) Law enforcement agency means a state or local law enforcement agency, prosecutor, or other authority that has responsibility for the investigation or prosecution of severe forms of trafficking in persons, as described in 8 C.F.R. 214.11(a);

(g) Qualifying criminal activity has the same meaning as in 8 C.F.R. 214.14;

(h) Victim of qualifying criminal activity has the same meaning as in 8 C.F.R. 214.14;

(i) Victim of a severe form of trafficking in persons has the same meaning as in 8 C.F.R. 214.11; and

(j) All references to federal statutes and regulations refer to such statutes and regulations as they existed on January 1, 2020.

(2)(a) On request from an individual whom a law enforcement agency reasonably believes to be a victim of a severe form of trafficking in persons, for purposes of a nonimmigrant T visa, pursuant to the criteria in 8 U.S.C. 1101(a)(15)(T)(i)(I) and (III), a law enforcement agency, no later than ninety business days after receiving the request:

(i) Shall complete, sign, and return to the individual the Form I-914B; and

(ii) May submit a written request to an appropriate federal law enforcement officer asking such officer to file an application for continued presence pursuant to 22 U.S.C. 7105(c)(3).

(b) If the law enforcement agency determines that an individual does not meet the requirements of the law enforcement agency for completion of a Form I-914B, the law enforcement agency shall, no later than ninety business days after receiving the request, inform the individual of the reason and that the individual may make another request with additional evidence or documentation to satisfy such requirements. The law enforcement agency shall permit the individual to make such additional request.

(3)(a) On request from an individual whom a certifying agency reasonably believes to be a victim of qualifying criminal activity, for purposes of a nonimmigrant U visa, pursuant to the certification criteria in 8 U.S.C. 1101(a)(15)(U)(i)(II) to (IV) and (iii), a certifying official in the certifying agency, no later than ninety business days after receiving the request, shall complete, sign, and return to the individual the Form I-918B.

(b) For purposes of determining helpfulness pursuant to 8 U.S.C. 1101(a)(15)(U)(i)(III), an individual shall be considered helpful if, since the initiation of cooperation, the individual has not unreasonably refused to cooperate or failed to provide information and assistance reasonably requested by law enforcement or the prosecutor.

(c) If the certifying official determines that an individual does not meet the requirements of the certifying agency for completion of a Form I-918B, the certifying official shall, no later than ninety business days after receiving the request, inform the individual of the reason and that the individual may make another request with additional evidence or documentation to satisfy such requirements. The certifying official shall permit the individual to make such additional request.

(4) An investigation, the filing of charges, a prosecution, or a conviction are not required for an individual to request and obtain the signed and completed Form I-914B or Form I-918B from a law enforcement agency or certifying official.

(5) It is the exclusive responsibility of the federal immigration authorities to determine whether a person is eligible for a T or U visa. Completion of a Form I-914B or Form I-918B by a law enforcement agency or certifying official only serves to verify information regarding certain criteria considered by the federal government in granting such visas.

(6) A law enforcement agency, certifying agency, or certifying official has the discretion to revoke, disavow, or withdraw a previous completion of a Form

I-914B or Form I-918B at any time after initial completion, as provided in 8 C.F.R. 214.11(d)(3)(ii) and 8 C.F.R. 214.14(h)(2)(i)(A).

(7) A law enforcement agency or certifying agency that receives a request under this section shall maintain an internal record of such request, including whether such request was granted or denied and, if denied, the reasons for such denial. Such record shall be maintained for at least three years from completion or denial of the request.

Source: Laws 2020, LB518, § 1.

ARTICLE 4
WARRANT AND ARREST OF ACCUSED

Section
29-404.02. Arrest without warrant; when; court appearance.
29-422. Citation in lieu of arrest; legislative intent.
29-431. Infraction, defined.

29-404.02 Arrest without warrant; when; court appearance.

(1) Except as provided in sections 28-311.11 and 42-928, a peace officer may arrest a person without a warrant if the officer has reasonable cause to believe that such person has committed:

(a) A felony;

(b) A misdemeanor, and the officer has reasonable cause to believe that such person either (i) will not be apprehended unless immediately arrested, (ii) may cause injury to himself or herself or others or damage to property unless immediately arrested, (iii) may destroy or conceal evidence of the commission of such misdemeanor, or (iv) has committed a misdemeanor in the presence of the officer; or

(c) One or more of the following acts to one or more household members, whether or not committed in the presence of the peace officer:

(i) Attempting to cause or intentionally and knowingly causing bodily injury with or without a dangerous instrument;

(ii) Placing, by physical menace, another in fear of imminent bodily injury; or

(iii) Engaging in sexual contact or sexual penetration without consent as defined in section 28-318.

(2) An individual arrested without a warrant under this section who remains in custody shall be brought before a court in the county where the arrest occurred for an appearance no later than seven days after such arrest. The appearance may be in person or conducted remotely by means of videoconferencing. The individual shall have the right to appear in person but must agree to waive the seven-day deadline if an in-person appearance within such time is not reasonably practicable.

(3) For purposes of this section:

(a) Household members includes spouses or former spouses, children, persons who are presently residing together or who have resided together in the past, persons who have a child in common whether or not they have been married or have lived together at any time, other persons related by consanguinity or affinity, and persons who are presently involved in a dating relation-

ship with each other or who have been involved in a dating relationship with each other; and

(b) Dating relationship means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement, but does not include a casual relationship or an ordinary association between persons in a business or social context.

Source: Laws 1967, c. 172, § 2, p. 487; Laws 1989, LB 330, § 1; Laws 2004, LB 613, § 6; Laws 2017, LB289, § 11; Laws 2024, LB1167, § 1.
Effective date July 19, 2024.

29-422 Citation in lieu of arrest; legislative intent.

It is hereby declared to be the policy of the State of Nebraska to issue citations in lieu of arrest or continued custody to the maximum extent consistent with the effective enforcement of the law and the protection of the public. In furtherance of that policy, except as provided in sections 28-311.11, 42-928, and 42-929, any peace officer shall be authorized to issue a citation in lieu of arrest or continued custody for any offense which is a traffic infraction, any other infraction, or a misdemeanor and for any violation of a city or village ordinance. Such authorization shall be carried out in the manner specified in sections 29-422 to 29-429 and 60-684 to 60-686.

Source: Laws 1974, LB 829, § 1; Laws 1978, LB 808, § 6; Laws 1985, LB 19, § 2; Laws 1989, LB 330, § 2; Laws 1993, LB 370, § 12; Laws 2017, LB289, § 12.

29-431 Infraction, defined.

As used in sections 28-416, 29-422, 29-424, 29-425, 29-431 to 29-434, 48-1231, and 53-173, unless the context otherwise requires, infraction means the violation of any law, ordinance, order, rule, or regulation, not including those related to traffic, which is not otherwise declared to be a misdemeanor or a felony. Infraction includes violations of section 60-6,267 and beginning January 1, 2024, section 60-6,279.

Source: Laws 1978, LB 808, § 1; Laws 1979, LB 534, § 1; Laws 1983, LB 306, § 1; Laws 1993, LB 370, § 14; Laws 2010, LB884, § 1; Laws 2015, LB330, § 1; Laws 2023, LB138, § 3.

Cross References

Child passenger restraint system, violation, see sections 60-6,267, 60-6,268, and 71-1907.

ARTICLE 9
BAIL

Section
29-901. Bail; personal recognizance; appointment of counsel; conditions; pretrial release program; conditions.
29-901.01. Conditions of release; how determined.

29-901 Bail; personal recognizance; appointment of counsel; conditions; pretrial release program; conditions.

(1) Except as provided in subsection (2) of this section, any bailable defendant shall be ordered released from custody pending judgment on his or her

personal recognizance unless the judge determines in the exercise of his or her discretion that such a release will not reasonably assure the appearance of the defendant as required or that such a release could jeopardize the safety and maintenance of evidence or the safety of victims, witnesses, or other persons in the community.

(2)(a) This subsection applies to any bailable defendant who is charged with one or more Class IIIA, IV, or V misdemeanors or violations of city or county ordinances, except when:

(i) The victim is an intimate partner as defined in section 28-323; or

(ii) The defendant is charged with one or more violations of section 60-6,196 or 60-6,197 or city or village ordinances enacted in conformance with section 60-6,196 or 60-6,197.

(b) Any bailable defendant described in this subsection shall be ordered released from custody pending judgment on his or her personal recognizance or under other conditions of release, other than payment of a bond, unless:

(i) The defendant has previously failed to appear in the instant case or any other case in the previous six months;

(ii) The judge determines in the exercise of his or her discretion that such a release will not reasonably assure the appearance of the defendant as required or that such a release could jeopardize the safety and maintenance of evidence or the safety of the defendant, victims, witnesses, or other persons; and

(iii) The defendant was arrested pursuant to a warrant.

(3) The court shall consider all methods of bond and conditions of release to avoid pretrial incarceration. If the judge determines that the defendant shall not be released on his or her personal recognizance, the judge shall consider the defendant's financial ability to pay a bond and shall impose the least onerous of the following conditions that will reasonably assure the defendant's appearance or that will eliminate or minimize the risk of harm to others or the public at large:

(a) Place the defendant in the custody of a designated person or organization agreeing to supervise the defendant;

(b) Place restrictions on the travel, association, or place of abode of the defendant during the period of such release; or

(c) Require, at the option of any bailable defendant, either of the following:

(i) The execution of an appearance bond in a specified amount and the deposit with the clerk of the court in cash of a sum not to exceed ten percent of the amount of the bond, ninety percent of such deposit to be returned to the defendant upon the performance of the appearance or appearances and ten percent to be retained by the clerk as appearance bond costs, except that when no charge is subsequently filed against the defendant or if the charge or charges which are filed are dropped before the appearance of the defendant which the bond was to assure, the entire deposit shall be returned to the defendant. If the bond is subsequently reduced by the court after the original bond has been posted, no additional appearance bond costs shall be retained by the clerk. The difference in the appearance bond costs between the original bond and the reduced bond shall be returned to the defendant. In no event shall the deposit be less than twenty-five dollars. Whenever jurisdiction is transferred from a court requiring an appearance bond under this subdivision to another state court, the transferring court shall transfer the ninety percent of the deposit

remaining after the appearance bond costs have been retained. No further costs shall be levied or collected by the court acquiring jurisdiction; or

(ii) The execution of a bail bond with such surety or sureties as shall seem proper to the judge or, in lieu of such surety or sureties, at the option of such person, a cash deposit of such sum so fixed, conditioned for his or her appearance before the proper court, to answer the offense with which he or she may be charged and to appear at such times thereafter as may be ordered by the proper court. The cash deposit shall be returned to the defendant upon the performance of all appearances.

(4) If the court requires the defendant to execute an appearance bond requiring the defendant to post money or requires the defendant to execute a bail bond, the court shall appoint counsel for the defendant if the court finds the defendant is financially unable to pay the amount required and is indigent.

(5) If the amount of bail is deemed insufficient by the court before which the offense is pending, the court may order an increase of such bail and the defendant shall provide the additional undertaking, written or cash, to secure his or her release. All recognizances in criminal cases shall be in writing and be continuous from term to term until final judgment of the court in such cases and shall also extend, when the court has suspended execution of sentence for a limited time, as provided in section 29-2202, or, when the court has suspended execution of sentence to enable the defendant to apply for a writ of error to the Supreme Court or Court of Appeals, as provided in section 29-2301, until the period of suspension has expired. When two or more indictments or informations are returned against the same person at the same term of court, the recognizance given may be made to include all offenses charged therein. Each surety on such recognizance shall be required to justify under oath in a sum twice the amount of such recognizance and give the description of real estate owned by him or her of a value above encumbrance equal to the amount of such justification and shall name all other cases pending in which he or she is a surety. No one shall be accepted as surety on recognizance aggregating a sum in excess of his or her equity in the real estate, but such recognizance shall not constitute a lien on the real estate described therein until judgment is entered thereon against such surety.

(6) In order to assure compliance with the conditions of release referred to in subsection (3) of this section, the court may order a defendant to be supervised by a person, an organization, or a pretrial services program approved by the county board. A court shall waive any fees or costs associated with the conditions of release or supervision if the court finds the defendant is unable to pay for such costs. Eligibility for release or supervision by such pretrial release program shall under no circumstances be conditioned upon the defendant's ability to pay. While under supervision of an approved entity, and in addition to the conditions of release referred to in subsection (3) of this section, the court may impose the following conditions:

(a) Periodic telephone contact by the defendant with the organization or pretrial services program;

(b) Periodic office visits by the defendant to the organization or pretrial services program;

(c) Periodic visits to the defendant's home by the organization or pretrial services program;

(d) Mental health or substance abuse treatment for the defendant, including residential treatment, if the defendant consents or agrees to the treatment;

(e) Periodic alcohol or drug testing of the defendant;

(f) Domestic violence counseling for the defendant, if the defendant consents or agrees to the counseling;

(g) Electronic or global-positioning monitoring of the defendant;

(h) Participation in a 24/7 sobriety program under the 24/7 Sobriety Program Act; and

(i) Any other supervision techniques shown by research to increase court appearance and public safety rates for defendants released on bond.

(7) The incriminating results of any drug or alcohol test or any information learned by a representative of an organization or program shall not be admissible in any proceeding, except for a proceeding relating to revocation or amendment of conditions of bond release.

Source: G.S.1873, c. 58, §§ 346 to 348, p. 802; R.S.1913, § 9003; Laws 1921, c. 203, § 1, p. 733; C.S.1922, § 10027; C.S.1929, § 29-901; R.S.1943, § 29-901; Laws 1951, c. 87, § 1, p. 250; Laws 1953, c. 90, § 1, p. 261; Laws 1961, c. 132, § 1, p. 384; Laws 1972, LB 1032, § 174; Laws 1974, LB 828, § 1; Laws 1975, LB 284, § 2; Laws 1984, LB 773, § 1; Laws 1991, LB 732, § 74; Laws 1999, LB 51, § 1; Laws 2009, LB63, § 23; Laws 2010, LB771, § 15; Laws 2017, LB259, § 2; Laws 2020, LB881, § 14; Laws 2021, LB271, § 7.

Cross References

Appeals, suspension of sentence, see section 29-2301.
Forfeiture of recognizance, see sections 29-1105 to 29-1110.
Suspension of sentence, see section 29-2202.
24/7 Sobriety Program Act, see section 60-701.

29-901.01 Conditions of release; how determined.

In determining which condition or conditions of release shall reasonably assure appearance and deter possible threats to the safety and maintenance of evidence or the safety of victims, witnesses, or other persons in the community, the judge shall, on the basis of available information, consider the defendant's financial ability to pay in setting the amount of bond. The judge may also take into account the nature and circumstances of the offense charged, including any information to indicate that the defendant might engage in additional criminal activity or pose a threat to himself or herself, yet to be collected evidence, alleged victims, potential witnesses, or members of the general public, the defendant's family ties, employment, the length of the defendant's residence in the community, the defendant's record of criminal convictions, and the defendant's record of appearances at court proceedings or of flight to avoid prosecution or of failure to appear at court proceedings.

Source: Laws 1974, LB 828, § 2; Laws 2009, LB63, § 24; Laws 2010, LB771, § 16; Laws 2017, LB259, § 3.

ARTICLE 10
CUSTODY AND MAINTENANCE OF PRISONERS

Section
29-1007. Custody awaiting trial; deadline; release after hearing.

29-1007 Custody awaiting trial; deadline; release after hearing.

A defendant charged with any offense or offenses shall not be held in custody awaiting trial on such offense or offenses for a period of time longer than the maximum possible sentence of imprisonment authorized for such offense or offenses. On the next judicial day after expiration of such deadline, the defendant shall be released on such defendant's personal recognizance, subject to conditions of release the court may impose after a hearing.

Source: Laws 2020, LB881, § 22.

ARTICLE 12
DISCHARGE FROM CUSTODY OR RECOGNIZANCE

Section
29-1201. Prisoner held without indictment; discharge or recognizance; when.

29-1201 Prisoner held without indictment; discharge or recognizance; when.

Any person held in jail charged with an indictable offense shall be discharged if he or she is not indicted at the term of court at which he or she is held to answer, unless such person is committed to jail on such charge after the rising and final report of the grand jury for that term, in which case the court may discharge such person, or require such person to enter into recognizance with sufficient security for his or her appearance before such court to answer such charge at the next term. However, such person so held in jail without indictment shall not be discharged if it appears to the satisfaction of the court that the witnesses on the part of the state have been enticed or kept away or are detained and prevented from attending court by sickness or some inevitable accident.

Source: G.S.1873, c. 58, § 389, p. 812; R.S.1913, § 9020; C.S.1922, § 10044; C.S.1929, § 29-1201; R.S.1943, § 29-1201; Laws 2020, LB387, § 41.

Cross References

Prisoners, disposition of untried charges, see section 29-3801 et seq.

ARTICLE 13
VENUE

Section
29-1301. Venue; change; when allowed.
29-1301.04. Venue; crime committed using an electronic communication device.
29-1302. Change of venue; how effected; costs; payment.

29-1301 Venue; change; when allowed.

All criminal cases shall be tried in the county where the offense was committed, except as otherwise provided in section 25-412.03 or sections

29-1301.01 to 29-1301.04, or unless it shall appear to the court by affidavits that a fair and impartial trial cannot be had therein. In such case the court, upon motion of the defendant, shall transfer the proceeding to any other district or county in the state as determined by the court.

Source: G.S.1873, c. 58, § 455, p. 823; R.S.1913, § 9024; C.S.1922, § 10048; C.S.1929, § 29-1301; R.S.1943, § 29-1301; Laws 1957, c. 103, § 1, p. 363; Laws 1975, LB 97, § 7; Laws 1978, LB 562, § 1; Laws 2021, LB500, § 1.

Cross References

Change of venue, criminal case pending in county with population of four thousand or less without adequate facilities for jury trials, see section 25-412.01.
Trial, agreements under Interlocal Cooperation Act, see section 25-412.03.

29-1301.04 Venue; crime committed using an electronic communication device.

(1) If a person uses an electronic communication device to commit any element of an offense, such person may be tried in the county where the electronic communication was initiated or where the electronic communication was received.

(2) For purposes of this section:

(a) Electronic communication has the same meaning as in section 28-1310; and

(b) Electronic communication device has the same meaning as in section 28-833.

Source: Laws 2021, LB500, § 2.

29-1302 Change of venue; how effected; costs; payment.

When the venue is changed, the clerk of the court in which the indictment was found shall file a certification of the case file and costs, which together with the original indictment, shall be transmitted to the clerk of the court to which the venue is changed, and the trial shall be conducted in all respects as if the offender had been indicted in the county to which the venue has been changed. All costs, fees, charges, and expenses accruing from a change of venue, together with all costs, fees, charges, and expenses made or incurred in the trial of, or in keeping, guarding, and maintaining the accused shall be paid by the county in which the indictment was found. The clerk of the trial court shall make a statement of such costs, fees, charges, and expenses and certify and transmit the same to the clerk of the district court where the indictment was found, to be entered upon the register of actions and collected and paid as if a change of venue had not been had.

Source: G.S.1873, c. 58, § 456, p. 824; Laws 1883, c. 84, § 1, p. 329; Laws 1887, c. 109, § 1, p. 667; R.S.1913, § 9025; C.S.1922, § 10049; C.S.1929, § 29-1302; R.S.1943, § 29-1302; Laws 1978, LB 562, § 2; Laws 2018, LB193, § 50.

ARTICLE 14

GRAND JURY

Section
29-1406. Judge; charge to jury; instruction as to powers and duties.

Section
29-1407.01. Grand jury proceedings; reporter; duties; transcript; exhibits; statements; availability.
29-1414. Disclosure of indictment; when prohibited.
29-1418. Indictments; presentation; filing; finding of probable cause; dismissal; motions.

29-1406 Judge; charge to jury; instruction as to powers and duties.

(1) The grand jury, after being sworn, shall be charged as to their duty by the judge, who shall call their attention particularly to the obligation of secrecy which their oaths impose, and to such offenses as he or she is by law required to specially charge.

(2) Upon impanelment of each grand jury, the court shall give to such grand jury adequate and reasonable written notice of and shall assure that the grand jury reasonably understands the nature of:

(a) Its duty to inquire into offenses against the criminal laws of the State of Nebraska alleged to have been committed or, in the case of a grand jury impaneled pursuant to subsection (4) of section 29-1401, its duty to inquire into offenses against the criminal laws of the State of Nebraska regarding the death of a person who has died while being apprehended or while in the custody of a law enforcement officer or detention personnel;

(b) Its right to call and interrogate witnesses;

(c) Its right to request the production of documents or other evidence;

(d) The subject matter of the investigation and the criminal statutes or other statutes involved, if these are known at the time the grand jury is impaneled;

(e) The duty of the grand jury by an affirmative vote of twelve or more members of the grand jury to determine, based on the evidence presented before it, whether or not there is probable cause for finding indictments and to determine the violations to be included in any such indictments;

(f) The requirement that the grand jury may not return an indictment in cases of perjury unless at least two witnesses to the same fact present evidence establishing probable cause to return such an indictment; and

(g) In the case of a grand jury impaneled pursuant to subsection (4) of section 29-1401, if the grand jury returns a no true bill:

(i) The grand jury shall create a grand jury report with the assistance of the prosecuting attorney. The grand jury report shall briefly provide an explanation of the grand jury's findings and any recommendations the grand jury determines to be appropriate based upon the grand jury's investigation and deliberations; and

(ii) The no true bill and the grand jury report shall be filed with the court, where they shall be available for public review, along with the grand jury transcript provided for in subsection (3) of section 29-1407.01.

Source: G.S.1873, c. 58, § 397, p. 814; R.S.1913, § 9036; C.S.1922, § 10060; C.S.1929, § 29-1406; R.S.1943, § 29-1406; Laws 1979, LB 524, § 1; Laws 2016, LB1000, § 7; Laws 2020, LB881, § 15.

29-1407.01 Grand jury proceedings; reporter; duties; transcript; exhibits; statements; availability.

(1) A certified or authorized reporter shall be present at all grand jury sessions. All grand jury proceedings and testimony from commencement to adjournment shall be reported. Except as otherwise provided in this section, no copies of transcripts of, or exhibits from, such proceedings shall be made available.

(2) Except as provided in subsection (3) of this section:

(a) The reporter's stenography notes and tape recordings shall be preserved and sealed and any transcripts which may be prepared shall be preserved, sealed, and filed with the court;

(b) No release or destruction of the notes or transcripts shall occur without prior court approval; and

(c) No copies of such transcript or exhibits shall be made available.

(3)(a) This subsection applies to a grand jury impaneled pursuant to subsection (4) of section 29-1401.

(b) A transcript, including any exhibits of the grand jury proceedings, and a copy of such transcript and copies of such exhibits shall be prepared at court expense and shall be filed with the court. Such transcript shall not include the names of grand jurors or their deliberations.

(c) If the grand jury returns a no true bill, a copy of the transcript, including a copy of any exhibits, shall be available for public review upon written request to the clerk of the district court. Such review shall be made at a reasonable time set by the clerk of the district court. Except as otherwise provided in this subdivision, no copies of such transcript or exhibits shall be made available.

(d)(i) If the grand jury returns a true bill, once a trial court is assigned and the criminal case docketed, any of the parties to the criminal case, within five days of the criminal case being docketed, may file a motion for a protective order requesting a hearing before the trial court to request a delay of the public review of the transcript, including any exhibits, of the grand jury proceedings. Except as otherwise provided in this subdivision, no copies of such transcript or exhibits shall be made available.

(ii) If after a hearing the trial court grants the request for a protective order, then any public review of the transcript, including any exhibits, of the grand jury proceedings shall not take place until the conclusion of the criminal prosecution. Conclusion of the criminal prosecution means an acquittal, a dismissal, or, if there is a conviction, when the direct appeal process has concluded. Once the criminal prosecution has concluded, a copy of the transcript, including a copy of any exhibits, shall be available for public review upon written request to the clerk of the district court. Such review shall be made at a reasonable time set by the clerk of the district court. Except as otherwise provided in this subdivision, no copies of such transcript or exhibits shall be made available.

(iii) If after a hearing the trial court denies the request for a protective order, then a copy of the transcript, including a copy of any exhibits, shall be available for public review once the trial court's order is filed and upon written request to the clerk of the district court. Such review shall be made at a reasonable time set by the clerk of the district court. Except as otherwise provided in this subdivision, no copies of such transcript or exhibits shall be made available.

(iv) If no party to the criminal case files a motion for a protective order within the time provided in subdivision (3)(d)(i) of this section, then a copy of

the transcript, including a copy of any exhibits, shall be available for public review upon written request to the clerk of the district court. Such review shall be made at a reasonable time set by the clerk of the district court. Except as otherwise provided in this subdivision, no copies of such transcript or exhibits shall be made available.

(4) Upon application by the prosecutor or by any witness after notice to the prosecutor, the court, for good cause, may enter an order to furnish to that witness a transcript of his or her own grand jury testimony or exhibits relating thereto.

(5) Any witness summoned to testify before a grand jury, or an attorney for such witness with the witness's written approval, shall be entitled, prior to testifying, to examine and copy at the witness's expense any statement in the possession of the prosecuting attorney or the grand jury which such witness has made that relates to the subject matter under inquiry by the grand jury. If a witness is proceeding in forma pauperis, he or she shall be furnished, upon request, a copy of such transcript and shall not pay a fee.

Source: Laws 1979, LB 524, § 3; Laws 2016, LB1000, § 8; Laws 2018, LB193, § 51; Laws 2020, LB881, § 16.

29-1414 Disclosure of indictment; when prohibited.

No grand juror or officer of the court shall disclose that an indictment has been found against any person not in custody or under bail, except by the issuing of process, until the indictment is filed.

Source: G.S.1873, c. 58, § 406, p. 815; R.S.1913, § 9044; C.S.1922, § 10068; C.S.1929, § 29-1414; R.S.1943, § 29-1414; Laws 2018, LB193, § 52.

29-1418 Indictments; presentation; filing; finding of probable cause; dismissal; motions.

(1) Indictments returned by a grand jury shall be presented by their foreman to the court and shall be filed with the clerk, who shall endorse thereon the day of their filing and shall enter each case upon the register of actions and the date when the parties indicted have been arrested.

(2) Any grand jury may indict a person for an offense when the evidence before such grand jury provides probable cause to believe that such person committed such offense.

(3) The district court before which the indicted defendant is to be tried shall dismiss any indictment of the grand jury if such district court finds, upon the filing of a motion by the indicted defendant based upon the grand jury record without argument or further evidence, that the grand jury finding of probable cause is not supported by the record.

(4) Any other motions testing the validity of the indictment may be heard by the court based only on the record and argument of counsel, unless there is cause shown for the need for additional evidence.

Source: G.S.1873, c. 58, § 410, p. 816; R.S.1913, § 9048; C.S.1922, § 10072; C.S.1929, § 29-1418; R.S.1943, § 29-1418; Laws 1979, LB 524, § 10; Laws 2018, LB193, § 53.

ARTICLE 16
PROSECUTION ON INFORMATION

Section
29-1602. Information; by whom filed and subscribed; names of witnesses; endorsement.
29-1603. Allegations; how made; joinder of offenses; rights of defendant.

29-1602 Information; by whom filed and subscribed; names of witnesses; endorsement.

All informations shall be filed in the court having jurisdiction of the offense specified therein, by the prosecuting attorney of the proper county as informant. The prosecuting attorney shall subscribe his or her name thereto and endorse thereon the names of the witnesses known to him or her at the time of filing. After the information has been filed, the prosecuting attorney shall endorse on the information the names of such other witnesses as shall then be known to him or her as the court in its discretion may prescribe, except that if a notice of aggravation is contained in the information as provided in section 29-1603, the prosecuting attorney may endorse additional witnesses at any time up to and including the thirtieth day prior to the trial of guilt.

Source: Laws 1885, c. 108, § 2, p. 397; R.S.1913, § 9063; Laws 1915, c. 164, § 1, p. 335; C.S.1922, § 10087; C.S.1929, § 29-1602; R.S.1943, § 29-1602; Laws 2002, Third Spec. Sess., LB 1, § 4; Laws 2015, LB268, § 11; Referendum 2016, No. 426.

Note: The changes made to section 29-1602 by Laws 2015, LB 268, section 11, have been omitted because of the vote on the referendum at the November 2016 general election.

29-1603 Allegations; how made; joinder of offenses; rights of defendant.

(1) All informations shall be in writing and signed by the county attorney, complainant, or some other person, and the offenses charged therein shall be stated with the same fullness and precision in matters of substance as is required in indictments in like cases.

(2)(a) Any information charging a violation of section 28-303 and in which the death penalty is sought shall contain a notice of aggravation which alleges one or more aggravating circumstances, as such aggravating circumstances are provided in section 29-2523. The notice of aggravation shall be filed as provided in section 29-1602. It shall constitute sufficient notice to describe the alleged aggravating circumstances in the language provided in section 29-2523.

(b) The state shall be permitted to add to or amend a notice of aggravation at any time up to and including the thirtieth day prior to the trial of guilt.

(c) The existence or contents of a notice of aggravation shall not be disclosed to the jury until after the verdict is rendered in the trial of guilt.

(3) Different offenses and different degrees of the same offense may be joined in one information, in all cases in which the same might by different counts be joined in one indictment; and in all cases a defendant or defendants shall have the same right, as to proceedings therein, as the defendant or defendants would have if prosecuted for the same offense upon indictment.

Source: Laws 1885, c. 108, § 3, p. 397; R.S.1913, § 9064; C.S.1922, § 10088; C.S.1929, § 29-1603; R.S.1943, § 29-1603; Laws 2002, Third Spec. Sess., LB 1, § 5; Laws 2011, LB669, § 22; Laws 2015, LB268, § 12; Referendum 2016, No. 426.

Note: The changes made to section 29-1603 by Laws 2015, LB 268, section 12, have been omitted because of the vote on the referendum at the November 2016 general election.

ARTICLE 17

ARREST AND ITS INCIDENTS AFTER INDICTMENT

Section
29-1705. Felonies; recognizance ordered by court; authority.

29-1705 Felonies; recognizance ordered by court; authority.

When any person has been indicted for a felony and the person so indicted has not been arrested or recognized to appear before the court, the court may make an entry of the cause upon the record and may order the amount in which the party indicted may be recognized for his or her appearance by any officer charged with the duty of arresting him or her.

Source: G.S.1873, c. 58, § 430, p. 820; R.S.1913, § 9074; C.S.1922, § 10098; C.S.1929, § 29-1705; R.S.1943, § 29-1705; Laws 2018, LB193, § 54.

ARTICLE 18

MOTIONS AND ISSUES ON INDICTMENT

Section
29-1802. Indictment; record; service of copy on defendant; arraignment, when had.
29-1816. Arraignment of accused; when considered waived; accused younger than eighteen years of age; move court to waive jurisdiction to juvenile court; findings for decision; transfer to juvenile court; effect; appeal; admission, confession, or statement made by the accused; inadmissible; when.
29-1816.01. Arraignment of accused; record of proceedings; filing; evidence.
29-1822. Mental incompetency of accused after crime commission; effect; death penalty; stay of execution.
29-1823. Mental incompetency of defendant before or during trial; determination by judge; effect; costs; hearing; commitment proceeding; treatment; department; duties; motion to discharge; considerations; reimbursement to counties for lodging.
29-1824. Competency restoration treatment; network of contract facilities and providers; department; powers.

29-1802 Indictment; record; service of copy on defendant; arraignment, when had.

The clerk of the district court shall, upon the filing of any indictment with him or her and after the person indicted is in custody or let to bail, cause the same to be entered on the record of the court, and in case of the loss of the original, such record or a certified copy thereof shall be used in place thereof upon the trial of the cause. Within twenty-four hours after the filing of an indictment for felony, and in every other case on request, the clerk shall make and deliver to the sheriff and the defendant or his or her counsel a copy of the indictment, and the sheriff on receiving such copy shall serve the same upon the defendant. No one shall be, without his or her assent, arraigned or called on to answer to any indictment until one day has elapsed after receiving in person or by counsel or having an opportunity to receive a copy of such indictment.

Source: G.S.1873, c. 58, § 436, p. 821; Laws 1877, § 1, p. 4; R.S.1913, § 9080; C.S.1922, § 10104; C.S.1929, § 29-1802; R.S.1943, § 29-1802; Laws 2018, LB193, § 55.

29-1816 Arraignment of accused; when considered waived; accused younger than eighteen years of age; move court to waive jurisdiction to juvenile court; findings for decision; transfer to juvenile court; effect; appeal; admission, confession, or statement made by the accused; inadmissible; when.

(1)(a) The accused may be arraigned in county court or district court:

(i) If the accused was eighteen years of age or older when the alleged offense was committed;

(ii) If the accused was younger than eighteen years of age and was fourteen years of age or older when an alleged offense punishable as a Class I, IA, IB, IC, ID, II, or IIA felony was committed; or

(iii) If the alleged offense is a traffic offense as defined in section 43-245.

(b) Arraignment in county court or district court shall be by reading to the accused the complaint or information, unless the reading is waived by the accused when the nature of the charge is made known to him or her. The accused shall then be asked whether he or she is guilty or not guilty of the offense charged. If the accused appears in person and by counsel and goes to trial before a jury regularly impaneled and sworn, he or she shall be deemed to have waived arraignment and a plea of not guilty shall be deemed to have been made.

(2) At the time of the arraignment, the county court or district court shall advise the accused, if the accused was younger than eighteen years of age at the time the alleged offense was committed, that the accused may move the county court or district court at any time not later than thirty days after arraignment, unless otherwise permitted by the court for good cause shown, to waive jurisdiction in such case to the juvenile court for further proceedings under the Nebraska Juvenile Code. This subsection does not apply if the case was transferred to county court or district court from juvenile court.

(3) For motions to transfer a case from the county court or district court to juvenile court:

(a) The county court or district court shall schedule a hearing on such motion within fifteen days. The customary rules of evidence shall not be followed at such hearing. The accused shall be represented by an attorney. The criteria set forth in section 43-276 shall be considered at such hearing. After considering all the evidence and reasons presented by both parties, the case shall be transferred to juvenile court unless a sound basis exists for retaining the case in county court or district court; and

(b) The county court or district court shall make a decision on such motion within thirty days after the hearing and shall set forth findings for the reason for its decision. If the county court or district court determines that the accused should be transferred to the juvenile court, the complete file in the county court or district court shall be transferred to the juvenile court and the complaint, indictment, or information may be used in place of a petition therein. The county court or district court making a transfer shall order the accused to be taken forthwith to the juvenile court and designate where the juvenile shall be kept pending determination by the juvenile court. The juvenile court shall then proceed as provided in the Nebraska Juvenile Code.

(4) An order granting or denying transfer of the case from county or district court to juvenile court shall be considered a final order for the purposes of appeal. Upon entry of an order, any party may appeal to the Court of Appeals

within ten days. Such review shall be advanced on the court docket without an extension of time granted to any party except upon a showing of exceptional cause. Appeals shall be submitted, assigned, and scheduled for oral argument as soon as the appellee's brief is due to be filed. The Court of Appeals shall conduct its review in an expedited manner and shall render the judgment and opinion, if any, as speedily as possible. During the pendency of an appeal from an order transferring the case to juvenile court, the juvenile court may enter temporary orders in the best interests of the juvenile.

(5)(a) Except as provided in subdivision (5)(b) of this section, any admission, confession, or statement made by the accused to a psychiatrist, psychologist, therapist, or licensed mental health practitioner for purposes of a motion to transfer a case from county court or district court to juvenile court shall be inadmissible in any criminal or civil proceeding.

(b) Subdivision (5)(a) of this section does not prevent any such admission, confession, or statement from being:

(i) Admissible in proceedings relating to such motion to transfer;

(ii) Admissible in disposition proceedings of such accused under the Nebraska Juvenile Code if the case is transferred to juvenile court;

(iii) Included in any presentence investigation report for such accused if the case is not transferred to juvenile court; and

(iv) Admissible in such case to impeach such accused during cross-examination if the accused testifies at trial or during juvenile court proceedings and such testimony is materially inconsistent with a prior statement made by the accused to a psychiatrist, psychologist, therapist, or licensed mental health practitioner for purposes of the motion to transfer such case.

(6) When the accused was younger than eighteen years of age when an alleged offense was committed, the county attorney or city attorney shall proceed under section 43-274.

Source: G.S.1873, c. 58, § 448, p. 822; R.S.1913, § 9092; C.S.1922, § 10117; Laws 1925, c. 105, § 1, p. 294; C.S.1929, § 29-1815; R.S.1943, § 29-1816; Laws 1947, c. 103, § 1(1), p. 291; Laws 1974, LB 620, § 6; Laws 1975, LB 288, § 2; Laws 1987, LB 34, § 1; Laws 2008, LB1014, § 16; Laws 2010, LB800, § 5; Laws 2014, LB464, § 4; Laws 2015, LB265, § 1; Laws 2015, LB605, § 59; Laws 2017, LB11, § 1; Laws 2021, LB307, § 1; Laws 2024, LB184, § 1; Laws 2024, LB1051, § 1.
Effective date July 19, 2024.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB184, section 1, with LB1051, section 1, to reflect all amendments.

Cross References

Nebraska Juvenile Code, see section 43-2,129.

29-1816.01 Arraignment of accused; record of proceedings; filing; evidence.

On the arraignment in the district court of any person accused of a felony, the court may require the official reporter of the court to make a record of the proceedings in such court incident to such arraignment and the disposition of the charge made against the accused including sentence in the event of conviction. The court may further require the court reporter to prepare a transcript of the report of such proceedings, authenticate the transcript with an appropriate certificate to be attached thereto, and cause the same to be filed in

the office of the clerk of the court. Such transcript shall be kept in a special file and not removed from the office of the clerk of the district court, except on an order of a judge of the court expressly authorizing removal. In the event that the transcript is so made, authenticated and filed, it, or a duly certified copy thereof, shall become and be competent and lawful evidence and admissible as such in any of the courts of this state.

Source: Laws 1947, c. 103, § 1(2), p. 292; Laws 2018, LB193, § 56.

29-1822 Mental incompetency of accused after crime commission; effect; death penalty; stay of execution.

(1) A person who becomes mentally incompetent after the commission of an offense shall not be tried for the offense until such disability is removed as provided in section 29-1823.

(2) If, after a verdict of guilty, but before judgment is pronounced, a defendant becomes mentally incompetent, then no judgment shall be given until such disability is removed.

(3) If a defendant is sentenced to death and, after judgment, but before execution of the sentence, such person becomes mentally incompetent, execution of the sentence shall be stayed until such disability is removed.

Source: G.S.1873, c. 58, § 454, p. 823; R.S.1913, § 9098; C.S.1922, § 10123; C.S.1929, § 29-1821; R.S.1943, § 29-1822; Laws 1986, LB 1177, § 7; Laws 2015, LB268, § 13; Referendum 2016, No. 426; Laws 2020, LB881, § 17.

29-1823 Mental incompetency of defendant before or during trial; determination by judge; effect; costs; hearing; commitment proceeding; treatment; department; duties; motion to discharge; considerations; reimbursement to counties for lodging.

(1) If at any time prior to or during trial it appears that the defendant has become mentally incompetent to stand trial, such disability may be called to the attention of the district or county court by the county attorney or city attorney, by the defendant, or by any person for the defendant. The judge of the district or county court of the county where the defendant is to be tried shall have the authority to determine whether or not the defendant is competent to stand trial. The judge may also cause such medical, psychiatric, or psychological examination of the defendant to be made as he or she deems warranted and hold such hearing as he or she deems necessary. The cost of the examination, when ordered by the court, shall be the expense of the county in which the crime is charged. The judge may allow any physician, psychiatrist, or psychologist a reasonable fee for his or her services, which amount, when determined by the judge, shall be certified to the county board which shall cause payment to be made. Should the judge determine after a hearing that the defendant is mentally incompetent to stand trial and that there is a substantial probability that the defendant will become competent within the reasonably foreseeable future, the judge shall order the defendant to be committed to the Department of Health and Human Services to provide appropriate treatment to restore competency. This may include commitment to a state hospital for the mentally ill, another appropriate state-owned or state-operated facility, or a contract facility or provider pursuant to an alternative treatment plan proposed by the

department and approved by the court under subsection (2) of this section until such time as the disability may be removed.

(2)(a) If the department determines that treatment by a contract facility or provider is appropriate, the department shall file a report outlining its determination and such alternative treatment plan with the court. Within twenty-one days after the filing of such report, the court shall hold a hearing to determine whether such treatment is appropriate. The court may approve or deny such alternative treatment plan.

(b) A defendant shall not be eligible for treatment by a contract facility or provider under this subsection if the judge determines that the public's safety would be at risk.

(3) Within sixty days after entry of the order committing the defendant to the department, and every sixty days thereafter until either the disability is removed or other disposition of the defendant has been made, the court shall hold a hearing to determine (a) whether the defendant is competent to stand trial or (b) whether or not there is a substantial probability that the defendant will become competent within the reasonably foreseeable future.

(4) If it is determined that there is not a substantial probability that the defendant will become competent within the reasonably foreseeable future, then the state shall either (a) commence the applicable civil commitment proceeding that would be required to commit any other person for an indefinite period of time or (b) release the defendant. If during the period of time between the sixty-day review hearings set forth in subsection (3) of this section it is the opinion of the department that the defendant is competent to stand trial, the department shall file a report outlining its opinion with the court and within seven days after such report being filed the court shall hold a hearing to determine whether or not the defendant is competent to stand trial. The state shall pay the cost of maintenance and care of the defendant during the period of time ordered by the court for treatment to remove the disability.

(5) The defendant, by and through counsel, may move to be discharged from the offenses charged in the complaint or information for the reason that there is not a substantial probability that the defendant will become competent within the reasonably foreseeable future.

(6) In determining whether there is a substantial probability that a defendant will become competent in the reasonably foreseeable future, the court shall take into consideration the likely length of any sentence that would be imposed upon the defendant. If the court discharges the defendant, the court shall state whether such discharge is with or without prejudice.

(7)(a) If a judge orders a defendant to be committed to the Department of Health and Human Services to receive treatment to restore competency and such defendant remains lodged in the county jail, the department shall reimburse the county for lodging the defendant.

(b) Costs of lodging the defendant shall include the daily rate of lodging the defendant, food, medical services, transportation, and any other necessary costs incurred by the county to lodge the defendant.

(c) The daily rate of lodging the defendant shall be one hundred dollars per day for each day or portion thereof after the first thirty days that the defendant is lodged in the county jail after a determination by a judge that the defendant is required to be restored to competency. On July 1, 2023, and each July 1

thereafter, the department shall adjust the amount to be reimbursed to the county jails by an amount equal to the percentage increase, if any, in the Consumer Price Index for All Urban Consumers, as published by the United States Department of Labor, Bureau of Labor Statistics, for the twelve months ending on June 30 of such year.

(d) For purposes of this section, medical services has the same meaning as provided in subsection (2) of section 47-701.

Source: Laws 1967, c. 174, § 1, p. 489; Laws 1997, LB 485, § 1; Laws 2017, LB259, § 4; Laws 2019, LB686, § 5; Laws 2020, LB881, § 18; Laws 2022, LB921, § 1.

Cross References

Attendance of witnesses, right of accused to compel, see Article I, section 11, Constitution of Nebraska.

29-1824 Competency restoration treatment; network of contract facilities and providers; department; powers.

The Department of Health and Human Services may establish a network of contract facilities and providers to provide competency restoration treatment pursuant to alternative treatment plans under section 29-1823. The department may create criteria for participation in such network and establish training in competency restoration treatment for participating contract facilities and providers.

Source: Laws 2020, LB881, § 19.

ARTICLE 19

PREPARATION FOR TRIAL

(a) TESTIMONY IN GENERAL

Section
29-1901. Subpoenas in traffic and criminal cases; provisions applicable.
29-1903. Traffic, criminal, and juvenile cases; witness fees and mileage.

(c) DISCOVERY

29-1912. Request by defendant to inspect and make copies of evidence; granted; when; findings; possibility of harm; effect.
29-1914. Discovery order; limitation.
29-1916. Discovery order; reciprocity to prosecution; waiver of privilege of self-incrimination.
29-1917. Deposition of witness or sexual assault victim; when; procedure; use at trial.
29-1918. Discovery of additional evidence; notify other party and court.
29-1919. Discovery; failure to comply; effect.
29-1923. Additional statement of defendant or name of eyewitness; prosecutor; notification required; failure to comply; effect.
29-1924. Statement, defined.
29-1926. Child victim or child witness; video deposition and in camera testimony; conditions; use; findings by court; release; procedure; violation; penalty.

(a) TESTIMONY IN GENERAL

29-1901 Subpoenas in traffic and criminal cases; provisions applicable.

(1) The statutes governing subpoenas in civil actions and proceedings shall also govern subpoenas in traffic and criminal cases, except that subsections (1), (3), and (4) of section 25-1228 shall not apply to those cases. The payment of compensation and mileage to witnesses in those cases shall be governed by section 29-1903.

(2) A trial subpoena in a traffic and criminal case shall contain the statement specified in subsection (5) of section 25-1223.

Source: G.S.1873, c. 58, § 459, p. 824; R.S.1913, § 9099; C.S.1922, § 10124; C.S.1929, § 29-1901; R.S.1943, § 29-1901; Laws 1990, LB 87, § 3; Laws 1992, LB 435, § 1; Laws 1992, LB 1059, § 23; Laws 2017, LB509, § 5.

29-1903 Traffic, criminal, and juvenile cases; witness fees and mileage.

(1) The amount of the witness fee and mileage in traffic, criminal, and juvenile cases is governed by section 33-139.

(2) A witness in a traffic, criminal, or juvenile case shall be entitled to a witness fee and mileage after appearing in court in response to a subpoena. The clerk of the court shall immediately submit a claim for payment of witness fees and mileage on behalf of all such witnesses to the county clerk in cases involving a violation of state law or to the city clerk in cases involving a violation of a city ordinance. All witness fees and mileage paid by a defendant as part of the court costs ordered by the court to be paid shall be reimbursed to the county or city treasurer as appropriate.

(3) Any person accused of crime amounting to a misdemeanor or felony shall have compulsory process to enforce the attendance of witnesses in his or her behalf.

Source: G.S.1873, c. 58, § 461, p. 825; Laws 1885, c. 106, § 1, p. 394; R.S.1913, § 9101; C.S.1922, § 10126; C.S.1929, § 29-1903; R.S. 1943, § 29-1903; Laws 1981, LB 204, § 40; Laws 2017, LB509, § 6.

(c) DISCOVERY

29-1912 Request by defendant to inspect and make copies of evidence; granted; when; findings; possibility of harm; effect.

(1) When a defendant is charged with a felony or when a defendant is charged with a misdemeanor or a violation of a city or village ordinance for which imprisonment is a possible penalty, he or she may request the court where the case is to be tried, at any time after the filing of the indictment, information, or complaint, to order the prosecuting attorney to permit the defendant to inspect and copy or photograph:

(a) The defendant's statement, if any. For purposes of this subdivision, statement includes any of the following which relate to the investigation of the underlying charge or charges in the case and which were developed or received by law enforcement agencies:

(i) Written or recorded statements;

(ii) Written summaries of oral statements; and

(iii) The substance of oral statements;

(b) The defendant's prior criminal record, if any;

(c) The defendant's recorded testimony before a grand jury;

(d) The names and addresses of witnesses on whose evidence the charge is based;

(e) The results and reports, in any form, of physical or mental examinations, and of scientific tests, or experiments made in connection with the particular case, or copies thereof;

(f) Documents, papers, books, accounts, letters, photographs, objects, or other tangible things of whatsoever kind or nature which could be used as evidence by the prosecuting authority; and

(g) Reports developed or received by law enforcement agencies when such reports directly relate to the investigation of the underlying charge or charges in the case.

(2) The court may issue such an order pursuant to the provisions of this section. In the exercise of its judicial discretion, the court shall consider, among other things, whether:

(a) The request is material to the preparation of the defense;

(b) The request is not made primarily for the purpose of harassing the prosecution or its witnesses;

(c) The request, if granted, would not unreasonably delay the trial of the offense and an earlier request by the defendant could not have reasonably been made;

(d) There is no substantial likelihood that the request, if granted, would preclude a just determination of the issues at the trial of the offense; or

(e) The request, if granted, would not result in the possibility of bodily harm to, or coercion of, witnesses.

(3) Whenever the court refuses to grant an order pursuant to the provisions of this section, it shall render its findings in writing together with the facts upon which the findings are based.

(4) Whenever the prosecuting attorney believes that the granting of an order under the provisions of this section will result in the possibility of bodily harm to witnesses or that witnesses will be coerced, the court may permit him or her to make such a showing in the form of a written statement to be inspected by the court alone. The statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal by the defendant.

(5) This section does not apply to jailhouse informants as defined in section 29-4701. Sections 29-4701 to 29-4706 govern jailhouse informants.

Source: Laws 1969, c. 235, § 1, p. 867; Laws 1983, LB 110, § 1; Laws 2009, LB63, § 25; Laws 2010, LB771, § 17; Laws 2019, LB352, § 7; Laws 2019, LB496, § 4.

29-1914 Discovery order; limitation.

Whenever an order is issued pursuant to the provisions of section 29-1912 or 29-1913, it shall be limited to items or information that:

(1) Directly relate to the investigation of the underlying charge or charges in the case;

(2) Are within the possession, custody, or control of the state or local subdivisions of government; and

(3) Are known to exist by the prosecution or that, by the exercise of due diligence, may become known to the prosecution.

Source: Laws 1969, c. 235, § 3, p. 869; Laws 2019, LB496, § 5.

29-1916 Discovery order; reciprocity to prosecution; waiver of privilege of self-incrimination.

(1) Whenever the court issues an order pursuant to the provisions of sections 29-1912 and 29-1913, the court may condition its order by requiring the defendant to grant the prosecution like access to comparable items or information included within the defendant's request which:

(a) Are in the possession, custody, or control of the defendant;

(b) The defendant intends to produce at the trial; and

(c) Are material to the preparation of the prosecution's case.

(2) Whenever a defendant is granted an order under sections 29-1912 to 29-1921, the defendant shall be deemed to have waived the privilege of self-incrimination for the purposes of the operation of this section.

Source: Laws 1969, c. 235, § 5, p. 869; Laws 2019, LB496, § 6.

29-1917 Deposition of witness or sexual assault victim; when; procedure; use at trial.

(1) Except as provided in section 29-1926, at any time after the filing of an indictment or information in a felony prosecution, the prosecuting attorney or the defendant may request the court to allow the taking of a deposition of any person other than the defendant who may be a witness in the trial of the offense. The court may order the taking of the deposition when it finds the testimony of the witness:

(a) May be material or relevant to the issue to be determined at the trial of the offense; or

(b) May be of assistance to the parties in the preparation of their respective cases.

(2) An order granting the taking of a deposition shall include the time and place for taking such deposition and such other conditions as the court determines to be just.

(3) Except as provided in subsection (4) of this section, the proceedings in taking the deposition of a witness pursuant to this section and returning it to the court shall be governed in all respects as the taking of depositions in civil cases, including section 25-1223.

(4)(a) A sexual assault victim may request to have an advocate of the victim's choosing present during a deposition under this section. The prosecuting attorney shall inform the victim that the victim may make such request as soon as reasonably practicable prior to the deposition. If the victim wishes to have an advocate present, the victim shall, if reasonably practicable, inform the prosecuting attorney if an advocate will be present, and, if known, the advocate's identity and contact information. If so informed by the victim, the prosecuting attorney shall notify the defendant as soon as reasonably practicable.

(b) An advocate present at a deposition under this section shall not interfere with the deposition or provide legal advice.

(c) For purposes of this subsection, the terms sexual assault victim, victim, and advocate have the same meanings as in section 29-4309.

(5) A deposition taken pursuant to this section may be used at the trial by any party solely for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

Source: Laws 1969, c. 235, § 6, p. 870; Laws 1988, LB 90, § 2; Laws 1993, LB 178, § 1; Laws 2011, LB667, § 6; Laws 2019, LB496, § 7; Laws 2020, LB43, § 10.

Cross References

Child victim or child witness, use of videotape deposition, see section 29-1926.

29-1918 Discovery of additional evidence; notify other party and court.

If, subsequent to compliance with an order for discovery under the provisions of sections 29-1912 to 29-1921, and prior to or during trial, a party discovers additional material which the party would have been under a duty to disclose or produce at the time of such previous compliance, the party shall promptly notify the other party or the other party's attorney and the court of the existence of the additional material. Such notice shall be given at the time of the discovery of such additional material.

Source: Laws 1969, c. 235, § 7, p. 870; Laws 2019, LB496, § 8.

29-1919 Discovery; failure to comply; effect.

If, at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with sections 29-1912 to 29-1921 or an order issued pursuant to sections 29-1912 to 29-1921, the court may:

(1) Order such party to permit the discovery or inspection of materials not previously disclosed;

(2) Grant a continuance;

(3) Prohibit the party from calling a witness not disclosed or introducing in evidence the material not disclosed; or

(4) Enter such other order as it deems just under the circumstances.

Source: Laws 1969, c. 235, § 8, p. 870; Laws 2019, LB496, § 9.

29-1923 Additional statement of defendant or name of eyewitness; prosecutor; notification required; failure to comply; effect.

If, subsequent to compliance with an order issued pursuant to section 29-1922, and prior to or during trial, the prosecuting authority discovers any additional statement made by the defendant or the name of any eyewitness who has identified the defendant at a lineup or showup previously requested or ordered which is subject to discovery or inspection under section 29-1922, he or she shall promptly notify the defendant or his or her attorney or the court of the existence of this additional material. Such notice shall be given at the time of the discovery of such additional material. If at any time during the course of the proceedings it is brought to the attention of the court that the prosecuting authority has failed to comply with this section or with an order issued pursuant to section 29-1922, the court may order the prosecuting authority to permit the discovery or inspection of materials or witnesses not previously

disclosed, grant a continuance, or prohibit the prosecuting authority from introducing in evidence the material or the testimony of the witness or witnesses not disclosed, or it may enter such other order as it deems just under the circumstances.

Source: Laws 1969, c. 230, § 2, p. 857; Laws 1983, LB 110, § 4; Laws 2019, LB496, § 10.

29-1924 Statement, defined.

For purposes of sections 29-1922 and 29-1923, statement made by the defendant includes any of the following statements made by the defendant which relate to the investigation of the underlying charge or charges in the case and which were developed or received by law enforcement agencies:

(1) Written or recorded statements;

(2) Written summaries of oral statements; and

(3) The substance of oral statements.

Source: Laws 1969, c. 230, § 3, p. 858; Laws 1983, LB 110, § 5; Laws 2019, LB496, § 11.

29-1926 Child victim or child witness; video deposition and in camera testimony; conditions; use; findings by court; release; procedure; violation; penalty.

(1)(a) Upon request of the prosecuting or defense attorney and upon a showing of compelling need, the court shall order the taking of a video deposition of a child victim of or child witness to any offense punishable as a felony. The deposition ordinarily shall be in lieu of courtroom or in camera testimony by the child. If the court orders a video deposition, the court shall:

(i) Designate the time and place for taking the deposition. The deposition may be conducted in the courtroom, the judge's chambers, or any other location suitable for video recording;

(ii) Assure adequate time for the defense attorney to complete discovery before taking the deposition; and

(iii) Preside over the taking of the video deposition in the same manner as if the child were called as a witness for the prosecution during the course of the trial.

(b) Unless otherwise required by the court, the deposition shall be conducted in the presence of the prosecuting attorney, the defense attorney, the defendant, and any other person deemed necessary by the court, including the parent or guardian of the child victim or child witness, an advocate as defined in section 29-4309, or a counselor or other person with whom the child is familiar. Such parent, guardian, advocate, counselor, or other person shall be allowed to sit with or near the child unless the court determines that such person would be disruptive to the child's testimony.

(c) At any time subsequent to the taking of the original video deposition and upon sufficient cause shown, the court shall order the taking of additional video depositions to be admitted at the time of the trial.

(d) If the child testifies at trial in person rather than by video deposition, the taking of the child's testimony may, upon request of the prosecuting attorney and upon a showing of compelling need, be conducted in camera.

(e) Unless otherwise required by the court, the child shall testify in the presence of the prosecuting attorney, the defense attorney, the defendant, and any other person deemed necessary by the court, including the parent or guardian of the child victim or child witness, an advocate as defined in section 29-4309, or a counselor or other person with whom the child is familiar. Such parent, guardian, advocate, counselor, or other person shall be allowed to sit with or near the child unless the court determines that such person would be disruptive to the child's testimony. Unless waived by the defendant, all persons in the room shall be visible on camera except the camera operator.

(f) If deemed necessary to preserve the constitutionality of the child's testimony, the court may direct that during the testimony the child shall at all times be in a position to see the defendant live or on camera.

(g) For purposes of this section, child means a person eleven years of age or younger at the time the motion to take the deposition is made or at the time of the taking of in camera testimony at trial.

(h) Nothing in this section shall restrict the court from conducting the pretrial deposition or in camera proceedings in any manner deemed likely to facilitate and preserve a child's testimony to the fullest extent possible, consistent with the right to confrontation guaranteed in the Sixth Amendment of the Constitution of the United States and Article I, section 11, of the Nebraska Constitution. In deciding whether there is a compelling need that child testimony accommodation is required by pretrial video deposition, in camera live testimony, in camera video testimony, or any other accommodation, the court shall make particularized findings on the record of:

(i) The nature of the offense;

(ii) The significance of the child's testimony to the case;

(iii) The likelihood of obtaining the child's testimony without modification of trial procedure or with a different modification involving less substantial digression from trial procedure than the modification under consideration;

(iv) The child's age;

(v) The child's psychological maturity and understanding; and

(vi) The nature, degree, and duration of potential injury to the child from testifying.

(i) The court may order an independent examination by a psychologist or psychiatrist if the defense attorney requests the opportunity to rebut the showing of compelling need produced by the prosecuting attorney. Such examination shall be conducted in the child's county of residence.

(j) After a finding of compelling need by the court, neither party may call the child witness to testify as a live witness at the trial before the jury unless that party demonstrates that the compelling need no longer exists.

(k) Nothing in this section shall limit the right of access of the media or the public to open court.

(l) Nothing in this section shall preclude discovery by the defendant as set forth in section 29-1912.

(m) The Supreme Court may adopt and promulgate rules of procedure to administer this section, which rules shall not be in conflict with laws governing such matters.

(2)(a) No custodian of a video recording of a child victim or child witness alleging, explaining, denying, or describing an act of sexual assault pursuant to section 28-319, 28-319.01, or 28-320.01 or child abuse pursuant to section 28-707 as part of an investigation or evaluation of the abuse or assault shall release or use a video recording or copies of a video recording or consent, by commission or omission, to the release or use of a video recording or copies of a video recording to or by any other party without a court order, notwithstanding the fact that the child victim or child witness has consented to the release or use of the video recording or that the release or use is authorized under law, except as provided in section 28-730 or pursuant to an investigation under the Office of Inspector General of Nebraska Child Welfare Act. Any custodian may release or consent to the release or use of a video recording or copies of a video recording to law enforcement agencies or agencies authorized to prosecute such abuse or assault cases on behalf of the state.

(b) The court order may govern the purposes for which the video recording may be used, the reproduction of the video recording, the release of the video recording to other persons, the retention and return of copies of the video recording, and any other requirements reasonably necessary for the protection of the privacy and best interests of the child victim or child witness.

(c)(i) Pursuant to section 29-1912, the defendant described in the video recording may petition the district court in the county where the alleged offense took place or where the custodian of the video recording resides for an order requiring the custodian of the video recording to provide a physical copy to the defendant or the defendant's attorney. Such order shall include a protective order prohibiting further distribution of the video recording without a court order.

(ii) Upon obtaining the copy of the video recording pursuant to subdivision (2)(c)(i) of this section, the defendant or the defendant's attorney may request that the recording be transcribed by filing a motion with the court identifying the court reporter or transcriber and the address or location where the transcription will occur. Upon receipt of such request, the court shall enter an order authorizing the distribution of a copy of the video recording to such reporter or transcriber and requiring the copy of the video recording be returned by the reporter or transcriber upon completion of the transcription. Such order may include a protective order related to the distribution of the video recording or information contained in the video recording, including an order that identifying information of the child victim or child witness be redacted from the transcript prepared pursuant to this subsection. Upon return of such copy, the defendant or the defendant's attorney shall certify to the court and the parties that such copy has been returned.

(iii) After obtaining the copy of the video recording pursuant to subdivision (2)(c)(i) of this section, the defendant or the defendant's attorney may file a motion with the court requesting permission to release such copy to an expert or investigator. If the defendant or the defendant's attorney believes that including the name or identifying information of such expert or investigator will prejudice the defendant, the court shall permit the defendant or the defendant's attorney to include such information in the form of a written statement to be inspected by the court alone. The statement shall be sealed and preserved in the records of the court. Upon granting such motion, the court shall enter an order authorizing the distribution of a copy of the video recording to such expert or investigator and requiring the copy of the video

recording be returned by the expert or investigator upon the completion of services of the expert or investigator. The order shall not include the name or identifying information of the expert or investigator. Such order may include a protective order related to the distribution of the video recording or information contained in the video recording. Upon return of such copy, the defendant or the defendant's attorney shall certify to the court and the parties that such copy has been returned. Such certification shall not include the name or identifying information of the expert or the investigator.

(d) Any person who releases or uses a video recording except as provided in this section shall be guilty of a Class I misdemeanor.

Source: Laws 1988, LB 90, § 3; Laws 1997, LB 643, § 1; Laws 2006, LB 1199, § 12; Laws 2015, LB347, § 1; Laws 2020, LB43, § 11; Laws 2020, LB1148, § 8.

Cross References

Office of Inspector General of Nebraska Child Welfare Act, see section 43-4301.

ARTICLE 20
TRIAL

Section
29-2001. Trial; presence of accused required; exceptions.
29-2003. Joint indictment; special venire; when required; how drawn.
29-2004. Jury; how drawn and selected; alternate jurors.
29-2005. Peremptory challenges.
29-2006. Challenges for cause.
29-2011. Jurors; permitted to take notes; use; destruction.
29-2011.02. Witnesses; refusal to testify or provide information; court order for testimony or information; limitation on use.
29-2011.03. Order for testimony or information of witness; request; when.
29-2017. Jury; view place of occurrence of material fact; restrictions.
29-2020. Bill of exceptions by defendant; request; procedure; exception in capital cases.
29-2023. Jury; discharged before verdict; effect; record.
29-2027. Verdict in trials for murder; conviction by confession; sentencing procedure.

29-2001 Trial; presence of accused required; exceptions.

No person indicted for a felony shall be tried unless personally present during the trial. Persons indicted for a misdemeanor may, at their own request, by leave of the court be put on trial in their absence. The request shall be in writing and entered on the record of the court.

Source: G.S.1873, c. 58, § 464, p. 825; R.S.1913, § 9104; C.S.1922, § 10129; C.S.1929, § 29-2001; R.S.1943, § 29-2001; Laws 2018, LB193, § 57.

29-2003 Joint indictment; special venire; when required; how drawn.

When two or more persons have been charged together in the same indictment or information with a crime, and one or more have demanded a separate trial and had the same, and when the court is satisfied by reason of the same evidence being required in the further trial of parties to the same indictment or information, that the petit jurors from the jury panel and bystanders are incompetent, because of having heard the evidence, to sit in further causes in

the same indictment or information, then the court may require the jury commissioner to draw in the same manner as described in section 25-1656 such number of names as the court may direct as a separate jury panel from which a jury may be selected, which panel shall be notified and summoned for the day and hour as ordered by the court. The jurors whose names are so drawn shall be summoned to forthwith appear before the court, and, after having been examined, such as are found qualified and have no lawful excuse for not serving as jurors shall constitute a special venire from which the court shall proceed to have a jury impaneled for the trial of the cause. The court may repeat the exercise of this power until all the parties charged in the same indictment or information have been tried.

Source: Laws 1881, c. 34, § 1, p. 213; R.S.1913, § 9106; C.S.1922, § 10131; C.S.1929, § 29-2003; R.S.1943, § 29-2003; Laws 2020, LB387, § 42.

29-2004 Jury; how drawn and selected; alternate jurors.

(1) All parties may stipulate that the jury may be selected up to thirty-one days prior to the date of trial. The stipulation must be unanimous among all parties and evidenced by a joint stipulation to the county court.

(2) In all cases, except as may be otherwise expressly provided, the accused shall be tried by a jury drawn, summoned, and impaneled according to provisions of the code of civil procedure, except that whenever in the opinion of the court the trial is likely to be a protracted one, the court may, immediately after the jury is impaneled and sworn, direct the calling of additional jurors, to be known as alternate jurors.

(3)(a) The court may impanel up to six alternate jurors to replace any jurors who are unable to perform or who are disqualified from performing their duties.

(b) Alternate jurors must have the same qualifications and shall be selected and sworn in the same manner as any other juror.

(c) Unless a party objects, alternate jurors shall replace jurors in the same sequence in which the alternates were selected. An alternate juror who replaces a juror has the same authority as the other jurors.

(4) The alternate jurors shall take the proper oath or affirmation and shall be seated near the regular jurors with equal facilities for seeing and hearing the proceedings in the cause, and shall attend at all times upon the trial of the cause in company with the regular jurors. They shall obey all orders and admonitions of the court, and if the regular jurors are ordered to be kept in the custody of an officer during the trial of the cause, the alternate jurors shall also be kept with the other jurors.

(5)(a) The court may retain alternate jurors after the jury retires to deliberate, except that if an information charging a violation of section 28-303 and in which the death penalty is sought contains a notice of aggravation, the alternate jurors shall be retained as provided in section 29-2520.

(b) The court shall ensure that a retained alternate does not discuss the case with anyone until that alternate replaces a juror or is discharged. If an alternate replaces a juror after deliberations have begun, the court shall instruct the jury to begin its deliberations anew.

(6)(a) Each party is entitled to the following number of additional peremptory challenges to prospective alternate jurors:

(i) One additional peremptory challenge is permitted when one or two alternates are impaneled;

(ii) Two additional peremptory challenges are permitted when three or four alternates are impaneled; and

(iii) Three additional peremptory challenges are permitted when five or six alternates are impaneled.

(b) The additional peremptory challenges provided in this subsection may only be used to remove alternate jurors.

(7) In construing and applying this section, courts shall consider Federal Rule of Criminal Procedure 24 and case law interpreting such rule.

Source: G.S.1873, c. 58, § 466, p. 825; R.S.1913, § 9107; C.S.1922, § 10132; C.S.1929, § 29-2004; Laws 1933, c. 38, § 1, p. 242; C.S.Supp.,1941, § 29-2004; R.S.1943, § 29-2004; Laws 1996, LB 1249, § 2; Laws 2002, Third Spec. Sess., LB 1, § 6; Laws 2015, LB268, § 14; Referendum 2016, No. 426; Laws 2020, LB881, § 20.

Cross References

Change of venue, criminal case pending in county with population of four thousand or less without adequate facilities for jury trials, see section 25-412.01.
For drawing and selection of jurors, see Jury Selection Act, section 25-1644.

29-2005 Peremptory challenges.

Except as otherwise provided in section 29-2004 for peremptory challenges to alternate jurors:

(1) Every person arraigned for any crime punishable with death, or imprisonment for life, shall be admitted on his or her trial to a peremptory challenge of twelve jurors, and no more;

(2) Every person arraigned for any offense that may be punishable by imprisonment for a term exceeding eighteen months and less than life, shall be admitted to a peremptory challenge of six jurors;

(3) In all other criminal trials, the defendant shall be allowed a peremptory challenge of three jurors; and

(4) The attorney prosecuting on behalf of the state shall be admitted to a peremptory challenge of twelve jurors in all cases when the offense is punishable with death or imprisonment for life, six jurors when the offense is punishable by imprisonment for a term exceeding eighteen months and less than life, and three jurors in all other cases.

Source: G.S.1873, c. 58, § 467, p. 826; R.S.1913, § 9108; Laws 1915, c. 166, § 1, p. 337; C.S.1922, § 10133; C.S.1929, § 29-2005; Laws 1933, c. 38, § 2, p. 243; C.S.Supp.,1941, § 29-2005; R.S.1943, § 29-2005; Laws 1981, LB 213, § 1; Laws 2015, LB268, § 15; Referendum 2016, No. 426; Laws 2020, LB881, § 21.

29-2006 Challenges for cause.

The following shall be good causes for challenge to any person called as a juror or alternate juror, on the trial of any indictment: (1) That he was a

member of the grand jury which found the indictment; (2) that he has formed or expressed an opinion as to the guilt or innocence of the accused; *Provided*, if a juror or alternate juror shall state that he has formed or expressed an opinion as to the guilt or innocence of the accused, the court shall thereupon proceed to examine, on oath, such juror or alternate juror as to the ground of such opinion; and if it shall appear to have been founded upon reading newspaper statements, communications, comments or reports, or upon rumor or hearsay, and not upon conversations with witnesses of the transactions or reading reports of their testimony or hearing them testify, and the juror or alternate juror shall say on oath that he feels able, notwithstanding such opinion, to render an impartial verdict upon the law and the evidence, the court, if satisfied that such juror or alternate juror is impartial and will render such verdict, may, in its discretion, admit such juror or alternate juror as competent to serve in such case; (3) in indictments for an offense the punishment whereof is capital, that his opinions are such as to preclude him from finding the accused guilty of an offense punishable with death; (4) that he is a relation within the fifth degree to the person alleged to be injured or attempted to be injured, or to the person on whose complaint the prosecution was instituted, or to the defendant; (5) that he has served on the petit jury which was sworn in the same cause against the same defendant and which jury either rendered a verdict which was set aside or was discharged, after hearing the evidence; (6) that he has served as a juror in a civil case brought against the defendant for the same act; (7) that he has been in good faith subpoenaed as a witness in the case; (8) that he is a habitual drunkard; (9) the same challenges shall be allowed in criminal prosecutions that are allowed to parties in civil cases.

Source: G.S.1873, c. 58, § 468, p. 826; R.S.1913, § 9109; C.S.1922, § 10134; C.S.1929, § 29-2006; Laws 1933, c. 38, § 3, p. 243; C.S.Supp.,1941, § 29-2006; R.S.1943, § 29-2006; Laws 2015, LB268, § 16; Referendum 2016, No. 426.

Note: The changes made to section 29-2006 by Laws 2015, LB 268, section 16, have been omitted because of the vote on the referendum at the November 2016 general election.

29-2011 Jurors; permitted to take notes; use; destruction.

Jurors shall be permitted, but not required, to take notes. The notes may be used during the jury's deliberations and shall be treated as confidential between the juror making them and the other jurors. The trial judge shall ensure the confidentiality of the notes during the course of the trial and the jury's deliberations and shall instruct the bailiff to immediately mutilate and destroy such notes upon return of the verdict.

Source: Laws 2008, LB1014, § 72; Laws 2020, LB387, § 43.

29-2011.02 Witnesses; refusal to testify or provide information; court order for testimony or information; limitation on use.

Whenever a witness refuses, on the basis of the privilege against self-incrimination, to testify or to provide other information in a criminal proceeding or investigation before a court, a grand jury, the Auditor of Public Accounts, the Legislative Council, or a standing committee or a special legislative investigative or oversight committee of the Legislature, the court, on motion of the county attorney, other prosecuting attorney, Auditor of Public Accounts, chairperson of the Executive Board of the Legislative Council, or chairperson of a standing or special committee of the Legislature, may order the witness to

testify or to provide other information. The witness may not refuse to comply with such an order of the court on the basis of the privilege against self-incrimination, but no testimony or other information compelled under the court's order or any information directly or indirectly derived from such testimony or other information may be used against the witness in any criminal case except in a prosecution for perjury, giving a false statement, or failing to comply with the order of the court.

Source: Laws 1982, LB 525, § 1; Laws 1990, LB 1246, § 12; Laws 2015, LB539, § 1; Laws 2020, LB681, § 1.

Cross References

Legislative Council, committee investigations, see sections 50-404 to 50-409.

29-2011.03 Order for testimony or information of witness; request; when.

The county attorney, other prosecuting attorney, Auditor of Public Accounts, or chairperson of the Executive Board of the Legislative Council or chairperson of a standing committee or a special legislative investigative or oversight committee of the Legislature upon an affirmative vote of a majority of the board or committee, may request an order pursuant to section 29-2011.02 when in such person's judgment:

(1) The testimony or other information from such individual may be necessary to the public interest; and

(2) Such individual has refused or is likely to refuse to testify or provide other information on the basis of the privilege against self-incrimination.

Source: Laws 1982, LB 525, § 2; Laws 1990, LB 1246, § 13; Laws 2015, LB539, § 2; Laws 2020, LB681, § 2.

29-2017 Jury; view place of occurrence of material fact; restrictions.

Whenever in the opinion of the court it is proper for the jury to have a view of the place in which any material fact occurred, it may order them to be conducted in a body, under charge of the bailiff, to the place which shall be shown to them by the bailiff, an individual appointed by the court, or both. While the jury are thus absent, no person other than the bailiff or individual appointed by the court shall speak to them on any subject connected with the trial.

Source: G.S.1873, c. 58, § 479, p. 829; R.S.1913, § 9120; C.S.1922, § 10145; C.S.1929, § 29-2017; R.S.1943, § 29-2017; Laws 2020, LB387, § 44.

29-2020 Bill of exceptions by defendant; request; procedure; exception in capital cases.

Except as provided in section 29-2525 for cases when the punishment is capital, in all criminal cases when a defendant feels aggrieved by any opinion or decision of the court, he or she may order a bill of exceptions. The ordering, preparing, signing, filing, correcting, and amending of the bill of exceptions shall be governed by the rules established in such matters in civil cases.

Source: G.S.1873, c. 58, § 482, p. 829; R.S.1913, § 9123; C.S.1922, § 10148; C.S.1929, § 29-2020; R.S.1943, § 29-2020; Laws 1959,

c. 120, § 1, p. 452; Laws 1961, c. 135, § 2, p. 390; Laws 1990, LB 829, § 1; Laws 2015, LB268, § 17; Referendum 2016, No. 426.

Note: The changes made to section 29-2020 by Laws 2015, LB 268, section 17, have been omitted because of the vote on the referendum at the November 2016 general election.

Cross References

Error proceedings by county attorney, decision on appeal, see section 29-2316.

29-2023 Jury; discharged before verdict; effect; record.

In case a jury is discharged on account of sickness of a juror, or other accident or calamity requiring their discharge, or after they have been kept so long together that there is no probability of agreeing, the court shall, upon directing the discharge, order that the reasons for such discharge be entered upon the record and such discharge shall be without prejudice to the prosecution.

Source: G.S.1873, c. 58, § 485, p. 830; R.S.1913, § 9126; C.S.1922, § 10151; C.S.1929, § 29-2023; R.S.1943, § 29-2023; Laws 2018, LB193, § 58; Laws 2020, LB387, § 45.

29-2027 Verdict in trials for murder; conviction by confession; sentencing procedure.

In all trials for murder the jury before whom such trial is had, if they find the prisoner guilty thereof, shall ascertain in their verdict whether it is murder in the first or second degree or manslaughter; and if such person is convicted by confession in open court, the court shall proceed by examination of witnesses in open court, to determine the degree of the crime, and shall pronounce sentence accordingly or as provided in sections 29-2519 to 29-2524 for murder in the first degree.

Source: G.S.1873, c. 58, § 489, p. 830; R.S.1913, § 9130; C.S.1922, § 10155; C.S.1929, § 29-2027; R.S.1943, § 29-2027; Laws 2002, Third Spec. Sess., LB 1, § 7; Laws 2015, LB268, § 18; Referendum 2016, No. 426.

Note: The changes made to section 29-2027 by Laws 2015, LB 268, section 18, have been omitted because of the vote on the referendum at the November 2016 general election.

ARTICLE 22

JUDGMENT ON CONVICTION

(a) JUDGMENT ON CONVICTION

(b) HABITUAL CRIMINALS

Section

(c) PROBATION

(d) COMMUNITY SERVICE

(e) RESTITUTION

(h) DEFERRED JUDGMENT

(a) JUDGMENT ON CONVICTION

29-2202 Verdict of guilty; judgment; when pronounced; suspension of sentence; when; bail.

Except as provided in sections 29-2292 to 29-2294 or 29-4801 to 29-4804, if the defendant has nothing to say, or if he or she shows no good and sufficient cause why judgment should not be pronounced, the court shall proceed to pronounce judgment as provided by law. The court, in its discretion, may for any cause deemed by it good and sufficient, suspend execution of sentence for a period not to exceed ninety days from the date judgment is pronounced. If the defendant is not at liberty under bail, he or she may be admitted to bail during the period of suspension of sentence as provided in section 29-901.

Source: G.S.1873, c. 58, § 496, p. 832; R.S.1913, § 9137; C.S.1922, § 10162; C.S.1929, § 29-2202; R.S.1943, § 29-2202; Laws 1951, c. 87, § 2, p. 251; Laws 2019, LB686, § 6; Laws 2024, LB253, § 9.
Operative date July 1, 2025.

Cross References

Bail, conditions, see sections 29-901 to 29-910.

29-2204 Sentence for felony other than Class III, IIIA, or IV felony; court; duties; study of offender; when; defendant under eighteen years of age; disposition.

(1) Except when a term of life imprisonment is required by law, in imposing a sentence upon an offender for any class of felony other than a Class III, IIIA, or IV felony, the court shall fix the minimum and the maximum terms of the sentence to be served within the limits provided by law. The maximum term shall not be greater than the maximum limit provided by law, and:

(a) The minimum term fixed by the court shall be any term of years less than the maximum term imposed by the court; or

(b) The minimum term shall be the minimum limit provided by law.

(2) When a maximum term of life is imposed by the court for a Class IB felony, the minimum term fixed by the court shall be:

(a) Any term of years not less than the minimum limit provided by law; or

(b) A term of life imprisonment.

(3) When a maximum term of life is imposed by the court for a Class IA felony, the minimum term fixed by the court shall be:

(a) A term of life imprisonment; or

(b) Any term of years not less than the minimum limit provided by law after consideration of the mitigating factors in section 28-105.02, if the defendant was under eighteen years of age at the time he or she committed the crime for which he or she was convicted.

(4) When the court is of the opinion that imprisonment may be appropriate but desires more detailed information as a basis for determining the sentence to be imposed than has been provided by the presentence report required by section 29-2261, the court may commit an offender to the Department of Correctional Services. During that time, the department shall conduct a complete study of the offender as provided in section 29-2204.03.

(5) Except when a term of life is required by law, whenever the defendant was under eighteen years of age at the time he or she committed the crime for which he or she was convicted, the court may, in its discretion, instead of imposing the penalty provided for the crime, make such disposition of the defendant as the court deems proper under the Nebraska Juvenile Code.

(6)(a) When imposing an indeterminate sentence upon an offender under this section, the court shall:

(i) Advise the offender on the record the time the offender will serve on his or her minimum term before attaining parole eligibility assuming that no good time for which the offender will be eligible is lost; and

(ii) Advise the offender on the record the time the offender will serve on his or her maximum term before attaining mandatory release assuming that no good time for which the offender will be eligible is lost.

(b) If any discrepancy exists between the statement of the minimum limit of the sentence and the statement of parole eligibility or between the statement of the maximum limit of the sentence and the statement of mandatory release, the

statements of the minimum limit and the maximum limit shall control the calculation of the offender's term.

(c) If the court imposes more than one sentence upon an offender or imposes a sentence upon an offender who is at that time serving another sentence, the court shall state whether the sentences are to be concurrent or consecutive.

Source: G.S.1873, c. 58, § 498, p. 832; R.S.1913, § 9140; C.S.1922, § 10165; C.S.1929, § 29-2205; R.S.1943, § 29-2204; Laws 1974, LB 620, § 7; Laws 1988, LB 790, § 3; Laws 1993, LB 31, § 9; Laws 1993, LB 529, § 1; Laws 1993, LB 627, § 1; Laws 1994, LB 988, § 8; Laws 1995, LB 371, § 12; Laws 1997, LB 364, § 14; Laws 1998, LB 1073, § 10; Laws 2002, Third Spec. Sess., LB 1, § 8; Laws 2011, LB12, § 2; Laws 2013, LB561, § 2; Laws 2015, LB268, § 19; Laws 2015, LB605, § 60; Referendum 2016, No. 426.

Note: The changes made to section 29-2204 by Laws 2015, LB 268, section 19, have been omitted because of the vote on the referendum at the November 2016 general election.

Cross References

Nebraska Juvenile Code, see section 43-2,129.

29-2206 Fine and costs; commitment until paid; installments; deduction from bond; suspension or revocation of motor vehicle operator's license.

(1)(a) In all cases in which courts or magistrates have now or may hereafter have the power to punish offenses, either in whole or in part, by requiring the offender to pay fines or costs, or both, such courts or magistrates may make it a part of the sentence that the party stand committed and be imprisoned in the jail of the proper county until the fines or costs are paid or secured to be paid or the offender is otherwise discharged according to law if the court or magistrate determines that the offender has the financial ability to pay such fines or costs. The court or magistrate may make such determination at the sentencing hearing or at a separate hearing prior to sentencing. A separate hearing shall not be required. In making such determination, the court or magistrate may consider the information or evidence adduced in an earlier proceeding pursuant to section 29-3902, 29-3903, 29-3906, or 29-3916. At any such hearing, the offender shall have the opportunity to present information as to his or her income, assets, debts, or other matters affecting his or her financial ability to pay. Following such hearing and prior to imposing sentence, the court or magistrate shall determine the offender's financial ability to pay the fines or costs, including his or her financial ability to pay in installments under subsection (2) of this section.

(b) If the court or magistrate determines that the offender is financially able to pay the fines or costs and the offender refuses to pay, the court or magistrate may:

(i) Make it a part of the sentence that the offender stand committed and be imprisoned in the jail of the proper county until the fines or costs are paid or secured to be paid or the offender is otherwise discharged according to law; or

(ii) Order the offender, in lieu of paying such fines or costs, to complete community service for a specified number of hours pursuant to sections 29-2277 to 29-2279.

(c) If the court or magistrate determines that the offender is financially unable to pay the fines or costs, the court or magistrate:

(i) Shall either:

(A) Impose a sentence without such fines or costs; or

(B) Enter an order pursuant to subdivision (1)(d) of this section discharging the offender of such fines or costs; and

(ii) May order, as a term of the offender's sentence or as a condition of probation, that he or she complete community service for a specified number of hours pursuant to sections 29-2277 to 29-2279.

(d) An order discharging the offender of any fines or costs shall be set forth in or accompanied by a judgment entry. Such order shall operate as a complete release of such fines or costs.

(2) If the court or magistrate determines, pursuant to subsection (1) of this section, that an offender is financially unable to pay such fines or costs in one lump sum but is financially capable of paying in installments, the court or magistrate shall make arrangements suitable to the court or magistrate and to the offender by which the offender may pay in installments. The court or magistrate shall enter an order specifying the terms of such arrangements and the dates on which payments are to be made. When the judgment of conviction provides for the suspension or revocation of a motor vehicle operator's license and the court authorizes the payment of fines or costs by installments, the revocation or suspension shall be effective as of the date of judgment.

(3) As an alternative to a lump-sum payment or as an alternative or in conjunction with installment payments, the court or magistrate may deduct costs from a bond posted by the offender to the extent that such bond is not otherwise encumbered by a valid lien, levy, execution, or assignment to counsel of record or the person who posted the bond. As an alternative to a lump-sum payment or as an alternative or in conjunction with installment payments, the court or magistrate may, with the consent of the offender, deduct fines from a bond posted by the offender to the extent that such bond is not otherwise encumbered by a valid lien, levy, execution, or assignment to counsel of record or the person who posted the bond.

Source: G.S.1873, c. 58, § 500, p. 833; R.S.1913, § 9142; C.S.1922, § 10167; C.S.1929, § 29-2207; R.S.1943, § 29-2206; Laws 1971, LB 1010, § 2; Laws 1974, LB 966, § 1; Laws 1979, LB 111, § 1; Laws 1988, LB 370, § 6; Laws 2012, LB722, § 1; Laws 2017, LB259, § 5; Laws 2020, LB881, § 23.

29-2206.01 Fine and costs; payment of installments; violation; penalty; hearing.

Installments provided for in section 29-2206 shall be paid pursuant to the order entered by the court or magistrate. Any person who fails to comply with the terms of such order shall be liable for punishment for contempt, unless such person has the leave of the court or magistrate in regard to such noncompliance or such person requests a hearing pursuant to section 29-2412 and establishes at such hearing that he or she is financially unable to pay.

Source: Laws 1971, LB 1010, § 3; Laws 2017, LB259, § 6.

29-2208 Fines or costs; person financially unable to pay; hearing; determination; court or magistrate; powers; order; operate as release.

(1) A person who has been ordered to pay fines or costs and who has not been arrested or brought into custody as described in subdivision (1)(a) of section 29-2412 but who believes himself or herself to be financially unable to pay such fines or costs may request a hearing to determine such person's financial ability to pay such fines or costs. The hearing shall be scheduled on the first regularly scheduled court date following the date of the request. Pending the hearing, the person shall not be arrested or brought into custody for failure to pay such fines or costs or failure to appear before a court or magistrate on the due date of such fines or costs.

(2) At the hearing, the person shall have the opportunity to present information as to his or her income, assets, debts, or other matters affecting his or her financial ability to pay. Following the hearing, the court or magistrate shall determine the person's financial ability to pay the fines or costs, including his or her financial ability to pay in installments as described in section 29-2206.

(3) If the court or magistrate determines that the person is financially able to pay the fines or costs and the person refuses to pay, the court or magistrate may:

(a) Deny the person's request for relief; or

(b) Enter an order pursuant to subsection (5) of this section discharging the person of such fines or costs and order the person to complete community service for a specified number of hours pursuant to sections 29-2277 to 29-2279.

(4) If the court or magistrate determines that the person is financially unable to pay the fines or costs, the court or magistrate:

(a) Shall either:

(i) Enter an order pursuant to subsection (5) of this section discharging the person of such fines or costs; or

(ii) If the person is subject to an order to pay installments pursuant to section 29-2206, the court or magistrate shall either enter an order pursuant to subsection (5) of this section discharging the person of such obligation or make any necessary modifications to the order specifying the terms of the installment payments as justice may require and that will enable the person to pay the fines or costs; and

(b) May order the person to complete community service for a specified number of hours pursuant to sections 29-2277 to 29-2279.

(5) An order discharging the person of fines or costs shall be set forth in or accompanied by a judgment entry. Such order shall operate as a complete release of such fines or costs.

Source: Laws 2017, LB259, § 12.

(b) HABITUAL CRIMINALS

29-2221 Habitual criminal, defined; procedure for determination; hearing; penalties; effect of pardon.

(1) Whoever has been twice convicted of a crime, sentenced, and committed to prison, in this or any other state or by the United States or once in this state and once at least in any other state or by the United States, for terms of not less than one year each shall, upon conviction of a felony committed in this state, be

deemed to be a habitual criminal and shall be punished by imprisonment in a Department of Correctional Services adult correctional facility for a mandatory minimum term of ten years and a maximum term of not more than sixty years, except that:

(a) If the felony committed is in violation of section 28-303, 28-304, 28-308, 28-313, 28-319, 28-319.01, 28-502, 28-929, or 28-1222, and at least one of the habitual criminal's prior felony convictions was for a violation of one of the sections listed in this subdivision or of a similar statute in another state or of the United States, the mandatory minimum term shall be twenty-five years and the maximum term not more than sixty years;

(b) If the felony committed is in violation of subsection (3) of section 28-306 and at least one of the prior convictions is in violation of subsection (3) of section 28-306 and the other is in violation of one of the sections set forth in subdivision (a) of this subsection or if the felony committed is in violation of one of the sections set forth in subdivision (a) of this subsection and both of the prior convictions are in violation of subsection (3) of section 28-306, the mandatory minimum term shall be twenty-five years and the maximum term not more than sixty years;

(c) If the felony committed and at least one of the prior felony convictions do not involve sexual contact, sexual penetration, the threat to inflict serious bodily injury or death on another person, the infliction of serious bodily injury on another person, a deadly or dangerous weapon, or a firearm, the mandatory minimum term shall be three years and the maximum term not more than the maximum term for the felony committed or twenty years, whichever is greater. For this subdivision (1)(c) to apply, no prior felony conviction may be a violation described in subdivision (1)(a) of this section; and

(d) If a greater punishment is otherwise provided by statute, the law creating the greater punishment shall govern.

(2) When punishment of an accused as a habitual criminal is sought, the facts with reference thereto shall be charged in the indictment or information which contains the charge of the felony upon which the accused is prosecuted, but the fact that the accused is charged with being a habitual criminal shall not be an issue upon the trial of the felony charge and shall not in any manner be disclosed to the jury. If the accused is convicted of a felony, before sentence is imposed a hearing shall be had before the court alone as to whether such person has been previously convicted of prior felonies. The court shall fix a time for the hearing and notice thereof shall be given to the accused at least three days prior thereto. At the hearing, if the court finds from the evidence submitted that the accused has been convicted two or more times of felonies and sentences imposed therefor by the courts of this or any other state or by the United States, the court shall sentence such person so convicted as a habitual criminal.

(3) If the person so convicted shows to the satisfaction of the court before which the conviction was had that he or she was released from imprisonment upon either of such sentences upon a pardon granted for the reason that he or she was innocent, such conviction and sentence shall not be considered as such under this section and section 29-2222.

Source: Laws 1921, c. 131, § 1, p. 543; C.S.1922, § 10177; C.S.1929, § 29-2217; Laws 1937, c. 68, § 1, p. 252; C.S.Supp.,1941, § 29-2217; R.S.1943, § 29-2221; Laws 1947, c. 105, § 1, p. 294;

Laws 1967, c. 179, § 1, p. 497; Laws 1993, LB 31, § 10; Laws 1995, LB 371, § 13; Laws 2006, LB 1199, § 14; Laws 2023, LB50, § 7.

(c) PROBATION

29-2243 Probation officers; performance metrics.

The office shall establish performance metrics for probation officers. Such metrics should measure efficacy in providing rehabilitative and reentry services to probationers. Such metrics should:

(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 probationers, 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 probationers, 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, § 24.
Effective date July 19, 2024.

29-2244 Assistant probation officers; pilot program; purpose; report.

(1) The probation administrator shall create a pilot program to hire additional assistant probation officers as provided in this section.

(2) The pilot program shall be limited to a single probation district.

(3) Assistant probation officers hired under this section shall assist probation officers in the supervision of high-risk caseloads.

(4) The purpose of the pilot program is to determine whether additional support for probation officers results in probationers completing their terms of probation with fewer violations.

(5) On or before June 1, 2024, the probation administrator shall electronically submit a report to the Judiciary Committee of the Legislature regarding the pilot program. The report shall include the total number of persons admitted into the pilot program, including demographic information, criminal history, and top needs according to the results of a risk assessment; conditions of supervision; the total number of violations of supervision conditions; the number of supervision discharges by type of discharge; and recidivism rates.

Source: Laws 2023, LB50, § 13.

29-2245 Probationer incentive program; pilot program; report.

(1) The probation administrator shall create a pilot program to establish a probationer incentive program as provided in this section.

(2) The pilot program shall be limited to a single probation district. Such district shall be chosen by the State Court Administrator.

(3) The pilot program shall establish an incentive fund to be used for the purchase of gift cards, vouchers, and other tangible rewards for probationers who are succeeding at probation, in order to encourage continued success and reduce recidivism. The incentives shall be awarded at the discretion of probation officers, subject to policies and guidelines of the office.

(4) On or before June 1, 2024, the probation administrator shall electronically submit a report to the Judiciary Committee of the Legislature regarding the pilot program.

Source: Laws 2023, LB50, § 14.

29-2246 Terms, defined.

For purposes of the Nebraska Probation Administration Act and sections 43-2,123.01 and 83-1,102 to 83-1,104, unless the context otherwise requires:

(1) Association means the Nebraska District Court Judges Association;

(2) Court means a district court, county court, or juvenile court as defined in section 43-245;

(3) Office means the Office of Probation Administration;

(4) Probation means a sentence under which a person found guilty of a crime upon verdict or plea or adjudicated delinquent or in need of special supervision is released by a court subject to conditions imposed by the court and subject to supervision. Probation includes post-release supervision and supervision ordered by a court pursuant to a deferred judgment under section 29-2292 or 29-4803;

(5) Probationer means a person sentenced to probation or post-release supervision;

(6) Probation officer means an employee of the system who supervises probationers and conducts presentence, predisposition, or other investigations as may be required by law or directed by a court in which he or she is serving or performs such other duties as authorized pursuant to section 29-2258, except unpaid volunteers from the community;

(7) Juvenile probation officer means any probation officer who supervises probationers of a separate juvenile court;

(8) Juvenile intake probation officer means an employee of the system who is called upon by a law enforcement officer in accordance with section 43-250 to make a decision regarding the furtherance of a juvenile's detention;

(9) Chief probation officer means the probation officer in charge of a probation district;

(10) System means the Nebraska Probation System;

(11) Administrator means the probation administrator;

(12) Non-probation-based program or service means a program or service established within the district, county, or juvenile courts and provided to individuals not sentenced to probation who have been charged with or convicted of a crime for the purpose of diverting the individual from incarceration or to provide treatment for issues related to the individual's criminogenic needs. Non-probation-based programs or services include, but are not limited to, problem solving courts established pursuant to section 24-1302 and the treatment of problems relating to substance abuse, mental health, sex offenses, or domestic violence;

(13) Post-release supervision means the portion of a split sentence following a period of incarceration under which a person found guilty of a crime upon verdict or plea is released by a court subject to conditions imposed by the court and subject to supervision by the office; and

(14) Rules and regulations means policies and procedures written by the office and approved by the Supreme Court.

Source: Laws 1971, LB 680, § 1; Laws 1972, LB 1051, § 1; Laws 1984, LB 13, § 61; Laws 1986, LB 529, § 32; Laws 2001, LB 451, § 1; Laws 2005, LB 538, § 5; Laws 2008, LB1014, § 18; Laws 2015, LB605, § 63; Laws 2016, LB919, § 3; Laws 2019, LB686, § 7; Laws 2024, LB253, § 10.
Operative date July 1, 2025.

29-2252 Probation administrator; duties.

The administrator shall:

(1) Supervise and administer the office;

(2) Establish and maintain policies, standards, and procedures for the system, with the concurrence of the Supreme Court;

(3) Prescribe and furnish such forms for records and reports for the system as shall be deemed necessary for uniformity, efficiency, and statistical accuracy;

(4) Establish minimum qualifications for employment as a probation officer in this state and establish and maintain such additional qualifications as he or she deems appropriate for appointment to the system. Qualifications for probation officers shall be established in accordance with subsection (4) of section 29-2253. An ex-offender released from a penal complex or a county jail may be appointed to a position of deputy probation or parole officer. Such ex-offender shall maintain a record free of arrests, except for minor traffic violations, for one year immediately preceding his or her appointment;

(5) Establish and maintain advanced periodic inservice training requirements for the system;

(6) Cooperate with all agencies, public or private, which are concerned with treatment or welfare of persons on probation. All information provided to the Nebraska Commission on Law Enforcement and Criminal Justice for the purpose of providing access to such information to law enforcement agencies through the state's criminal justice information system shall be provided in a manner that allows such information to be readily accessible through the main interface of the system;

(7) Organize and conduct training programs for probation officers. Training shall include the proper use of a risk and needs assessment, risk-based supervision strategies, relationship skills, cognitive behavioral interventions, community-based resources, criminal risk factors, and targeting criminal risk factors to reduce recidivism and the proper use of a matrix of administrative sanctions, custodial sanctions, and rewards developed pursuant to subdivision (18) of this section. All probation officers employed on or after August 30, 2015, shall complete the training requirements set forth in this subdivision;

(8) Collect, develop, and maintain statistical information concerning probationers, probation practices, and the operation of the system and provide the Community Corrections Division of the Nebraska Commission on Law Enforce-

ment and Criminal Justice with the information needed to compile the report required in section 47-624;

(9) Interpret the probation program to the public with a view toward developing a broad base of public support;

(10) Conduct research for the purpose of evaluating and improving the effectiveness of the system. Subject to the availability of funding, the administrator shall contract with an independent contractor or academic institution for evaluation of existing community corrections facilities and programs operated by the office;

(11) Adopt and promulgate such rules and regulations as may be necessary or proper for the operation of the office or system. The administrator shall adopt and promulgate rules and regulations for transitioning individuals on probation across levels of supervision and discharging them from supervision consistent with evidence-based practices. The rules and regulations shall ensure supervision resources are prioritized for individuals who are high risk to reoffend, require transitioning individuals down levels of supervision intensity based on assessed risk and months of supervision without a reported major violation, and establish incentives for earning discharge from supervision based on compliance;

(12) Transmit a report during each even-numbered year to the Supreme Court on the operation of the office for the preceding two calendar years which shall include a historical analysis of probation officer workload, including participation in non-probation-based programs and services. The report shall be transmitted by the Supreme Court to the Governor and the Clerk of the Legislature. The report submitted to the Clerk of the Legislature shall be submitted electronically;

(13) Administer the payment by the state of all salaries, travel, and expenses authorized under section 29-2259 incident to the conduct and maintenance of the office;

(14) Use the funds provided under section 29-2262.07 to augment operational or personnel costs associated with the development, implementation, and evaluation of enhanced probation-based programs and non-probation-based programs and services in which probation personnel or probation resources are utilized pursuant to an interlocal agreement authorized by subdivision (16) of this section and to purchase services to provide such programs aimed at enhancing adult probationer or non-probation-based program participant supervision in the community and treatment needs of probationers and non-probation-based program participants. Enhanced probation-based programs include, but are not limited to, specialized units of supervision, related equipment purchases and training, and programs that address a probationer's vocational, educational, mental health, behavioral, or substance abuse treatment needs;

(15) Ensure that any risk or needs assessment instrument utilized by the system be periodically validated;

(16) Have the authority to enter into interlocal agreements in which probation resources or probation personnel may be utilized in conjunction with or as part of non-probation-based programs and services. Any such interlocal agreement shall comply with section 29-2255;

(17) Collaborate with the Community Corrections Division of the Nebraska Commission on Law Enforcement and Criminal Justice and the Division of Parole Supervision to develop rules governing the participation of parolees in community corrections programs operated by the Office of Probation Administration;

(18) 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. As applicable under sections 29-2266.02 and 29-2266.03, custodial sanctions of up to thirty days in jail shall be designated as the most severe response to a violation in lieu of revocation and custodial sanctions of up to three days in jail shall be designated as the second most severe response;

(19) Adopt and promulgate rules and regulations for the creation of individualized post-release supervision plans, collaboratively with the Department of Correctional Services and county jails, for probationers sentenced to post-release supervision; and

(20) Exercise all powers and perform all duties necessary and proper to carry out his or her responsibilities.

Each member of the Legislature shall receive an electronic copy of the report required by subdivision (12) of this section by making a request for it to the administrator.

Source: Laws 1971, LB 680, § 7; Laws 1973, LB 126, § 2; Laws 1978, LB 625, § 9; Laws 1979, LB 322, § 9; Laws 1979, LB 536, § 6; Laws 1981, LB 545, § 6; Laws 1984, LB 13, § 65; Laws 1986, LB 529, § 37; Laws 1990, LB 663, § 16; Laws 1992, LB 447, § 5; Laws 2003, LB 46, § 5; Laws 2005, LB 538, § 7; Laws 2011, LB390, § 1; Laws 2012, LB782, § 32; Laws 2015, LB605, § 64; Laws 2016, LB1094, § 12; Laws 2018, LB841, § 2; Laws 2020, LB381, § 22; Laws 2023, LB50, § 8.

29-2257 Nebraska Probation System; established; duties; salary equalization.

The Nebraska Probation System is established which shall consist of the probation administrator, chief probation officers, probation officers, and support staff. The system shall be responsible for juvenile intake services, for preadjudication juvenile supervision services under section 43-254, for presentence and other probation investigations, for the direct supervision of persons placed on probation, and for non-probation-based programs and services authorized by an interlocal agreement pursuant to subdivision (16) of section 29-2252. The system shall be sufficient in size to assure that no probation officer carries a caseload larger than is compatible with adequate probation investigation or supervision. Probation officers shall be compensated with salaries substantially equal to other state employees who have similar responsibilities.

This provision for salary equalization shall apply only to probation officers and support staff and shall not apply to chief probation officers, the probation administrator, the chief deputy administrator, the deputy probation administrator, or any other similarly established management positions.

Source: Laws 1971, LB 680, § 12; Laws 1986, LB 529, § 39; Laws 1995, LB 371, § 14; Laws 2001, LB 451, § 3; Laws 2005, LB 538, § 8; Laws 2013, LB561, § 3; Laws 2024, LB1051, § 2.
Effective date July 19, 2024.

29-2258 District probation officer; duties; powers.

A district probation officer shall:

(1) Conduct juvenile intake interviews and investigations in accordance with sections 43-253 and 43-260.01 and supervise delivery of preadjudication juvenile services under subdivision (1)(f) of section 43-254;

(2) Make presentence and other investigations, as may be required by law or directed by a court in which he or she is serving;

(3) Supervise probationers in accordance with the rules and regulations of the office and the directions of the sentencing court;

(4) Advise the sentencing court, in accordance with the Nebraska Probation Administration Act and such rules and regulations of the office, of violations of the conditions of probation by individual probationers;

(5) Advise the sentencing court, in accordance with the rules and regulations of the office and the direction of the court, when the situation of a probationer may require a modification of the conditions of probation or when a probationer's adjustment is such as to warrant termination of probation;

(6) Provide each probationer with a statement of the period and conditions of his or her probation;

(7) Whenever necessary, exercise the power of arrest as provided in sections 29-2266.01 and 29-2266.02 or exercise the power of temporary custody as provided in section 43-286.01;

(8) Establish procedures for the direction and guidance of deputy probation officers under his or her jurisdiction and advise such officers in regard to the most effective performance of their duties;

(9) Supervise and evaluate deputy probation officers under his or her jurisdiction;

(10) Delegate such duties and responsibilities to a deputy probation officer as he or she deems appropriate;

(11) Make such reports as required by the administrator, the judges of the probation district in which he or she serves, or the Supreme Court;

(12) Keep accurate and complete accounts of all money or property collected or received from probationers and give receipts therefor;

(13) Cooperate fully with and render all reasonable assistance to other probation officers;

(14) In counties with a population of less than twenty-five thousand people, participate in pretrial diversion programs established pursuant to sections 29-3601 to 29-3604 and juvenile pretrial diversion programs established pursuant to sections 43-260.02 to 43-260.07 as requested by judges of the probation district in which he or she serves or as requested by a county attorney and approved by the judges of the probation district in which he or she serves, except that participation in such programs shall not require appointment of additional personnel and shall be consistent with the probation officer's current caseload;

(15) Participate, at the direction of the probation administrator pursuant to an interlocal agreement which meets the requirements of section 29-2255, in non-probation-based programs and services;

(16) Perform such other duties not inconsistent with the Nebraska Probation Administration Act or the rules and regulations of the office as a court may from time to time direct; and

(17) Exercise all powers and perform all duties necessary and proper to carry out his or her responsibilities.

Source: Laws 1971, LB 680, § 13; Laws 1979, LB 536, § 8; Laws 1986, LB 529, § 40; Laws 2001, LB 451, § 4; Laws 2003, LB 43, § 10; Laws 2005, LB 538, § 9; Laws 2010, LB800, § 6; Laws 2011, LB463, § 2; Laws 2013, LB561, § 4; Laws 2016, LB1094, § 15; Laws 2024, LB1051, § 3.
Effective date July 19, 2024.

29-2259 Probation administrator; office; salaries; expenses; office space; prepare budget; interpreter services.

(1) The salaries and expenses incident to the conduct and maintenance of the office shall be paid by the state. Other expenses shall be paid by the state as provided in sections 81-1174 to 81-1177.

(2) The salaries and travel expenses of the probation service shall be paid by the state. Travel expenses shall be paid as provided in sections 81-1174 to 81-1177.

(3) Except as provided in sections 29-2262 and 29-2262.04, the costs of drug testing and equipment incident to the electronic surveillance of individuals on probation shall be paid by the state.

(4) The expenses incident to the conduct and maintenance of the principal office within each probation district shall in the first instance be paid by the county in which it is located, but such county shall be reimbursed for such expenses by all other counties within the probation district to the extent and in the proportions determined by the Supreme Court based upon population, number of investigations, and probation cases handled or upon such other basis as the Supreme Court deems fair and equitable.

(5) Each county shall provide office space and necessary facilities for probation officers performing their official duties and shall bear the costs incident to maintenance of such offices other than salaries, travel expenses, and data processing and word processing hardware and software that is provided on the state computer network.

(6) The cost of interpreter services for deaf and hard of hearing persons and for persons unable to communicate the English language shall be paid by the state with money appropriated to the Supreme Court for that purpose or from other funds, including grant money, made available to the Supreme Court for such purpose. Interpreter services shall include auxiliary aids for deaf and hard of hearing persons as defined in section 20-151 and interpreters to assist persons unable to communicate the English language as defined in section 25-2402. Interpreter services shall be provided under this section for the purposes of conducting a presentence investigation and for ongoing supervision by a probation officer of such persons placed on probation.

(7) The probation administrator shall prepare a budget and request for appropriations for the office and shall submit such request to the Supreme

Court and with its approval to the appropriate authority in accordance with law.

Source: Laws 1971, LB 680, § 14; Laws 1979, LB 536, § 9; Laws 1981, LB 204, § 43; Laws 1986, LB 529, § 41; Laws 1989, LB 2, § 1; Laws 1990, LB 220, § 5; Laws 1992, LB 1059, § 24; Laws 1999, LB 54, § 4; Laws 2011, LB669, § 23; Laws 2020, LB381, § 23.

29-2261 Presentence investigation, when; contents; psychiatric examination; persons having access to records; reports authorized.

(1) Unless it is impractical to do so, when an offender has been convicted of a felony other than murder in the first degree, the court shall not impose sentence without first ordering a presentence investigation of the offender and according due consideration to a written report of such investigation. When an offender has been convicted of murder in the first degree and (a) a jury renders a verdict finding the existence of one or more aggravating circumstances as provided in section 29-2520 or (b)(i) the information contains a notice of aggravation as provided in section 29-1603 and (ii) the offender waives his or her right to a jury determination of the alleged aggravating circumstances, the court shall not commence the sentencing determination proceeding as provided in section 29-2521 without first ordering a presentence investigation of the offender and according due consideration to a written report of such investigation.

(2) A court may order a presentence investigation in any case, except in cases in which an offender has been convicted of a Class IIIA misdemeanor, a Class IV misdemeanor, a Class V misdemeanor, a traffic infraction, or any corresponding city or village ordinance.

(3) The presentence investigation and report shall include, when available, an analysis of the circumstances attending the commission of the crime, the offender's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, and personal habits, and any other matters that the probation officer deems relevant or the court directs to be included. All local and state police agencies and Department of Correctional Services adult correctional facilities shall furnish to the probation officer copies of such criminal records, in any such case referred to the probation officer by the court of proper jurisdiction, as the probation officer shall require without cost to the court or the probation officer.

Such investigation shall also include:

(a) Any written statements submitted to the county attorney by a victim; and

(b) Any written statements submitted to the probation officer by a victim.

(4) If there are no written statements submitted to the probation officer, he or she shall certify to the court that:

(a) He or she has attempted to contact the victim; and

(b) If he or she has contacted the victim, such officer offered to accept the written statements of the victim or to reduce such victim's oral statements to writing.

For purposes of subsections (3) and (4) of this section, the term victim shall be as defined in section 29-119.

(5) Before imposing sentence, the court may order the offender to submit to psychiatric observation and examination for a period of not exceeding sixty days or such longer period as the court determines to be necessary for that purpose. The offender may be remanded for this purpose to any available clinic or mental hospital, or the court may appoint a qualified psychiatrist to make the examination. The report of the examination shall be submitted to the court.

(6)(a) Any presentence report, substance abuse evaluation, or psychiatric examination shall be privileged and shall not be disclosed directly or indirectly to anyone other than a judge; probation officers to whom an offender's file is duly transferred; the probation administrator or his or her designee; alcohol and drug counselors, mental health practitioners, psychiatrists, and psychologists licensed or certified under the Uniform Credentialing Act to conduct substance abuse evaluations and treatment; or others entitled by law to receive such information, including personnel and mental health professionals for the Nebraska State Patrol specifically assigned to sex offender registration and community notification for the sole purpose of using such report, evaluation, or examination for assessing risk and for community notification of registered sex offenders.

(b) For purposes of this subsection, mental health professional means (i) a practicing physician licensed to practice medicine in this state under the Medicine and Surgery Practice Act, (ii) a practicing psychologist licensed to engage in the practice of psychology in this state as provided in section 38-3111 or as provided under similar provisions of the Psychology Interjurisdictional Compact, (iii) a practicing mental health professional licensed or certified in this state as provided in the Mental Health Practice Act, or (iv) a practicing professional counselor holding a privilege to practice in Nebraska under the Licensed Professional Counselors Interstate Compact.

(7) The court shall permit inspection of the presentence report, substance abuse evaluation, or psychiatric examination or parts of the report, evaluation, or examination, as determined by the court, by the prosecuting attorney and defense counsel. Such inspection shall be by electronic access only unless the court determines such access is not available to the prosecuting attorney or defense counsel. The State Court Administrator shall determine and develop the means of electronic access to such presentence reports, evaluations, and examinations. Upon application by the prosecuting attorney or defense counsel, the court may order that addresses, telephone numbers, and other contact information for victims or witnesses named in the report, evaluation, or examination be redacted upon a showing by a preponderance of the evidence that such redaction is warranted in the interests of public safety. The court may permit inspection of the presentence report, substance abuse evaluation, or psychiatric examination or examination of parts of the report, evaluation, or examination by any other person having a proper interest therein whenever the court finds it is in the best interest of a particular offender. The court may allow fair opportunity for an offender to provide additional information for the court's consideration.

(8) If an offender is sentenced to imprisonment, a copy of the report of any presentence investigation, substance abuse evaluation, or psychiatric examination shall be transmitted immediately to the Department of Correctional Services. Upon request, the department shall provide a copy of the report to the Board of Parole, the Division of Parole Supervision, and the Board of Pardons.

(9) Notwithstanding subsections (6) and (7) of this section, the Supreme Court or an agent of the Supreme Court acting under the direction and supervision of the Chief Justice shall have access to psychiatric examinations, substance abuse evaluations, and presentence investigations and reports for research purposes. The Supreme Court and its agent shall treat such information as confidential, and nothing identifying any individual shall be released.

Source: Laws 1971, LB 680, § 16; Laws 1974, LB 723, § 1; Laws 1983, LB 78, § 4; Laws 2000, LB 1008, § 1; Laws 2002, LB 564, § 1; Laws 2002, Third Spec. Sess., LB 1, § 9; Laws 2003, LB 46, § 8; Laws 2004, LB 1207, § 17; Laws 2007, LB463, § 1129; Laws 2011, LB390, § 3; Laws 2015, LB268, § 20; Laws 2015, LB504, § 1; Referendum 2016, No. 426; Laws 2018, LB841, § 3; Laws 2018, LB1034, § 3; Laws 2022, LB752, § 4; Laws 2023, LB50, § 9.

Cross References

Licensed Professional Counselors Interstate Compact, see section 38-4201.
Medicine and Surgery Practice Act, see section 38-2001.
Mental Health Practice Act, see section 38-2101.
Uniform Credentialing Act, see section 38-101.

29-2262 Probation; conditions; court order; information accessible through criminal justice information system.

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

(2) The court may, as a condition of a sentence of probation, require the offender:

(a) To refrain from unlawful conduct;

(b) To be confined periodically in the county jail or to return to custody after specified hours but not to exceed the lesser of ninety days or the maximum jail term provided by law for the offense;

(c) To meet his or her family responsibilities;

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

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

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

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

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

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

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

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

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

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

(n) To perform community service as outlined in sections 29-2277 to 29-2279 under the direction of his or her probation officer;

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

(p) To participate in a community correctional facility or program as provided in the Community Corrections Act;

(q) To satisfy any other conditions reasonably related to the rehabilitation of the offender;

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

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

(3) When jail time is imposed as a condition of probation under subdivision (2)(b) of this section, the court shall advise the offender on the record the time the offender will serve in jail assuming no good time for which the offender will be eligible under section 47-502 is lost and assuming none of the jail time imposed as a condition of probation is waived by the court.

(4) Jail time may only be imposed as a condition of probation under subdivision (2)(b) of this section if:

(a) The court would otherwise sentence the defendant to a term of imprisonment instead of probation; and

(b) The court makes a finding on the record that, while probation is appropriate, periodic confinement in the county jail as a condition of probation is necessary because a sentence of probation without a period of confinement would depreciate the seriousness of the offender's crime or promote disrespect for law.

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

(6) In all cases in which the offender is guilty of a crime covered by the DNA Identification Information Act, a condition of probation shall be the collecting of a DNA sample pursuant to the act and the paying of all costs associated with the collection of the DNA sample prior to release from probation.

(7) For any offender sentenced to probation, the court shall enter an order to provide the offender's (a) name, (b) probation officer, and (c) conditions of probation 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 1971, LB 680, § 17; Laws 1975, LB 289, § 1; Laws 1978, LB 623, § 29; Laws 1979, LB 292, § 1; Laws 1986, LB 504, § 2; Laws 1986, LB 528, § 4; Laws 1986, LB 956, § 14; Laws 1989, LB 592, § 3; Laws 1989, LB 669, § 1; Laws 1990, LB 220, § 8; Laws 1991, LB 742, § 2; Laws 1993, LB 627, § 2; Laws 1995, LB 371, § 15; Laws 1997, LB 882, § 1; Laws 1998, LB 218, § 16;

Laws 2003, LB 46, § 9; Laws 2006, LB 385, § 1; Laws 2010, LB190, § 1; Laws 2015, LB605, § 67; Laws 2016, LB1094, § 17; Laws 2019, LB340, § 1; Laws 2023, LB50, § 10.

Cross References

Community Corrections Act, see section 47-619.
DNA Identification Information Act, see section 29-4101.

29-2263 Probation; term; court; duties; powers; post-release supervision; term; probation obligation satisfied, when; probation officer; duties; probationer outside of jurisdiction without permission; effect.

(1)(a) Except as provided in subsection (2) of this section, when a court has sentenced an offender to probation, the court shall specify the term of such probation which shall be not more than five years upon conviction of a felony or second offense misdemeanor and two years upon conviction of a first offense misdemeanor.

(b) At sentencing, the court shall provide notice to the offender that the offender may be eligible to have the conviction set aside as provided in subsection (2) of section 29-2264 and shall provide information on how to file such a petition. The State Court Administrator shall develop standardized advisement language and any forms necessary to carry out this subdivision.

(c) The court, on application of a probation officer or of the probationer or on its own motion, may discharge a probationer at any time.

(2) When a court has sentenced an offender to post-release supervision, the court shall specify the term of such post-release supervision as provided in section 28-105. The court, on application of a probation officer or of the probationer or on its own motion, may discharge a probationer at any time.

(3) During the term of probation, the court on application of a probation officer or of the probationer, or its own motion, may modify or eliminate any of the conditions imposed on the probationer or add further conditions authorized by section 29-2262. This subsection does not preclude a probation officer from imposing administrative sanctions with the probationer's full knowledge and consent as authorized by sections 29-2266.01 and 29-2266.02.

(4)(a) Upon completion of the term of probation, or the earlier discharge of the probationer, the probationer shall be relieved of any obligations imposed by the order of the court and shall have satisfied the sentence for his or her crime.

(b) Upon satisfactory fulfillment of the conditions of probation for the entire period or after discharge from probation prior to the termination of the period of probation, a probation officer shall notify the probationer that the probationer may be eligible to have the conviction set aside as provided in subsection (2) of section 29-2264. The notice shall include an explanation of the requirements for a conviction to be set aside, how to file a petition for a conviction to be set aside, and the effect of and limitations of having a conviction set aside and an advisement that the probationer consult with an attorney prior to filing a petition. The State Court Administrator shall develop standardized advisement language and any forms necessary to carry out this subdivision.

(5) Whenever a probationer disappears or leaves the jurisdiction of the court without permission, the time during which he or she keeps his or her where-

abouts hidden or remains away from the jurisdiction of the court shall be added to the original term of probation.

Source: Laws 1971, LB 680, § 18; Laws 1975, LB 289, § 2; Laws 2003, LB 46, § 10; Laws 2015, LB605, § 68; Laws 2016, LB1094, § 18; Laws 2023, LB50, § 11.

29-2264 Probation; completion; conviction may be set aside; conditions; retroactive effect.

(1) Whenever any person is placed on probation by a court and satisfactorily completes the conditions of his or her probation for the entire period or is discharged from probation prior to the termination of the period of probation, the sentencing court shall issue an order releasing the offender from probation. Such order in all felony cases shall provide notice that the person's voting rights are restored upon completion of probation. The order shall include information on restoring other civil rights through the pardon process, including application to and hearing by the Board of Pardons.

(2) Whenever any person is convicted of an offense and is placed on probation by the court, is sentenced to a fine only, or is sentenced to community service, he or she may, after satisfactory fulfillment of the conditions of probation for the entire period or after discharge from probation prior to the termination of the period of probation and after payment of any fine and completion of any community service, petition the sentencing court to set aside the conviction.

(3)(a) Except as provided in subdivision (3)(b) of this section, whenever any person is convicted of an offense and is sentenced other than as provided in subsection (2) of this section, but is not sentenced to a term of imprisonment of more than one year, such person may, after completion of his or her sentence, petition the sentencing court to set aside the conviction.

(b) A petition under subdivision (3)(a) of this section shall be denied if filed:

(i) By any person with a criminal charge pending in any court in the United States or in any other country;

(ii) During any period in which the person is required to register under the Sex Offender Registration Act;

(iii) For any misdemeanor or felony motor vehicle offense under section 28-306 or the Nebraska Rules of the Road; or

(iv) Within two years after a denial of a petition to set aside a conviction under this subsection.

(4) In determining whether to set aside the conviction, the court shall consider:

(a) The behavior of the offender after sentencing;

(b) The likelihood that the offender will not engage in further criminal activity; and

(c) Any other information the court considers relevant.

(5) The court may grant the offender's petition and issue an order setting aside the conviction when in the opinion of the court the order will be in the best interest of the offender and consistent with the public welfare. The order shall:

(a) Nullify the conviction;

(b) Remove all civil disabilities and disqualifications imposed as a result of the conviction; and

(c) Notify the offender that he or she should consult with an attorney regarding the effect of the order, if any, on the offender's ability to possess a firearm under state or federal law.

(6) The setting aside of a conviction in accordance with the Nebraska Probation Administration Act shall not:

(a) Require the reinstatement of any office, employment, or position which was previously held and lost or forfeited as a result of the conviction;

(b) Preclude proof of a plea of guilty whenever such plea is relevant to the determination of an issue involving the rights or liabilities of someone other than the offender;

(c) Preclude proof of the conviction as evidence of the commission of the offense whenever the fact of its commission is relevant for the purpose of impeaching the offender as a witness, except that the order setting aside the conviction may be introduced in evidence;

(d) Preclude use of the conviction for the purpose of determining sentence on any subsequent conviction of a criminal offense;

(e) Preclude the proof of the conviction as evidence of the commission of the offense in the event an offender is charged with a subsequent offense and the penalty provided by law is increased if the prior conviction is proved;

(f) Preclude the proof of the conviction to determine whether an offender is eligible to have a subsequent conviction set aside in accordance with the Nebraska Probation Administration Act;

(g) Preclude use of the conviction as evidence of commission of the offense for purposes of determining whether an application filed or a license issued under sections 71-1901 to 71-1906.01, the Child Care Licensing Act, or the Children's Residential Facilities and Placing Licensure Act or a certificate issued under sections 79-806 to 79-815 should be denied, suspended, or revoked;

(h) Preclude use of the conviction as evidence of serious misconduct or final conviction of or pleading guilty or nolo contendere to a felony or misdemeanor for purposes of determining whether an application filed or a certificate issued under sections 81-1401 to 81-1414.19 should be denied, suspended, or revoked;

(i) Preclude proof of the conviction as evidence whenever the fact of the conviction is relevant to a determination of the registration period under section 29-4005;

(j) Relieve a person who is convicted of an offense for which registration is required under the Sex Offender Registration Act of the duty to register and to comply with the terms of the act;

(k) Preclude use of the conviction for purposes of section 28-1206;

(l) Affect the right of a victim of a crime to prosecute or defend a civil action;

(m) Affect the assessment or accumulation of points under section 60-4,182; or

(n) Affect eligibility for, or obligations relating to, a commercial driver's license.

(7) For purposes of this section, offense means any violation of the criminal laws of this state or any political subdivision of this state including, but not limited to, any felony, misdemeanor, infraction, traffic infraction, violation of a city or village ordinance, or violation of a county resolution.

(8) Except as otherwise provided for the notice in subsection (1) of this section, changes made to this section by Laws 2005, LB 713, shall be retroactive in application and shall apply to all persons, otherwise eligible in accordance with the provisions of this section, whether convicted prior to, on, or subsequent to September 4, 2005.

(9) The changes made to this section by Laws 2018, LB146, and Laws 2020, LB881, shall apply to all persons otherwise eligible under this section, without regard to the date of the conviction sought to be set aside.

Source: Laws 1971, LB 680, § 19; Laws 1993, LB 564, § 1; Laws 1994, LB 677, § 1; Laws 1995, LB 401, § 1; Laws 1997, LB 310, § 1; Laws 1998, Spec. Sess., LB 1, § 3; Laws 2002, LB 1054, § 6; Laws 2003, LB 685, § 2; Laws 2004, LB 1005, § 3; Laws 2005, LB 53, § 3; Laws 2005, LB 713, § 3; Laws 2009, LB285, § 2; Laws 2012, LB817, § 2; Laws 2013, LB265, § 30; Laws 2018, LB146, § 1; Laws 2020, LB881, § 24; Laws 2021, LB51, § 3; Laws 2024, LB20, § 3.
Effective date July 19, 2024.

Cross References

Child Care Licensing Act, see section 71-1908.
Children's Residential Facilities and Placing Licensure Act, see section 71-1924.
Nebraska Rules of the Road, see section 60-601.
Sex Offender Registration Act, see section 29-4001.

29-2268 Probation; post-release supervision; violation; court; determination.

(1) If the court finds that the probationer, other than a probationer serving a term of post-release supervision, did violate a condition of his or her probation, it may revoke the probation and impose on the offender such new sentence as might have been imposed originally for the crime of which he or she was convicted.

(2) If the court finds that a probationer serving a term of post-release supervision did violate a condition of his or her post-release supervision, it may revoke the post-release supervision and impose on the offender a term of imprisonment up to the original period of post-release supervision. If a sentence of incarceration is imposed upon revocation of post-release supervision, the court shall grant jail credit for any days spent in custody as a result of the post-release supervision, including custodial sanctions. The term shall be served in an institution under the jurisdiction of the Department of Correctional Services or in county jail subject to subsection (2) of section 28-105.

(3) If the court finds that the probationer did violate a condition of his or her probation, but is of the opinion that revocation is not appropriate, the court may order that:

(a) The probationer receive a reprimand and warning;

(b) Probation supervision and reporting be intensified;

(c) The probationer be required to conform to one or more additional conditions of probation which may be imposed in accordance with the Nebraska Probation Administration Act;

(d) A custodial sanction be imposed on a probationer convicted of a felony, subject to the provisions of section 29-2266.03; and

(e) The probationer's term of probation be extended, subject to the provisions of section 29-2263.

Source: Laws 1971, LB 680, § 23; Laws 2015, LB605, § 70; Laws 2016, LB1094, § 24; Laws 2019, LB686, § 8.

29-2269 Act, how cited.

Sections 29-2243 to 29-2269 shall be known and may be cited as the Nebraska Probation Administration Act.

Source: Laws 1971, LB 680, § 31; Laws 1990, LB 220, § 9; Laws 2003, LB 46, § 14; Laws 2005, LB 538, § 11; Laws 2010, LB800, § 9; Laws 2014, LB464, § 6; Laws 2016, LB1094, § 25; Laws 2023, LB50, § 12; Laws 2024, LB631, § 25.
Effective date July 19, 2024.

29-2274 Post-release supervision; report; contents.

(1) Beginning October 1, 2024, the Office of Probation Administration shall electronically submit a quarterly report to the Judiciary Committee of the Legislature and the Appropriations Committee of the Legislature regarding individuals serving sentences of post-release supervision. The report shall include:

(a) The number of individuals:

(i) On post-release supervision;

(ii) Successfully discharged from post-release supervision;

(iii) Unsuccessfully discharged from post-release supervision;

(iv) Whose post-release supervision is revoked for technical violations;

(v) Whose post-release supervision is revoked for law violations;

(vi) Who abscond and do not complete the conditions of post-release supervision;

(vii) Who are sent to jails to serve custodial sanctions; and

(viii) Whose post-release supervision has been revoked;

(b) The number of jail beds utilized for custodial sanctions and the number of days such beds are utilized;

(c) The types of programming offered to individuals on post-release supervision; and

(d) The risk scores of individuals on post-release supervision at the time they began serving a sentence of imprisonment and upon discharge from post-release supervision.

(2) The report shall redact all personal identifying information of individuals on post-release supervision.

Source: Laws 2024, LB631, § 21.
Effective date July 19, 2024.

(d) COMMUNITY SERVICE

29-2277 Terms, defined.

As used in sections 29-2277 to 29-2279, unless the context otherwise requires:

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

(2) Community correctional facility or program has the same meaning as in section 47-621; and

(3) Community service means uncompensated labor for an agency to be performed by an offender when the offender is not working or attending school.

Source: Laws 1986, LB 528, § 1; Laws 2017, LB259, § 7.

29-2278 Community service; sentencing; when; failure to perform; effect; exception to eligibility.

An offender may be sentenced to community service (1) as an alternative to a fine, incarceration, or supervised probation, or in lieu of incarceration if he or she fails to pay a fine as ordered, except when the violation of a misdemeanor or felony requires mandatory incarceration or imposition of a fine, (2) as a condition of probation, or (3) in addition to any other sanction. The court or magistrate shall establish the terms and conditions of community service including, but not limited to, a reasonable time limit for completion. The performance or completion of a sentence of community service or an order to complete community service may be supervised or confirmed by a community correctional facility or program or another similar entity, as ordered by the court or magistrate. If an offender fails to perform community service as ordered by the court or magistrate, he or she may be arrested and after a hearing may be resentenced on the original charge, have probation revoked, or be found in contempt of court. No person convicted of an offense involving serious bodily injury or sexual assault shall be eligible for community service.

Source: Laws 1986, LB 528, § 2; Laws 2017, LB259, § 8.

29-2279 Community service; length.

The length of a community service sentence shall be as follows:

(1) Pursuant to section 29-2206, 29-2208, or 29-2412, for an infraction, not less than four nor more than twenty hours;

(2) For a violation of a city ordinance that is an infraction and not pursuant to section 29-2206, 29-2208, or 29-2412, not less than four hours;

(3) For a Class IV or Class V misdemeanor, not less than four nor more than eighty hours;

(4) For a Class III or Class IIIA misdemeanor, not less than eight nor more than one hundred fifty hours;

(5) For a Class I or Class II misdemeanor, not less than twenty nor more than four hundred hours;

(6) For a Class IIIA or Class IV felony, not less than two hundred nor more than three thousand hours; and

(7) For a Class III felony, not less than four hundred nor more than six thousand hours.

Source: Laws 1986, LB 528, § 3; Laws 1997, LB 364, § 15; Laws 2017, LB259, § 9.

(e) RESTITUTION

29-2281 Restitution; determination of amount; fines and costs; manner and priority of payment.

(1) To determine the amount of restitution, the court may hold a hearing at the time of sentencing. The amount of restitution shall be based on the actual damages sustained by the victim and shall be supported by evidence which shall become a part of the court record. The court shall consider the defendant's earning ability, employment status, financial resources, and family or other legal obligations and shall balance such considerations against the obligation to the victim. In considering the earning ability of a defendant who is sentenced to imprisonment, the court may receive evidence of money anticipated to be earned by the defendant during incarceration.

(2) A person may not be granted or denied probation or parole either solely or primarily due to his or her financial resources or ability or inability to pay restitution.

(3) The court may order that restitution be made immediately, in specified installments, or within a specified period of time not to exceed five years after the date of judgment or defendant's final release date from imprisonment, whichever is later.

(4) If, in addition to restitution, a defendant is ordered to pay fines and costs as part of the judgment and the defendant fails to pay the full amount owed, funds shall first be applied to a restitution obligation with the remainder applied towards fines and costs only when the restitution obligation is satisfied in full.

(5) Restitution payments shall be made through the clerk of the court ordering restitution. The clerk shall maintain a record of all receipts and disbursements.

Source: Laws 1986, LB 956, § 2; Laws 1992, LB 1059, § 26; Laws 2015, LB605, § 71; Laws 2023, LB50, § 15.

(h) DEFERRED JUDGMENT

29-2292 Deferral of entry of judgment of conviction; defendant placed on probation; conditions; factors; new sentence; when.

(1) Upon a finding of guilt for which a judgment of conviction may be rendered, a defendant may request the court defer the entry of judgment of conviction. Upon such request and after giving the prosecutor and defendant the opportunity to be heard, the court may defer the entry of a judgment of conviction and the imposition of a sentence and place the defendant on probation, upon conditions as the court may require under section 29-2262.

(2) The court shall not defer judgment under this section if:

(a) The offense is a violation of section 42-924;

(b) The victim of the offense is an intimate partner as defined in section 28-323;

(c) The offense is a violation of section 60-6,196 or 60-6,197 or a city or village ordinance enacted in conformance with section 60-6,196 or 60-6,197; or

(d) The defendant is not eligible for probation.

(3) Whenever a court considers a request to defer judgment, the court shall consider the factors set forth in section 29-2260 and any other information the court deems relevant.

(4) Except as otherwise provided in this section and sections 29-2293 and 29-2294, the supervision of a defendant on probation pursuant to a deferred judgment shall be governed by the Nebraska Probation Administration Act and sections 29-2270 to 29-2273.

(5) After a hearing providing the prosecutor and defendant an opportunity to be heard and upon a finding that a defendant has violated a condition of his or her probation, the court may enter any order authorized by section 29-2268 or pronounce judgment and impose such new sentence as might have been originally imposed for the offense for which the defendant was convicted.

(6) Upon satisfactory completion of the conditions of probation and the payment or waiver of all administrative and programming fees assessed under section 29-2293, the defendant or prosecutor may file a motion to withdraw any plea entered by the defendant and to dismiss the action without entry of judgment.

(7) The provisions of this section apply to offenses committed on or after July 1, 2020. For purposes of this section, an offense shall be deemed to have been committed prior to July 1, 2020, if any element of the offense occurred prior to such date.

Source: Laws 2019, LB686, § 9.

Cross References

Nebraska Probation Administration Act, see section 29-2269.

29-2293 Court order; fees.

Upon entry of a deferred judgment pursuant to section 29-2292 or 29-4803, the court shall order the defendant to pay all administrative and programming fees authorized under section 29-2262.06, unless waived under such section. The defendant shall pay any such fees to the clerk of the court. The clerk of the court shall remit all fees so collected to the State Treasurer for credit to the Probation Program Cash Fund.

Source: Laws 2019, LB686, § 10; Laws 2024, LB253, § 11.
Operative date July 1, 2025.

29-2294 Final order.

An entry of deferred judgment pursuant to section 29-2292 or 29-4803 is a final order as defined in section 25-1902.

Source: Laws 2019, LB686, § 11; Laws 2024, LB253, § 12.
Operative date July 1, 2025.

ARTICLE 23
REVIEW OF JUDGMENTS IN CRIMINAL CASES

29-2315.01 Appeal by prosecuting attorney; application; procedure.

The prosecuting attorney may take exception to any ruling or decision of the court made during the prosecution of a cause by presenting to the trial court the application for leave to file an appeal with reference to the rulings or decisions of which complaint is made. Such application shall contain a copy of the ruling or decision complained of, the basis and reasons for objection thereto, and a statement by the prosecuting attorney as to the part of the record he or she proposes to present to the appellate court. Such application shall be filed with the trial court within twenty days after the final order is entered in the cause, and upon presentation, if the trial court finds it is in conformity with the truth, the judge of the trial court shall sign the same and shall further indicate thereon whether in his or her opinion the part of the record which the prosecuting attorney proposes to present to the appellate court is adequate for a proper consideration of the matter. The prosecuting attorney shall then file such application with the appellate court within thirty days from the date of the final order. If the application is granted, the prosecuting attorney shall within thirty days from such granting order a bill of exceptions in accordance with section 29-2020 if such bill of exceptions is desired and otherwise proceed to obtain a review of the case as provided in section 25-1912.

Source: Laws 1959, c. 121, § 1, p. 453; Laws 1961, c. 135, § 4, p. 391; Laws 1982, LB 722, § 9; Laws 1987, LB 33, § 5; Laws 1991, LB 732, § 80; Laws 1992, LB 360, § 8; Laws 2003, LB 17, § 11; Laws 2018, LB193, § 59.

29-2315.02 Error proceedings by county attorney; finding regarding indigency; effect on appointment of counsel for defendant; fees and expenses.

If the application is granted in cases where the court finds a defendant to be indigent, the trial court shall first contact the public defender, in counties with a public defender, to inquire whether or not the public defender is able to accept the appointment to argue the case against the prosecuting attorney. If the public defender declines the appointment because of a conflict of interest, the court shall appoint another attorney. An attorney other than the public defender appointed under this section shall file an application for fees and expenses in the court which appointed such attorney for all fees and expenses reasonably necessary to permit such attorney to effectively and competently represent the defendant and to argue the case against the prosecuting attorney. Such fees and expenses shall be paid out of the treasury of the county in the full amount determined by the court. If the court does not find a defendant indigent and does not appoint the public defender or another attorney, the defendant may be represented by an attorney of the defendant's choice.

Source: Laws 1959, c. 121, § 2, p. 454; Laws 2023, LB50, § 16.

29-2318 Appeal of ruling or decision; finding regarding indigency; effect on appointment of counsel for defendant; fees and expenses.

When a notice is filed in cases where the court finds a defendant to be indigent, the trial court shall first contact the public defender, in counties with a public defender, to inquire whether or not the public defender is able to accept the appointment to argue the case against the prosecuting attorney. If the public defender declines the appointment because of a conflict of interest, the court shall appoint another attorney. An attorney other than the public defender appointed under this section shall file an application for fees and expenses in the court which appointed such attorney for all fees and expenses reasonably necessary to permit such attorney to effectively and competently represent the defendant and to argue the case against the prosecuting attorney. Such fees and expenses shall be paid out of the treasury of the county in the full amount determined by the court. If the court does not find a defendant indigent and does not appoint the public defender or another attorney, the defendant may be represented by an attorney of the defendant's choice.

Source: Laws 1975, LB 130, § 2; Laws 1984, LB 13, § 71; Laws 2023, LB50, § 17.

ARTICLE 24

EXECUTION OF SENTENCES

Section

29-2404 Misdemeanor cases; fines and costs; judgment; levy; commitment.

In all cases of misdemeanor in which courts or magistrates shall have power to fine any offender, and shall render judgment for such fine, it shall be lawful to issue executions for the same, with the costs taxed against the offender, to be levied on the goods and chattels of any such offender, and, for want of the same, upon the body of the offender, who shall, following a determination that the offender has the financial ability to pay such fine pursuant to section 29-2412, be committed to the jail of the proper county until the fine and costs be paid, or secured to be paid, or the offender be otherwise discharged according to law.

Source: G.S.1873, c. 58, § 521, p. 837; R.S.1913, § 9191; C.S.1922, § 10198; C.S.1929, § 29-2404; R.S.1943, § 29-2404; Laws 2017, LB259, § 10.

29-2407 Judgments for fines, costs, and forfeited recognizances; lien; exemptions; duration.

Judgments for fines and costs in criminal cases shall be a lien upon all the property of the defendant within the county from the time of filing the case by the clerk of the proper court, and judgments upon forfeited recognizance shall be a like lien from the time of forfeiture. No property of any convict shall be exempt from execution issued upon any such judgment as set out in this section

against such convict except in cases when the convict is sentenced to a Department of Correctional Services adult correctional facility for a period of more than two years or to suffer death, in which cases there shall be the same exemptions as at the time may be provided by law for civil cases. The lien on real estate of any such judgment for costs shall terminate as provided in section 25-1716.

Source: G.S.1873, c. 58, § 524, p. 837; R.S.1913, § 9194; C.S.1922, § 10201; C.S.1929, § 29-2407; R.S.1943, § 29-2407; Laws 1974, LB 666, § 2; Laws 1993, LB 31, § 11; Laws 2015, LB268, § 21; Referendum 2016, No. 426; Laws 2018, LB193, § 60.

Cross References

Exemptions in civil cases, see section 25-1552 et seq.

29-2412 Fine and costs; financial ability to pay; hearing; nonpayment; commutation upon confinement; credit; amount.

(1) Beginning July 1, 2019:

(a) Any person arrested and brought into custody on a warrant for failure to pay fines or costs, for failure to appear before a court or magistrate on the due date of such fines or costs, or for failure to comply with the terms of an order pursuant to sections 29-2206 and 29-2206.01, shall be entitled to a hearing on the first regularly scheduled court date following the date of arrest. The purpose of such hearing shall be to determine the person's financial ability to pay such fines or costs. At the hearing, the person shall have the opportunity to present information as to his or her income, assets, debts, or other matters affecting his or her financial ability to pay. Following the hearing, the court or magistrate shall determine the person's ability to pay the fines or costs, including his or her financial ability to pay by installment payments as described in section 29-2206;

(b) If the court or magistrate determines that the person is financially able to pay the fines or costs and the person refuses to pay, the court or magistrate may:

(i) Order the person to be confined in the jail of the proper county until the fines or costs are paid or secured to be paid or the person is otherwise discharged pursuant to subsection (4) of this section; or

(ii) Enter an order pursuant to subdivision (1)(d) of this section discharging the person of such fines or costs and order the person to complete community service for a specified number of hours pursuant to sections 29-2277 to 29-2279;

(c) If the court or magistrate determines that the person is financially unable to pay the fines or costs, the court or magistrate:

(i) Shall either:

(A) Enter an order pursuant to subdivision (1)(d) of this section discharging the person of such fines or costs; or

(B) If the person is subject to an order to pay installments pursuant to section 29-2206, the court or magistrate shall either enter an order pursuant to subdivision (1)(d) of this section discharging the person of such obligation or make any necessary modifications to the order specifying the terms of the installment payments as justice may require and that will enable the person to pay the fines or costs; and

(ii) May order the person to complete community service for a specified number of hours pursuant to sections 29-2277 to 29-2279; and

(d) An order discharging the person of fines or costs shall be set forth in or accompanied by a judgment entry. Such order shall operate as a complete release of such fines or costs.

(2) Whenever it is made satisfactorily to appear to the district court, or to the county judge of the proper county, after all legal means have been exhausted, that any person who is confined in jail for any fines or costs of prosecution for any criminal offense has no estate with which to pay such fines or costs, it shall be the duty of such court or judge, on his or her own motion or upon the motion of the person so confined, to discharge such person from further imprisonment for such fines or costs, which discharge shall operate as a complete release of such fines or costs.

(3) Nothing in this section shall authorize any person to be discharged from imprisonment before the expiration of the time for which he or she may be sentenced to be imprisoned as part of his or her punishment.

(4)(a) Any person held in custody for nonpayment of fines or costs or for default on an installment shall be entitled to a credit on the fines, costs, or installment of one hundred fifty dollars for each day so held.

(b) In no case shall a person held in custody for nonpayment of fines or costs be held in such custody for more days than the maximum number to which he or she could have been sentenced if the penalty set by law includes the possibility of confinement.

Source: G.S.1873, c. 58, § 528, p. 838; R.S.1913, § 9199; C.S.1922, § 10206; C.S.1929, § 29-2412; R.S.1943, § 29-2412; Laws 1959, c. 122, § 2, p. 455; Laws 1979, LB 111, § 2; Laws 1986, LB 528, § 5; Laws 1988, LB 370, § 7; Laws 2010, LB712, § 17; Laws 2017, LB259, § 11.

29-2413 Judgments for fines and costs; execution in another county or against real estate; filing of transcript in district court.

In every case, whenever it is desirable to obtain execution to be issued to another county, or against the lands or real estate of any person against whom a judgment for fine or costs has been rendered by a magistrate, the magistrate may file with the clerk of the district court of the county wherein such magistrate holds office a transcript of the judgment, whereupon such clerk shall enter the cause upon the register of actions and shall file with the clerk of such court a praecipe and execution to be forthwith issued thereon by such clerk and served in all respects as though the judgment had been rendered in the district court of such county.

Source: G.S.1873, c. 58, § 529, p. 839; R.S.1913, § 9200; C.S.1922, § 10207; C.S.1929, § 29-2413; R.S.1943, § 29-2413; Laws 2018, LB193, § 61.

ARTICLE 25

SPECIAL PROCEDURE IN CASES OF HOMICIDE

Section
29-2501. Omitted.
29-2502. Omitted.

Section

29-2501 Omitted.

Source: Laws 2015, LB268, § 22; Referendum 2016, No. 426.

Note: Section 29-2501, newly enacted by Laws 2015, LB 268, section 22, and assigned by the Revisor of Statutes to section 29-2501, has been omitted because of the vote on the referendum at the November 2016 general election.

29-2502 Omitted.

Source: Laws 2015, LB268, § 23; Referendum 2016, No. 426.

Note: Section 29-2502, newly enacted by Laws 2015, LB 268, section 23, and assigned by the Revisor of Statutes to section 29-2502, has been omitted because of the vote on the referendum at the November 2016 general election.

29-2519 Statement of intent.

(1) The Legislature hereby finds that it is reasonable and necessary to establish mandatory standards for the imposition of the sentence of death; that the imposition of the death penalty in every instance of the commission of the crimes specified in section 28-303 fails to allow for mitigating factors which may dictate against the penalty of death; and that the rational imposition of the death sentence requires the establishment of specific legislative guidelines to be applied in individual cases by the court. The Legislature therefor determines that the death penalty should be imposed only for the crimes set forth in section 28-303 and, in addition, that it shall only be imposed in those instances when the aggravating circumstances existing in connection with the crime outweigh the mitigating circumstances, as set forth in sections 29-2520 to 29-2524.

(2) The Legislature hereby finds and declares that:

(a) The decision of the United States Supreme Court in Ring v. Arizona (2002) requires that Nebraska revise its sentencing process in order to ensure that rights of persons accused of murder in the first degree, as required under the Sixth and Fourteenth Amendments of the United States Constitution, are protected;

(b) The changes made by Laws 2002, LB 1, Ninety-seventh Legislature, Third Special Session, are intended to be procedural only in nature and ameliorative of the state's prior procedures for determination of aggravating circumstances in the sentencing process for murder in the first degree;

(c) The changes made by Laws 2002, LB 1, Ninety-seventh Legislature, Third Special Session, are not intended to alter the substantive provisions of sections 28-303 and 29-2520 to 29-2524;

(d) The aggravating circumstances defined in section 29-2523 have been determined by the United States Supreme Court to be ''functional equivalents of elements of a greater offense'' for purposes of the defendant's Sixth Amendment right, as applied to the states under the Fourteenth Amendment, to a jury determination of such aggravating circumstances, but the aggravating circumstances are not intended to constitute elements of the crime generally unless subsequently so required by the state or federal constitution; and

(e) To the extent that such can be applied in accordance with state and federal constitutional requirements, it is the intent of the Legislature that the changes to the murder in the first degree sentencing process made by Laws 2002, LB 1, Ninety-seventh Legislature, Third Special Session, shall apply to any murder in the first degree sentencing proceeding commencing on or after November 23, 2002.

Source: Laws 1973, LB 268, § 1; Laws 1978, LB 748, § 21; Laws 2002, Third Spec. Sess., LB 1, § 10; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2519 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

29-2520 Aggravation hearing; procedure.

(1) Whenever any person is found guilty of a violation of section 28-303 and the information contains a notice of aggravation as provided in section 29-1603, the district court shall, as soon as practicable, fix a date for an aggravation hearing to determine the alleged aggravating circumstances. If no notice of aggravation has been filed, the district court shall enter a sentence of life imprisonment.

(2) Unless the defendant waives his or her right to a jury determination of the alleged aggravating circumstances, such determination shall be made by:

(a) The jury which determined the defendant's guilt; or

(b) A jury impaneled for purposes of the determination of the alleged aggravating circumstances if:

(i) The defendant waived his or her right to a jury at the trial of guilt and either was convicted before a judge or was convicted on a plea of guilty or nolo contendere; or

(ii) The jury which determined the defendant's guilt has been discharged.

A jury required by subdivision (2)(b) of this section shall be impaneled in the manner provided in sections 29-2004 to 29-2010.

(3) The defendant may waive his or her right to a jury determination of the alleged aggravating circumstances. The court shall accept the waiver after determining that it is made freely, voluntarily, and knowingly. If the defendant waives his or her right to a jury determination of the alleged aggravating circumstances, such determination shall be made by a panel of judges as a part of the sentencing determination proceeding as provided in section 29-2521.

(4)(a) At an aggravation hearing before a jury for the determination of the alleged aggravating circumstances, the state may present evidence as to the existence of the aggravating circumstances alleged in the information. The Nebraska Evidence Rules shall apply at the aggravation hearing.

(b) Alternate jurors who would otherwise be discharged upon final submission of the cause to the jury shall be retained during the deliberation of the defendant's guilt but shall not participate in such deliberations. Such alternate jurors shall serve during the aggravation hearing as provided in section 29-2004 but shall not participate in the jury's deliberations under this subsection.

(c) If the jury serving at the aggravation hearing is the jury which determined the defendant's guilt, the jury may consider evidence received at the trial of guilt for purposes of reaching its verdict as to the existence or nonexistence of aggravating circumstances in addition to the evidence received at the aggravation hearing.

(d) After the presentation and receipt of evidence at the aggravation hearing, the state and the defendant or his or her counsel may present arguments before the jury as to the existence or nonexistence of the alleged aggravating circumstances.

(e) The court shall instruct the members of the jury as to their duty as jurors, the definitions of the aggravating circumstances alleged in the information, and the state's burden to prove the existence of each aggravating circumstance alleged in the information beyond a reasonable doubt.

(f) The jury at the aggravation hearing shall deliberate and return a verdict as to the existence or nonexistence of each alleged aggravating circumstance. Each aggravating circumstance shall be proved beyond a reasonable doubt. Each verdict with respect to each alleged aggravating circumstance shall be unanimous. If the jury is unable to reach a unanimous verdict with respect to an aggravating circumstance, such aggravating circumstance shall not be weighed in the sentencing determination proceeding as provided in section 29-2521.

(g) Upon rendering its verdict as to the determination of the aggravating circumstances, the jury shall be discharged.

(h) If no aggravating circumstance is found to exist, the court shall enter a sentence of life imprisonment. If one or more aggravating circumstances are found to exist, the court shall convene a panel of three judges to hold a hearing to receive evidence of mitigation and sentence excessiveness or disproportionality as provided in subsection (3) of section 29-2521.

Source: Laws 1973, LB 268, § 5; Laws 1978, LB 748, § 22; Laws 2002, Third Spec. Sess., LB 1, § 11; Laws 2011, LB12, § 3; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2520 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

Nebraska Evidence Rules, see section 27-1103.

29-2521 Sentencing determination proceeding.

(1) When a person has been found guilty of murder in the first degree and (a) a jury renders a verdict finding the existence of one or more aggravating circumstances as provided in section 29-2520 or (b)(i) the information contains a notice of aggravation as provided in section 29-1603 and (ii) such person waives his or her right to a jury determination of the alleged aggravating circumstances, the sentence of such person shall be determined by:

(a) A panel of three judges, including the judge who presided at the trial of guilt or who accepted the plea and two additional active district court judges named at random by the Chief Justice of the Supreme Court. The judge who presided at the trial of guilt or who accepted the plea shall act as the presiding judge for the sentencing determination proceeding under this section; or

(b) If the Chief Justice of the Supreme Court has determined that the judge who presided at the trial of guilt or who accepted the plea is disabled or disqualified after receiving a suggestion of such disability or disqualification from the clerk of the court in which the finding of guilty was entered, a panel of three active district court judges named at random by the Chief Justice of the Supreme Court. The Chief Justice of the Supreme Court shall name one member of the panel at random to act as the presiding judge for the sentencing determination proceeding under this section.

(2) In the sentencing determination proceeding before a panel of judges when the right to a jury determination of the alleged aggravating circumstances has been waived, the panel shall, as soon as practicable after receipt of the written report resulting from the presentence investigation ordered as provided in section 29-2261, hold a hearing. At such hearing, evidence may be presented as to any matter that the presiding judge deems relevant to sentence and shall include matters relating to the aggravating circumstances alleged in the information, to any of the mitigating circumstances set forth in section 29-2523, and to sentence excessiveness or disproportionality. The Nebraska Evidence Rules shall apply to evidence relating to aggravating circumstances. Each aggravating circumstance shall be proved beyond a reasonable doubt. Any evidence at the sentencing determination proceeding which the presiding judge deems to have probative value may be received. The state and the defendant or his or her counsel shall be permitted to present argument for or against sentence of death. The presiding judge shall set forth the general order of procedure at the outset of the sentencing determination proceeding. The panel shall make written findings of fact based upon the trial of guilt and the sentencing determination proceeding, identifying which, if any, of the alleged aggravating circumstances have been proven to exist beyond a reasonable doubt. Each finding of fact with respect to each alleged aggravating circumstance shall be unanimous. If the panel is unable to reach a unanimous finding of fact with respect to an aggravating circumstance, such aggravating circumstance shall not be weighed in the sentencing determination proceeding. After the presentation and receipt of evidence and argument, the panel shall determine an appropriate sentence as provided in section 29-2522.

(3) When a jury renders a verdict finding the existence of one or more aggravating circumstances as provided in section 29-2520, the panel of judges shall, as soon as practicable after receipt of the written report resulting from

the presentence investigation ordered as provided in section 29-2261, hold a hearing to receive evidence of mitigation and sentence excessiveness or disproportionality. Evidence may be presented as to any matter that the presiding judge deems relevant to (a) mitigation, including, but not limited to, the mitigating circumstances set forth in section 29-2523, and (b) sentence excessiveness or disproportionality as provided in subdivision (3) of section 29-2522. Any such evidence which the presiding judge deems to have probative value may be received. The state and the defendant and his or her counsel shall be permitted to present argument for or against sentence of death. The presiding judge shall set forth the general order of procedure at the outset of the sentencing determination proceeding. After the presentation and receipt of evidence and argument, the panel shall determine an appropriate sentence as provided in section 29-2522.

Source: Laws 1973, LB 268, § 6; Laws 2002, Third Spec. Sess., LB 1, § 12; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2521 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

Nebraska Evidence Rules, see section 27-1103.

29-2521.01 Legislative findings.

The Legislature hereby finds that:

(1) Life is the most valuable possession of a human being, and before taking it, the state should apply and follow the most scrupulous standards of fairness and uniformity;

(2) The death penalty, because of its enormity and finality, should never be imposed arbitrarily nor as a result of local prejudice or public hysteria;

(3) State law should be applied uniformly throughout the state and since the death penalty is a statewide law an offense which would not result in a death sentence in one portion of the state should not result in death in a different portion;

(4) Charges resulting from the same or similar circumstances have, in the past, not been uniform and have produced radically differing results; and

(5) In order to compensate for the lack of uniformity in charges which are filed as a result of similar circumstances it is necessary for the Supreme Court to review and analyze all criminal homicides committed under the existing law in order to insure that each case produces a result similar to that arrived at in other cases with the same or similar circumstances.

Source: Laws 1978, LB 711, § 1; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2521.01 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

29-2521.02 Criminal homicide cases; review and analysis by Supreme Court; manner.

The Supreme Court shall within a reasonable time after July 22, 1978, review and analyze all cases involving criminal homicide committed on or after April 20, 1973. Such review and analysis shall examine (1) the facts including mitigating and aggravating circumstances, (2) the charges filed, (3) the crime

for which defendant was convicted, and (4) the sentence imposed. Such review shall be updated as new criminal homicide cases occur.

Source: Laws 1978, LB 711, § 2; Laws 2000, LB 1008, § 2; Laws 2011, LB390, § 5; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2521.02 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

29-2521.03 Criminal homicide cases; appeal; sentence; Supreme Court review.

The Supreme Court shall, upon appeal, determine the propriety of the sentence in each case involving a criminal homicide by comparing such case with previous cases involving the same or similar circumstances. No sentence imposed shall be greater than those imposed in other cases with the same or similar circumstances. The Supreme Court may reduce any sentence which it finds not to be consistent with sections 29-2521.01 to 29-2521.04, 29-2522, and 29-2524.

Source: Laws 1978, LB 711, § 3; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2521.03 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

29-2521.04 Criminal homicide cases; Supreme Court review and analyze; district court; provide records.

Each district court shall provide all records required by the Supreme Court in order to conduct its review and analysis pursuant to sections 29-2521.01 to 29-2522 and 29-2524.

Source: Laws 1978, LB 711, § 4; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2521.04 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

29-2521.05 Aggravating circumstances; interlocutory appeal prohibited.

The verdict of a jury as to the existence or nonexistence of the alleged aggravating circumstances or, when the right to a jury determination of the alleged aggravating circumstances has been waived, the determination of a panel of judges with respect thereto, shall not be an appealable order or judgment of the district court, and no appeal may be taken directly from such verdict or determination.

Source: Laws 2002, Third Spec. Sess., LB 1, § 13; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2521.05 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

29-2522 Sentence; considerations; determination; contents.

The panel of judges for the sentencing determination proceeding shall either unanimously fix the sentence at death or, if the sentence of death was not unanimously agreed upon by the panel, fix the sentence at life imprisonment. Such sentence determination shall be based upon the following considerations:

(1) Whether the aggravating circumstances as determined to exist justify imposition of a sentence of death;

(2) Whether sufficient mitigating circumstances exist which approach or exceed the weight given to the aggravating circumstances; or

(3) Whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

In each case, the determination of the panel of judges shall be in writing and refer to the aggravating and mitigating circumstances weighed in the determination of the panel.

If an order is entered sentencing the defendant to death, a date for execution shall not be fixed until after the conclusion of the appeal provided for by section 29-2525.

Source: Laws 1973, LB 268, § 7; Laws 1978, LB 711, § 5; Laws 1982, LB 722, § 10; Laws 2002, Third Spec. Sess., LB 1 § 14; Laws 2011, LB12, § 4; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2522 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

29-2523 Aggravating and mitigating circumstances.

The aggravating and mitigating circumstances referred to in sections 29-2519 to 29-2524 shall be as follows:

(1) Aggravating Circumstances:

(a) The offender was previously convicted of another murder or a crime involving the use or threat of violence to the person, or has a substantial prior history of serious assaultive or terrorizing criminal activity;

(b) The murder was committed in an effort to conceal the commission of a crime, or to conceal the identity of the perpetrator of such crime;

(c) The murder was committed for hire, or for pecuniary gain, or the defendant hired another to commit the murder for the defendant;

(d) The murder was especially heinous, atrocious, cruel, or manifested exceptional depravity by ordinary standards of morality and intelligence;

(e) At the time the murder was committed, the offender also committed another murder;

(f) The offender knowingly created a great risk of death to at least several persons;

(g) The victim was a public servant having lawful custody of the offender or another in the lawful performance of his or her official duties and the offender knew or should have known that the victim was a public servant performing his or her official duties;

(h) The murder was committed knowingly to disrupt or hinder the lawful exercise of any governmental function or the enforcement of the laws; or

(i) The victim was a law enforcement officer engaged in the lawful performance of his or her official duties as a law enforcement officer and the offender knew or reasonably should have known that the victim was a law enforcement officer.

(2) Mitigating Circumstances:

(a) The offender has no significant history of prior criminal activity;

(b) The offender acted under unusual pressures or influences or under the domination of another person;

(c) The crime was committed while the offender was under the influence of extreme mental or emotional disturbance;

(d) The age of the defendant at the time of the crime;

(e) The offender was an accomplice in the crime committed by another person and his or her participation was relatively minor;

(f) The victim was a participant in the defendant's conduct or consented to the act; or

(g) At the time of the crime, the capacity of the defendant to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law was impaired as a result of mental illness, mental defect, or intoxication.

Source: Laws 1973, LB 268, § 8; Laws 1998, LB 422, § 1; Laws 2002, Third Spec. Sess., LB 1, § 15; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2523 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

29-2524 Sections; how construed.

Nothing in sections 25-1140.09, 28-303, 28-313, and 29-2519 to 29-2546 shall be in any way deemed to repeal or limit existing procedures for automatic review of capital cases, nor shall they in any way limit the right of the Supreme Court to reduce a sentence of death to a sentence of life imprisonment in accordance with the provisions of section 29-2308, nor shall they limit the right of the Board of Pardons to commute any sentence of death to a sentence of life imprisonment.

Source: Laws 1973, LB 268, § 9; Laws 1978, LB 748, § 23; Laws 1978, LB 711, § 6; Laws 2002, Third Spec. Sess., LB 1 § 16; Laws 2011, LB12, § 5; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2524 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

Constitutional provisions:
Board of Pardons, see Article IV, section 13, Constitution of Nebraska.
Board of Pardons, see section 83-1,126.

29-2524.01 Criminal homicide; report filed by county attorney; contents; time of filing.

Each county attorney shall file a report with the State Court Administrator for each criminal homicide case filed by him. The report shall include (1) the initial charge filed, (2) any reduction in the initial charge and whether such reduction was the result of a plea bargain or some other reason, (3) dismissals prior to trial, (4) outcome of the trial including not guilty, guilty as charged, guilty of a lesser included offense, or dismissal, (5) the sentence imposed, (6) whether an appeal was taken, and (7) such other information as may be required by the State Court Administrator. Such report shall be filed not later than thirty days after ultimate disposition of the case by the court.

Source: Laws 1978, LB 749, § 1; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2524.01 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

29-2524.02 State Court Administrator; criminal homicide report; provide forms.

The State Court Administrator shall provide all forms necessary to carry out sections 29-2524.01 and 29-2524.02.

Source: Laws 1978, LB 749, § 2; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2524.02 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

29-2525 Capital punishment cases; appeal; procedure; expedited opinion.

In cases when the punishment is capital, no notice of appeal shall be required and within the time prescribed by section 25-1912 for the commencement of proceedings for the reversing, vacating, or modifying of judgments, the clerk of the district court in which the conviction was had shall notify the court reporter who shall prepare a bill of exceptions as in other cases and the clerk shall prepare and file with the Clerk of the Supreme Court a transcript of the record of the proceedings, for which no charge shall be made. The Clerk of the Supreme Court shall, upon receipt of the transcript, docket the appeal. No payment of a docket fee shall be required.

The Supreme Court shall expedite the rendering of its opinion on the appeal, giving the matter priority over civil and noncapital criminal matters.

Source: Laws 1973, LB 268, § 10; Laws 1982, LB 722, § 11; Laws 1995, LB 371, § 16; Laws 2000, LB 921, § 32; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2525 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

Bill of exceptions, see section 25-1140.09.

29-2527 Briefs; payment for printing by county.

The cost of printing briefs on behalf of any person convicted of an offense for which the punishment adjudged is capital shall be paid by the county.

Source: Laws 1973, LB 268, § 12; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2527 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

29-2528 Death penalty cases; Supreme Court; orders.

In all cases when the death penalty has been imposed by the district court, the Supreme Court shall, after consideration of the appeal, order the prisoner to be discharged, a new trial to be had, or appoint a day certain for the execution of the sentence.

Source: Laws 1973, LB 268, § 13; Laws 1982, LB 722, § 12; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2528 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

29-2537 Convicted person; appears to be incompetent; notice to judge; suspend sentence; commission appointed; findings; suspension of execution; when; annual review.

(1) If any convicted person under sentence of death shall appear to be incompetent, the Director of Correctional Services shall forthwith give notice thereof to a judge of the district court of the judicial district in which the convicted person was tried and sentenced and such judge shall at once make such investigation as shall satisfy him or her as to whether a commission ought to be named to examine such convicted person.

(2) If the court determines that there is not sufficient reason for the appointment of a commission, the court shall so find and refuse to suspend the execution of the convicted person. If the court determines that a commission ought to be appointed to examine such convicted person, the court shall make a finding to that effect and cause it to be entered upon the records of the district court in the county in which such convicted person was sentenced, and, if necessary, the court shall suspend the execution and appoint three licensed mental health professionals employed by the state as a commission to examine such convicted person. The commission shall examine the convicted person to determine whether he or she is competent or incompetent and shall report its findings in writing to the court within ten days after its appointment. If two members of the commission find the convicted person incompetent, the court shall suspend the convicted person's execution until further order. Thereafter, the court shall appoint a commission annually to review the convicted person's competency. The results of such review shall be provided to the court. If the convicted person is subsequently found to be competent by two members of the commission, the court shall certify that finding to the Supreme Court which shall then establish a date for the enforcement of the convicted person's sentence.

(3) The standard for the determination of competency under this section shall be the same as the standard for determining competency to stand trial.

Source: Laws 1973, LB 268, § 22; Laws 1986, LB 1177, § 8; Laws 2009, LB36, § 1; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2537 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

29-2538 Suspension of execution pending investigation; convict found competent; Supreme Court; appoint a day of execution.

If a court has suspended the execution of the convicted person pending an investigation as to his or her competency, the date for the enforcement of the convicted person's sentence has passed, and the convicted person is found to be competent, the court shall certify that finding to the Supreme Court which shall appoint a day for the enforcement of the convicted person's sentence.

Source: Laws 1973, LB 268, § 23; Laws 2009, LB36, § 2; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2538 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

29-2539 Commission members; mileage; payment.

The members of the commission appointed pursuant to section 29-2537 shall each receive mileage at the rate authorized in section 81-1176 for state

employees for each mile actually and necessarily traveled in reaching and returning from the place where the convicted person is confined and examined, and it is hereby made the duty of the commission to act in this capacity without compensation other than that already provided for them by law. All of the findings and orders aforesaid shall be entered in the district court records of the county wherein the convicted person was originally tried and sentenced, and the costs therefor, including those providing for the mileage of the members of the commission, shall be allowed and paid in the usual manner by the county in which the convicted person was tried and sentenced to death.

Source: Laws 1973, LB 268, § 24; Laws 1981, LB 204, § 44; Laws 2009, LB36, § 3; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2539 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

29-2540 Female convicted person; pregnant; notice to judge; procedures.

If a female convicted person under sentence of death shall appear to be pregnant, the Director of Correctional Services shall in like manner notify the judge of the district court of the county in which she was sentenced, who shall in all things proceed as in the case of an incompetent convicted person.

Source: Laws 1973, LB 268, § 25; Laws 1986, LB 1177, § 9; Laws 2009, LB36, § 4; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2540 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

Mentally incompetent convicts, see sections 29-2537 to 29-2539.

29-2541 Female convicted person; finding convicted person is pregnant; judge; duties; costs.

If the commission appointed pursuant to section 29-2537 finds that the female convicted person is pregnant, the court shall suspend the execution of her sentence. At such time as it shall be determined that such woman is no longer pregnant, the judge shall appoint a date for her execution and issue a warrant directing the enforcement of the sentence of death which shall be delivered to the Director of Correctional Services. The costs and expenses thereof shall be the same as those provided for in the case of an incompetent convicted person and shall be paid in the same manner.

Source: Laws 1973, LB 268, § 26; Laws 1986, LB 1177, § 10; Laws 2009, LB36, § 5; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2541 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

29-2542 Escaped convict; return; notify Supreme Court; fix date of execution.

If any person who has been convicted of a crime punishable by death, and sentenced to death, shall escape, and shall not be retaken before the time fixed for his or her execution, it shall be lawful for the Director of Correctional Services, or any sheriff or other officer or person, to rearrest such person and return him or her to the custody of the director, who shall thereupon notify the Supreme Court that such person has been returned to custody. Upon receipt of that notice, the Supreme Court shall then issue a warrant, fixing a date for the enforcement of the sentence which shall be delivered to the director. The date

of execution shall be set no later than sixty days following the issuance of the warrant.

Source: Laws 1973, LB 268, § 27; Laws 2009, LB36, § 6; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2542 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

29-2543 Person convicted of crime sentenced to death; Supreme Court; warrant.

(1) Whenever any person has been tried and convicted before any district court in this state, has been sentenced to death, and has had his or her sentence of death affirmed by the Supreme Court on mandatory direct review, it shall be the duty of the Supreme Court to issue a warrant, under the seal of the court, reciting therein the conviction and sentence and establishing a date for the enforcement of the sentence directed to the Director of Correctional Services, commanding him or her to proceed at the time named in the warrant. The date of execution shall be set no later than sixty days following the issuance of the warrant.

(2) Thereafter, if the initial execution date has been stayed and the original execution date has expired, the Supreme Court shall establish a new date for enforcement of the sentence upon receipt of notice from the Attorney General that the stay of execution is no longer in effect and issue its warrant to the director. The date of execution shall be set no later than sixty days following the issuance of the warrant.

Source: Laws 1973, LB 268, § 28; Laws 1993, LB 31, § 12; Laws 2009, LB36, § 7; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2543 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

29-2546 Reversal of judgment of conviction; delivery of convicted person to custody of sheriff; await further judgment and order of court.

Whenever the Supreme Court reverses the judgment of conviction in accordance with which any convicted person has been sentenced to death and is confined in a Department of Correctional Services adult correctional facility as herein provided, it shall be the duty of the Director of Correctional Services, upon receipt of a copy of such judgment of reversal, duly certified by the clerk of the court and under the seal thereof, to forthwith deliver such convicted person into the custody of the sheriff of the county in which the conviction was had to be held in the jail of the county awaiting the further judgment and order of the court in the case.

Source: Laws 1973, LB 268, § 31; Laws 1993, LB 31, § 13; Laws 2009, LB36, § 8; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2546 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

ARTICLE 27

RECEIPTS AND DISBURSEMENTS OF MONEY IN CRIMINAL CAUSES

29-2702 Money received; disposition.

Every judge or clerk of court, upon receiving any money on account of forfeited recognizances, fines, or costs accruing or due to the county or state, shall pay the same to the treasurer of the proper county, except as may be otherwise expressly provided, within thirty days from the time of receiving the same. When any money is paid to a judge or clerk of court on account of costs due to individual persons, the same shall be paid to the persons to whom the same are due upon demand.

Source: G.S.1873, c. 58, § 534, p. 840; R.S.1913, § 9238; C.S.1922, § 10267; Laws 1927, c. 62, § 1, p. 223; C.S.1929, § 29-2702; R.S.1943, § 29-2702; Laws 1973, LB 226, § 19; Laws 1988, LB 370, § 8; Laws 2020, LB1028, § 6.

ARTICLE 28
HABEAS CORPUS

Section
29-2801. Habeas corpus; writ; when allowed.
29-2811. Accessories before the fact in capital cases; not bailable.

29-2801 Habeas corpus; writ; when allowed.

If any person, except persons convicted of some crime or offense for which they stand committed, or persons committed for treason or felony, the punishment whereof is capital, plainly and specially expressed in the warrant of commitment, now is or shall be confined in any jail of this state, or shall be unlawfully deprived of his or her liberty, and shall make application, either by him or herself or by any person on his or her behalf, to any one of the judges of the district court, or to any county judge, and does at the same time produce to such judge a copy of the commitment or cause of detention of such person, or if the person so imprisoned or detained is imprisoned or detained without any legal authority, upon making the same appear to such judge, by oath or affirmation, it shall be his duty forthwith to allow a writ of habeas corpus, which writ shall be issued forthwith by the clerk of the district court, or by the county judge, as the case may require, under the seal of the court whereof the person allowing such writ is a judge, directed to the proper officer, person or persons who detains such prisoner.

Source: G.S.1873, c. 58, § 353, p. 804; R.S.1913, § 9247; C.S.1922, § 10276; C.S.1929, § 29-2801; R.S.1943, § 29-2801; Laws 2015, LB268, § 24; Referendum 2016, No. 426.

Note: The changes made to section 29-2801 by Laws 2015, LB 268, section 24, have been omitted because of the vote on the referendum at the November 2016 general election.

29-2811 Accessories before the fact in capital cases; not bailable.

When any person shall appear to be committed by any judge or magistrate, and charged as accessory before the fact to any felony, the punishment whereof is capital, which felony shall be plainly and especially charged in the warrant of commitment, such person shall not be removed or bailed by virtue of sections 29-2801 to 29-2824, or in any other manner than as if said sections had not been enacted.

Source: G.S.1873, c. 58, § 363, p. 806; R.S.1913, § 9257; C.S.1922, § 10286; C.S.1929, § 29-2811; R.S.1943, § 29-2811; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2811 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

ARTICLE 29

CONVICTED SEX OFFENDER

Section
29-2935. Department of Health and Human Services; access to data and information for evaluation; authorized.

29-2935 Department of Health and Human Services; access to data and information for evaluation; authorized.

For purposes of evaluating the treatment process, the Division of Parole Supervision, the Department of Correctional Services, the Board of Parole, and the designated aftercare treatment programs shall allow appropriate access to data and information as requested by the Department of Health and Human Services.

Source: Laws 1992, LB 523, § 14; Laws 1996, LB 645, § 19; Laws 1996, LB 1044, § 88; Laws 2018, LB841, § 4.

ARTICLE 30

POSTCONVICTION PROCEEDINGS

Section
29-3001. Postconviction relief; motion; limitation; procedure; costs.
29-3005. Victim of sex trafficking; motion to set aside conviction or adjudication; procedure; court; findings; considerations; hearing; order; effect.

29-3001 Postconviction relief; motion; limitation; procedure; costs.

(1) A prisoner in custody under sentence and claiming a right to be released on the ground that there was such a denial or infringement of the rights of the prisoner as to render the judgment void or voidable under the Constitution of this state or the Constitution of the United States, may file a verified motion, in the court which imposed such sentence, stating the grounds relied upon and asking the court to vacate or set aside the sentence.

(2) Unless the motion and the files and records of the case show to the satisfaction of the court that the prisoner is entitled to no relief, the court shall cause notice thereof to be served on the county attorney, grant a prompt hearing thereon, and determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that there was such a denial or infringement of the rights of the prisoner as to render the judgment void or voidable under the Constitution of this state or the Constitution of the United States, the court shall vacate and set aside the judgment and shall discharge the prisoner or resentence the prisoner or grant a new trial as may appear appropriate. Proceedings under the provisions of sections 29-3001 to 29-3004 shall be civil in nature. Costs shall be taxed as in habeas corpus cases.

(3) A court may entertain and determine such motion without requiring the production of the prisoner, whether or not a hearing is held. Testimony of the prisoner or other witnesses may be offered by deposition. The court need not entertain a second motion or successive motions for similar relief on behalf of the same prisoner.

(4) A one-year period of limitation shall apply to the filing of a verified motion for postconviction relief. The one-year limitation period shall run from the later of:

(a) The date the judgment of conviction became final by the conclusion of a direct appeal or the expiration of the time for filing a direct appeal;

(b) The date on which the factual predicate of the constitutional claim or claims alleged could have been discovered through the exercise of due diligence;

(c) The date on which an impediment created by state action, in violation of the Constitution of the United States or the Constitution of Nebraska or any law of this state, is removed, if the prisoner was prevented from filing a verified motion by such state action;

(d) The date on which a constitutional claim asserted was initially recognized by the Supreme Court of the United States or the Nebraska Supreme Court, if the newly recognized right has been made applicable retroactively to cases on postconviction collateral review; or

(e) The date on which the Supreme Court of the United States denies a writ of certiorari or affirms a conviction appealed from the Nebraska Supreme Court. This subdivision only applies if, within thirty days after petitioning the Supreme Court of the United States for a writ of certiorari, the prisoner files a notice in the district court of conviction stating that the prisoner has filed such petition.

Source: Laws 1965, c. 145, § 1, p. 486; Laws 2011, LB137, § 1; Laws 2023, LB50, § 18.

29-3005 Victim of sex trafficking; motion to set aside conviction or adjudication; procedure; court; findings; considerations; hearing; order; effect.

(1) For purposes of this section:

(a) Prostitution-related offense includes:

(i) Prostitution under section 28-801, solicitation of prostitution under section 28-801.01, keeping a place of prostitution under section 28-804, public indecency under section 28-806, or loitering for the purpose of engaging in prostitution or related or similar offenses under local ordinances; and

(ii) Attempt, conspiracy, solicitation, being an accessory to, aiding and abetting, aiding the consummation of, or compounding a felony with any of the offenses in subdivision (1)(a) of this section as the underlying offense;

(b) Trafficker means a person who engages in sex trafficking or sex trafficking of a minor as defined in section 28-830; and

(c) Victim of sex trafficking means a person subjected to sex trafficking or sex trafficking of a minor, as those terms are defined in section 28-830.

(2) At any time following the completion of sentence or disposition, a victim of sex trafficking convicted in county or district court of, or adjudicated in a juvenile court for, (a) a prostitution-related offense committed while the movant was a victim of sex trafficking or proximately caused by the movant's status as a victim of sex trafficking or (b) any other offense committed as a direct result of, or proximately caused by, the movant's status as a victim of sex trafficking, may file a motion to set aside such conviction or adjudication. The motion shall

be filed in the county, district, or separate juvenile court of the county in which the movant was convicted or adjudicated.

(3)(a) If the court finds that the movant was a victim of sex trafficking at the time of the prostitution-related offense or finds that the movant's participation in the prostitution-related offense was proximately caused by the movant's status as a victim of sex trafficking, the court shall grant the motion to set aside a conviction or an adjudication for such prostitution-related offense.

(b) If the court finds that the movant's participation in an offense other than a prostitution-related offense was a direct result of or proximately caused by the movant's status as a victim of sex trafficking, the court shall grant the motion to set aside a conviction or an adjudication for such offense.

(4) Official documentation of a movant's status as a victim of sex trafficking at the time of the prostitution-related offense or other offense shall create a rebuttable presumption that the movant was a victim of sex trafficking at the time of the prostitution-related offense or other offense. Such official documentation shall not be required to obtain relief under this section. Such official documentation includes:

(a) A copy of an official record, certification, or eligibility letter from a federal, state, tribal, or local proceeding, including an approval notice or an enforcement certification generated from a federal immigration proceeding, that shows that the movant is a victim of sex trafficking; or

(b) An affidavit or sworn testimony from an attorney, a member of the clergy, a medical professional, a trained professional staff member of a victim services organization, or other professional from whom the movant has sought legal counsel or other assistance in addressing the trauma associated with being a victim of sex trafficking.

(5) In considering whether the movant is a victim of sex trafficking, the court may consider any other evidence the court determines is of sufficient credibility and probative value, including an affidavit or sworn testimony. Examples of such evidence include, but are not limited to:

(a) Branding or other tattoos on the movant that identified him or her as having a trafficker;

(b) Testimony or affidavits from those with firsthand knowledge of the movant's involvement in the commercial sex trade such as solicitors of commercial sex, family members, hotel workers, and other individuals trafficked by the same individual or group of individuals who trafficked the movant;

(c) Financial records showing profits from the commercial sex trade, such as records of hotel stays, employment at indoor venues such as massage parlors, bottle clubs, or strip clubs, or employment at an escort service;

(d) Internet listings, print advertisements, or business cards used to promote the movant for commercial sex; or

(e) Email, text, or voicemail records between the movant, the trafficker, or solicitors of sex that reveal aspects of the sex trade such as behavior patterns, meeting times, or payments or examples of the trafficker exerting force, fraud, or coercion over the movant.

(6) Upon request of a movant, any hearing relating to the motion shall be conducted in camera. The rules of evidence shall not apply at any hearing relating to the motion.

(7) An order setting aside a conviction or an adjudication under this section shall have the same effect as an order setting aside a conviction as provided in subsections (5) and (6) of section 29-2264.

Source: Laws 2018, LB1132, § 2; Laws 2020, LB881, § 25.

ARTICLE 32

RENDITION OF PRISONERS AS WITNESSES

Section
29-3205. Sections; exceptions.

29-3205 Sections; exceptions.

Sections 29-3201 to 29-3210 do not apply to any person in this state confined as mentally ill or under sentence of death.

Source: Laws 1969, c. 229, § 5, p. 855; Laws 1986, LB 1177, § 11; Laws 2015, LB268, § 25; Referendum 2016, No. 426.

Note: The changes made to section 29-3205 by Laws 2015, LB 268, section 25, have been omitted because of the vote on the referendum at the November 2016 general election.

ARTICLE 35

CRIMINAL HISTORY INFORMATION

Section
29-3523. Criminal history record information; dissemination; limitations; removal; certain information not part of public record; court; duties; sealed record; effect; expungement.

29-3523 Criminal history record information; dissemination; limitations; removal; certain information not part of public record; court; duties; sealed record; effect; expungement.

(1) After the expiration of the periods described in subsection (3) of this section or after the granting of a motion under subsection (4), (5), or (6) of this section, a criminal justice agency shall respond to a public inquiry in the same manner as if there were no criminal history record information and criminal history record information shall not be disseminated to any person other than a criminal justice agency, except as provided in subsection (2) of this section or when the subject of the record:

(a) Is currently the subject of prosecution or correctional control as the result of a separate arrest;

(b) Is currently an announced candidate for or holder of public office;

(c) Has made a notarized request for the release of such record to a specific person; or

(d) Is kept unidentified, and the record is used for purposes of surveying or summarizing individual or collective law enforcement agency activity or practices, or the dissemination is requested consisting only of release of criminal history record information showing (i) dates of arrests, (ii) reasons for arrests, and (iii) the nature of the dispositions including, but not limited to, reasons for not prosecuting the case or cases.

(2) That part of criminal history record information described in subsection (7) of this section may be disseminated to individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an

agreement with a criminal justice agency that specifically authorizes access to the information, limits the use of the information to research, evaluative, or statistical activities, and ensures the confidentiality and security of the information.

(3) Except as provided in subsections (1) and (2) of this section, in the case of an arrest, citation in lieu of arrest, or referral for prosecution without citation, all criminal history record information relating to the case shall be removed from the public record as follows:

(a) When no charges are filed as a result of the determination of the prosecuting attorney, the criminal history record information shall not be part of the public record after one year from the date of arrest, citation in lieu of arrest, or referral for prosecution without citation;

(b) When charges are not filed as a result of a completed diversion, the criminal history record information shall not be part of the public record after two years from the date of arrest, citation in lieu of arrest, or referral for prosecution without citation; and

(c) When charges are filed, but the case is dismissed by the court (i) on motion of the prosecuting attorney, (ii) as a result of a hearing not the subject of a pending appeal, (iii) after acquittal, (iv) after a deferred judgment, or (v) after completion of a program prescribed by a drug court or any other problem solving court approved by the Supreme Court, the criminal history record information shall not be part of the public record immediately upon notification of a criminal justice agency after acquittal pursuant to subdivision (3)(c)(iii) of this section or after the entry of an order dismissing the case.

(4) Upon the granting of a motion to set aside a conviction or an adjudication pursuant to section 29-3005, a person who is a victim of sex trafficking, as defined in section 29-3005, may file a motion with the sentencing court for an order to seal the criminal history record information related to such conviction or adjudication. Upon a finding that a court issued an order setting aside such conviction or adjudication pursuant to section 29-3005, the sentencing court shall grant the motion and:

(a) For a conviction, issue an order as provided in subsection (7) of this section; or

(b) For an adjudication, issue an order as provided in section 43-2,108.05.

(5) Any person who has received a pardon may file a motion with the sentencing court for an order to seal the criminal history record information and any cases related to such charges or conviction. Upon a finding that the person received a pardon, the court shall grant the motion and issue an order as provided in subsection (7) of this section.

(6) Any person who is subject to a record which resulted in a case being dismissed prior to January 1, 2017, as described in subdivision (3)(c) of this section, may file a motion with the court in which the case was filed to enter an order pursuant to subsection (7) of this section. Upon a finding that the case was dismissed for any reason described in subdivision (3)(c) of this section, the court shall grant the motion and enter an order as provided in subsection (7) of this section.

(7) Upon acquittal or entry of an order dismissing a case described in subdivision (3)(c) of this section, or after granting a motion under subsection (4), (5), or (6) of this section, the court shall:

(a) Order that all records, including any information or other data concerning any proceedings relating to the case, including the arrest, taking into custody, petition, complaint, indictment, information, trial, hearing, adjudication, correctional supervision, dismissal, or other disposition or sentence, are not part of the public record and shall not be disseminated to persons other than criminal justice agencies, except as provided in subsection (1) or (2) of this section;

(b) Send notice of the order (i) to the Nebraska Commission on Law Enforcement and Criminal Justice, (ii) to the Nebraska State Patrol, and (iii) to law enforcement agencies, county attorneys, and city attorneys referenced in the court record;

(c) Order all parties notified under subdivision (7)(b) of this section to seal all records pertaining to the case; and

(d) If the case was transferred from one court to another, send notice of the order to seal the record to the transferring court.

(8) In any application for employment, bonding, license, education, or other right or privilege, any appearance as a witness, or any other public inquiry, a person cannot be questioned with respect to any offense for which the record is sealed. If an inquiry is made in violation of this subsection, the person may respond as if the offense never occurred.

(9) Any person arrested due to the error of a law enforcement agency may file a petition with the district court for an order to expunge the criminal history record information related to such error. The petition shall be filed in the district court of the county in which the petitioner was arrested. The county attorney shall be named as the respondent and shall be served with a copy of the petition. The court may grant the petition and issue an order to expunge such information if the petitioner shows by clear and convincing evidence that the arrest was due to error by the arresting law enforcement agency.

(10) The changes made by Laws 2018, LB1132, to the relief set forth in this section shall apply to all persons otherwise eligible in accordance with the provisions of this section, whether arrested, cited in lieu of arrest, referred for prosecution without citation, charged, convicted, or adjudicated prior to, on, or subsequent to July 19, 2018.

Source: Laws 1978, LB 713, § 25; Laws 1980, LB 782, § 1; Laws 1997, LB 856, § 1; Laws 2007, LB470, § 1; Laws 2015, LB605, § 73; Laws 2016, LB505, § 1; Laws 2018, LB1132, § 3; Laws 2019, LB686, § 12.

ARTICLE 39

PUBLIC DEFENDERS AND APPOINTED COUNSEL

(a) INDIGENT DEFENDANTS

Section
29-3903. Indigent defendant; right to counsel; appointment.

(c) COUNTY REVENUE ASSISTANCE ACT

29-3920. Legislative findings.
29-3922. Terms, defined.
29-3925. Commission; chairperson; expenses.
29-3928. Chief counsel; qualifications; salary.
29-3929. Chief counsel; duties.

(a) INDIGENT DEFENDANTS

29-3903 Indigent defendant; right to counsel; appointment.

At a felony defendant's first appearance before a judge, the judge shall advise him or her of the right to court-appointed counsel if such person is indigent. If he or she asserts indigency, the court shall make a reasonable inquiry to determine such person's financial condition and shall require him or her to execute an affidavit of indigency for filing with the clerk of the court.

If the court determines the defendant to be indigent, it shall formally appoint the public defender or, in counties not having a public defender, an attorney or attorneys licensed to practice law in this state, not exceeding two, to represent the indigent felony defendant at all future critical stages of the criminal proceedings against such defendant, consistent with the provisions of section 23-3402, but appointed counsel other than the public defender must obtain leave of court before being authorized to proceed beyond an initial direct appeal to either the Court of Appeals or the Supreme Court of Nebraska to any further direct, collateral, or postconviction appeals to state or federal courts.

A felony defendant who is not indigent at the time of his or her first appearance before a judge may nevertheless assert his or her indigency at any subsequent stage of felony proceedings, at which time the judge shall consider appointing counsel as otherwise provided in this section.

The judge, upon filing such order for appointment, shall note all appearances of appointed counsel upon the record. If at the time of appointment of counsel the indigent felony defendant and appointed counsel have not had a reasonable opportunity to consult concerning the prosecution, the judge shall continue the arraignment, trial, or other next stage of the felony proceedings for a reasonable period of time to allow for such consultation.

Source: Laws 1972, LB 1463, § 6; Laws 1979, LB 241, § 3; Laws 1984, LB 189, § 4; R.S.1943, (1989), § 29-1804.07; Laws 1990, LB 822, § 21; Laws 1991, LB 732, § 89; Laws 2018, LB193, § 62.

(c) COUNTY REVENUE ASSISTANCE ACT

29-3920 Legislative findings.

The Legislature finds that:

(1) County property owners should be given some relief from the obligation of providing mandated indigent defense services which in most instances are required because of state laws establishing crimes and penalties;

(2) Property tax relief can be accomplished if the state begins to assist the counties with the obligation of providing indigent defense services required by state laws establishing crimes and penalties;

(3) Property tax relief in the form of state assistance to the counties of Nebraska in providing for indigent defense services will also increase accountability because the state, which is the governmental entity responsible for passing criminal statutes, will likewise be responsible for paying some of the costs;

(4) Property tax relief in the form of state assistance to the counties of Nebraska in providing for indigent defense services will also improve inconsistent and inadequate funding of indigent defense services by the counties;

(5) Property tax relief in the form of state assistance to the counties of Nebraska in providing for indigent defense services will also lessen the impact on county property taxpayers of the cost of a high profile death penalty case which can significantly affect the finances of the counties; and

(6) To accomplish property tax relief in the form of the state assisting the counties of Nebraska in providing for indigent defense services, the Commission on Public Advocacy Operations Cash Fund should be established to fund the operation of the Commission on Public Advocacy and to fund reimbursement requests as determined by section 29-3933.

Source: Laws 1995, LB 646, § 2; Laws 2002, LB 876, § 64; Laws 2003, LB 760, § 9; Laws 2015, LB268, § 26; Referendum 2016, No. 426.

Note: The changes made to section 29-3920 by Laws 2015, LB 268, section 26, have been omitted because of the vote on the referendum at the November 2016 general election.

29-3922 Terms, defined.

For purposes of the County Revenue Assistance Act:

(1) Chief counsel means an attorney appointed to be the primary administrative officer of the commission pursuant to section 29-3928;

(2) Commission means the Commission on Public Advocacy;

(3) Commission staff means attorneys, investigators, and support staff who are performing work for the capital litigation division, appellate division, DNA testing division, and major case resource center;

(4) Contracting attorney means an attorney contracting to act as a public defender pursuant to sections 23-3404 to 23-3408;

(5) Court-appointed attorney means an attorney other than a contracting attorney or a public defender appointed by the court to represent an indigent person;

(6) Indigent defense services means legal services provided to indigent persons by an indigent defense system in capital cases, felony cases, misdemeanor cases, juvenile cases, mental health commitment cases, child support enforcement cases, and paternity establishment cases;

(7) Indigent defense system means a system of providing services, including any services necessary for litigating a case, by a contracting attorney, court-appointed attorney, or public defender;

(8) Indigent person means a person who is indigent and unable to obtain legal counsel as determined pursuant to subdivision (3) of section 29-3901; and

(9) Public defender means an attorney appointed or elected pursuant to sections 23-3401 to 23-3403.

Source: Laws 1995, LB 646, § 4; Laws 2001, LB 335, § 3; Laws 2001, LB 659, § 15; Laws 2009, LB154, § 2; Laws 2015, LB268, § 27; Referendum 2016, No. 426.

Note: The changes made to section 29-3922 by Laws 2015, LB 268, section 27, have been omitted because of the vote on the referendum at the November 2016 general election.

29-3925 Commission; chairperson; expenses.

The Governor shall designate one of the members of the commission as the chairperson. The members of the commission shall be reimbursed for expenses incurred in the performance of their duties as provided in sections 81-1174 to 81-1177.

Source: Laws 1995, LB 646, § 7; Laws 2020, LB381, § 24.

29-3928 Chief counsel; qualifications; salary.

The commission shall appoint a chief counsel. The responsibilities and duties of the chief counsel shall be defined by the commission and shall include the overall supervision of the workings of the various divisions of the commission. The chief counsel shall be qualified for his or her position, shall have been licensed to practice law in the State of Nebraska for at least five years prior to the effective date of the appointment, and shall be experienced in the practice of criminal defense, including the defense of capital cases. The chief counsel shall serve at the pleasure of the commission. The salary of the chief counsel shall be set by the commission.

Source: Laws 1995, LB 646, § 10; Laws 2015, LB268, § 28; Referendum 2016, No. 426.

Note: The changes made to section 29-3928 by Laws 2015, LB 268, section 28, have been omitted because of the vote on the referendum at the November 2016 general election.

29-3929 Chief counsel; duties.

The primary duties of the chief counsel shall be to provide direct legal services to indigent defendants, and the chief counsel shall:

(1) Supervise the operations of the appellate division, the capital litigation division, the DNA testing division, and the major case resource center;

(2) Prepare a budget and disburse funds for the operations of the commission;

(3) Present to the commission an annual report on the operations of the commission, including an accounting of all funds received and disbursed, an evaluation of the cost-effectiveness of the commission, and recommendations for improvement;

(4) Convene or contract for conferences and training seminars related to criminal defense;

(5) Perform other duties as directed by the commission;

(6) Establish and administer projects and programs for the operation of the commission;

(7) Appoint and remove employees of the commission and delegate appropriate powers and duties to them;

(8) Adopt and promulgate rules and regulations for the management and administration of policies of the commission and the conduct of employees of the commission;

(9) Transmit monthly to the commission a report of the operations of the commission for the preceding calendar month;

(10) Execute and carry out all contracts, leases, and agreements authorized by the commission with agencies of federal, state, or local government, corporations, or persons; and

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

Source: Laws 1995, LB 646, § 11; Laws 2001, LB 659, § 16; Laws 2015, LB268, § 29; Referendum 2016, No. 426.

Note: The changes made to section 29-3929 by Laws 2015, LB 268, section 29, have been omitted because of the vote on the referendum at the November 2016 general election.

29-3930 Commission; divisions established.

The following divisions are established within the commission:

(1) The capital litigation division shall be available to assist in the defense of capital cases in Nebraska, subject to caseload standards of the commission;

(2) The appellate division shall be available to prosecute appeals to the Court of Appeals and the Supreme Court, subject to caseload standards of the commission;

(3) The violent crime and drug defense division shall be available to assist in the defense of certain violent and drug crimes as defined by the commission, subject to the caseload standards of the commission;

(4) The DNA testing division shall be available to assist in representing persons who are indigent who have filed a motion pursuant to the DNA Testing Act, subject to caseload standards; and

(5) The major case resource center shall be available to assist public defenders, contracting attorneys, or court-appointed attorneys with the defense of a felony offense, subject to caseload standards of the commission.

Source: Laws 1995, LB 646, § 12; Laws 2001, LB 659, § 17; Laws 2003, LB 760, § 11; Laws 2015, LB268, § 30; Referendum 2016, No. 426.

Note: The changes made to section 29-3930 by Laws 2015, LB 268, section 30, have been omitted because of the vote on the referendum at the November 2016 general election.

Cross References

DNA Testing Act, see section 29-4116.

29-3933 Request for reimbursement; requirements.

(1) Any county which intends to request reimbursement for a portion of its expenditures for its indigent defense system must comply with this section.

(2) In order to assist the Commission on Public Advocacy in its budgeting process for determining future reimbursement amounts, after July 1, 2002, and before July 15, 2002, and for each year thereafter in which the county intends to seek reimbursement for a portion of its expenditures for indigent defense services in felony cases for the next fiscal year, the county shall present to the Commission on Public Advocacy (a) a plan, in a format approved by the commission, describing how the county intends to provide indigent defense services in felony cases, (b) a statement of intent declaring that the county intends to comply with the standards set by the commission for felony cases and that the county intends to apply for reimbursement, and (c) a projection of the total dollar amount of expenditures for that county's indigent defense services in felony cases for the next fiscal year.

(3) The commission may conduct whatever investigation is necessary and may require certifications by key individuals in the criminal justice system, in order to determine if the county is in compliance with the standards. If a county is certified by the commission as having met the standards established

by the commission for felony cases, the county shall be eligible for reimbursement according to the following schedule and procedures: The county clerk of the county seeking reimbursement may submit, on a quarterly basis, a certified request to the commission, for reimbursement from funds appropriated by the Legislature, for an amount equal to one-fourth of the county's actual expenditures for indigent defense services in felony cases.

(4) Upon certification by the county clerk of the amount of the expenditures, and a determination by the commission that the request is in compliance with the standards set by the commission for felony cases, the commission shall quarterly authorize an amount of reimbursement to the county as set forth in this section.

(5) If the appropriated funds are insufficient in any quarter to meet the amount needed for full payment of all county reimbursements for net expenditures that are certified for that quarter, the commission shall pay the counties their pro rata share of the remaining funds based upon the percentage of the county's certified request in comparison to the total certified requests for that quarter.

(6) For purposes of section 13-519, for any year in which a county first seeks reimbursement from funds appropriated by the Legislature or has previously qualified for reimbursement and is seeking additional reimbursement for improving its indigent criminal defense program, the last prior year's total of restricted funds shall be the last prior year's total of restricted funds plus any increased amount budgeted for indigent defense services that is required to develop a plan and meet the standards necessary to qualify for reimbursement of expenses from funds appropriated by the Legislature. This subsection applies to fiscal years beginning prior to July 1, 2025.

Source: Laws 2001, LB 335, § 6; Laws 2002, LB 876, § 69; Laws 2024, First Spec. Sess., LB34, § 17.
Effective date August 21, 2024.

ARTICLE 40

SEX OFFENDERS

(a) SEX OFFENDER REGISTRATION ACT

(a) SEX OFFENDER REGISTRATION ACT

29-4003 Applicability of act.

(1)(a) The Sex Offender Registration Act applies to any person who on or after January 1, 1997:

(i) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any of the following:

(A) 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 in this section;

(B) False imprisonment of a minor pursuant to section 28-314 or 28-315;

(C) Sexual assault pursuant to section 28-319 or 28-320;

(D) Sexual abuse by a school employee pursuant to section 28-316.01;

(E) Sexual assault of a child in the second or third degree pursuant to section 28-320.01;

(F) Sexual assault of a child in the first degree pursuant to section 28-319.01;

(G) Sexual abuse of a vulnerable adult or senior adult pursuant to subdivision (1)(c) of section 28-386;

(H) Incest of a minor pursuant to section 28-703;

(I) Pandering of a minor pursuant to section 28-802;

(J) Visual depiction of sexually explicit conduct of a child pursuant to section 28-1463.03 or subdivision (2)(b) or (c) of section 28-1463.05;

(K) Knowingly possessing any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers pursuant to subsection (1) or (4) of section 28-813.01;

(L) Criminal child enticement pursuant to section 28-311;

(M) Child enticement by means of an electronic communication device pursuant to section 28-320.02;

(N) Debauching a minor pursuant to section 28-805; or

(O) Attempt, solicitation, aiding or abetting, being an accessory, or conspiracy to commit an offense listed in subdivisions (1)(a)(i)(A) through (1)(a)(i)(N) of this section;

(ii) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any offense that is substantially equivalent to a registrable offense under subdivision (1)(a)(i) of this section by any village, town, city, state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, by court-martial or other military tribunal, or by a foreign jurisdiction, notwithstanding a procedure comparable in effect to that described under section 29-2264 or any other procedure to nullify a conviction other than by pardon;

(iii) Is incarcerated in a jail, a penal or correctional facility, or any other public or private institution or is under probation or parole as a result of pleading guilty to or being found guilty of a registrable offense under subdivision (1)(a)(i) or (ii) of this section prior to January 1, 1997; or

(iv) Enters the state and is required to register as a sex offender under the laws of another village, town, city, state, territory, commonwealth, or other jurisdiction of the United States.

(b) In addition to the registrable offenses under subdivision (1)(a) of this section, the Sex Offender Registration Act applies to any person who on or after January 1, 2010:

(i)(A) Except as provided in subdivision (1)(b)(i)(B) of this section, has ever pled guilty to, pled nolo contendere to, or been found guilty of any of the following:

(I) Murder in the first degree pursuant to section 28-303;

(II) Murder in the second degree pursuant to section 28-304;

(III) Manslaughter pursuant to section 28-305;

(IV) Assault in the first degree pursuant to section 28-308;

(V) Assault in the second degree pursuant to section 28-309;

(VI) Assault in the third degree pursuant to section 28-310;

(VII) Stalking pursuant to section 28-311.03;

(VIII) Violation of section 28-311.08 requiring registration under the act pursuant to subsection (6) of section 28-311.08;

(IX) Kidnapping pursuant to section 28-313;

(X) False imprisonment pursuant to section 28-314 or 28-315;

(XI) Sexual abuse of an inmate or parolee in the first degree pursuant to section 28-322.02;

(XII) Sexual abuse of an inmate or parolee in the second degree pursuant to section 28-322.03;

(XIII) Sexual abuse of a protected individual pursuant to section 28-322.04;

(XIV) Incest pursuant to section 28-703;

(XV) Child abuse pursuant to subdivision (1)(d) or (e) of section 28-707;

(XVI) Enticement by electronic communication device pursuant to section 28-833; or

(XVII) Attempt, solicitation, aiding or abetting, being an accessory, or conspiracy to commit an offense listed in subdivisions (1)(b)(i)(A)(I) through (1)(b)(i)(A)(XVI) of this section.

(B) In order for the Sex Offender Registration Act to apply to the offenses listed in subdivisions (1)(b)(i)(A)(I), (II), (III), (IV), (V), (VI), (VII), (IX), and (X) of this section, a court shall have found that evidence of sexual penetration or sexual contact, as those terms are defined in section 28-318, was present in the record, which shall include consideration of the factual basis for a plea-based conviction and information contained in the presentence report;

(ii) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any offense that is substantially equivalent to a registrable offense under subdivision (1)(b)(i) of this section by any village, town, city, state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, by court-martial or other military tribunal, or by a foreign jurisdiction, notwithstanding a procedure comparable in effect to that described under section 29-2264 or any other procedure to nullify a conviction other than by pardon; or

(iii) Enters the state and is required to register as a sex offender under the laws of another village, town, city, state, territory, commonwealth, or other jurisdiction of the United States.

(c) In addition to the registrable offenses under subdivisions (1)(a) and (b) of this section, the Sex Offender Registration Act applies to any person who on or after January 1, 2020:

(i) Has ever pled guilty to, pled nolo contendere to, or been found guilty of sexual abuse of a detainee under section 28-322.05; or

(ii) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any offense that is substantially equivalent to a registrable offense under subdivision (1)(c)(i) of this section by any village, town, city, state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, by court-martial or other military tribunal, or by a foreign

jurisdiction, notwithstanding a procedure comparable in effect to that described under section 29-2264 or any other procedure to nullify a conviction other than by pardon.

(d) In addition to the registrable offenses under subdivisions (1)(a), (b), and (c) of this section, the Sex Offender Registration Act applies to any person who on or after January 1, 2023:

(i) Has ever pled guilty to, pled nolo contendere to, or been found guilty of human trafficking under subsection (1) or (2) of section 28-831, and the court determines either by notification of sex offender registration responsibilities or notation in the sentencing order that the human trafficking was sex trafficking or sex trafficking of a minor and not solely labor trafficking or labor trafficking of a minor; or

(ii) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any offense that is substantially equivalent to a registrable offense under subdivision (1)(d)(i) of this section by any village, town, city, state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, by court-martial or other military tribunal, or by a foreign jurisdiction, notwithstanding a procedure comparable in effect to that described under section 29-2264 or any other procedure to nullify a conviction other than by pardon.

(2) A person appealing a conviction of a registrable offense under this section shall be required to comply with the act during the appeals process.

Source: Laws 1996, LB 645, § 3; Laws 2002, LB 564, § 3; Laws 2004, LB 943, § 9; Laws 2005, LB 713, § 4; Laws 2006, LB 1199, § 18; Laws 2009, LB97, § 25; Laws 2009, LB285, § 4; Laws 2011, LB61, § 2; Laws 2014, LB998, § 6; Laws 2016, LB934, § 11; Laws 2019, LB519, § 14; Laws 2019, LB630, § 7; Laws 2020, LB881, § 26; Laws 2022, LB1246, § 2.

29-4007 Sentencing court; duties; Department of Correctional Services or local facility; Department of Motor Vehicles; notification requirements; Attorney General; approve form.

(1) When sentencing a person convicted of a registrable offense under section 29-4003, the court shall:

(a) Provide written notification of the duty to register under the Sex Offender Registration Act at the time of sentencing to any defendant who has pled guilty or has been found guilty of a registrable offense under section 29-4003. The written notification shall:

(i) Inform the defendant of whether or not he or she is subject to the act, the duration of time he or she will be subject to the act, and that he or she shall report to a location designated by the Nebraska State Patrol for purposes of accepting such registration within three working days after the date of the written notification to register;

(ii) Inform the defendant that if he or she moves to another address within the same county, he or she must report to the county sheriff of the county in which he or she is residing within three working days before his or her move;

(iii) Inform the defendant that if he or she no longer has a residence, temporary domicile, or habitual living location, he or she shall report such change in person to the sheriff of the county in which he or she is located

within three working days after such change in residence, temporary domicile, or habitual living location;

(iv) Inform the defendant that if he or she moves to another county in the State of Nebraska, he or she must notify, in person, the county sheriff of the county in which he or she had been last residing, had a temporary domicile, or had a habitual living location and the county sheriff of the county in which he or she is residing, has a temporary domicile, or is habitually living of his or her current address. The notice must be given within three working days before his or her move;

(v) Inform the defendant that if he or she moves to another state, he or she must report, in person, the change of address to the county sheriff of the county in which he or she has been residing, has had a temporary domicile, or has had a habitual living location and must comply with the registration requirements of the state to which he or she is moving. The notice must be given within three working days before his or her move;

(vi) Inform the defendant that he or she shall (A) inform the sheriff of the county in which he or she resides, has a temporary domicile, or is habitually living, in person, of each educational institution at which he or she is employed, carries on a vocation, or attends school, within three working days after such employment or attendance, and (B) notify the sheriff of any change in such employment or attendance status of such person at such educational institution, within three working days;

(vii) Inform the defendant that he or she shall (A) inform the sheriff of the county in which the employment site is located, in person, of the name and address of any place where he or she is or will be an employee, within three working days after such employment, and (B) inform the sheriff of the county in which the employment site is located, in person, of any change in his or her employment;

(viii) Inform the defendant that if he or she goes to another state to work or goes to another state as a student and still resides, has a temporary domicile, or has a habitual living location in this state, he or she must comply with the registration requirements of both states;

(ix) Inform the defendant that fingerprints, palm prints, a DNA sample if not previously collected, and a photograph will be obtained by any registering entity in order to comply with the registration requirements;

(x) Inform the defendant of registry and verification locations; and

(xi) Inform the defendant of the reduction request requirements, if eligible, under section 29-4005;

(b) Require the defendant to read and sign the registration form stating that the duty of the defendant to register under the Sex Offender Registration Act has been explained;

(c) Retain the original notification signed by the defendant; and

(d) Provide a copy of the filed notification, the information or amended information, and the sentencing order of the court to the county attorney, the defendant, the sex offender registration and community notification division of the Nebraska State Patrol, and the county sheriff of the county in which the defendant resides, has a temporary domicile, or has a habitual living location.

(2) When a person is convicted of a registrable offense under section 29-4003 and is not subject to immediate incarceration upon sentencing, prior to being

released by the court, the sentencing court shall ensure that the defendant is registered by a Nebraska State Patrol office or other location designated by the patrol for purposes of accepting registrations.

(3)(a) The Department of Correctional Services or a city or county correctional or jail facility shall provide written notification of the duty to register pursuant to the Sex Offender Registration Act to any person committed to its custody for a registrable offense under section 29-4003 prior to the person's release from incarceration. The written notification shall:

(i) Inform the person of whether or not he or she is subject to the act, the duration of time he or she will be subject to the act, and that he or she shall report to a location designated by the Nebraska State Patrol for purposes of accepting such registration within three working days after the date of the written notification to register;

(ii) Inform the person that if he or she moves to another address within the same county, he or she must report all address changes, in person, to the county sheriff of the county in which he or she has been residing within three working days before his or her move;

(iii) Inform the defendant that if he or she no longer has a residence, temporary domicile, or habitual living location, he or she shall report such change in person to the sheriff of the county in which he or she is located within three working days after such change in residence, temporary domicile, or habitual living location;

(iv) Inform the person that if he or she moves to another county in the State of Nebraska, he or she must notify, in person, the county sheriff of the county in which he or she had been last residing, had a temporary domicile, or had a habitual living location and the county sheriff of the county in which he or she is residing, has a temporary domicile, or is habitually living of his or her current address. The notice must be given within three working days before his or her move;

(v) Inform the person that if he or she moves to another state, he or she must report, in person, the change of address to the county sheriff of the county in which he or she has been residing, has had a temporary domicile, or has been habitually living and must comply with the registration requirements of the state to which he or she is moving. The report must be given within three working days before his or her move;

(vi) Inform the person that he or she shall (A) inform the sheriff of the county in which he or she resides, has a temporary domicile, or is habitually living, in person, of each educational institution at which he or she is employed, carries on a vocation, or attends school, within three working days after such employment or attendance, and (B) notify the sheriff of any change in such employment or attendance status of such person at such educational institution, within three working days after such change;

(vii) Inform the person that he or she shall (A) inform the sheriff of the county in which the employment site is located, in person, of the name and address of any place where he or she is or will be an employee, within three working days after such employment, and (B) inform the sheriff of the county in which the employment site is located, in person, of any change in his or her employment;

(viii) Inform the person that if he or she goes to another state to work or goes to another state as a student and still resides, has a temporary domicile, or has

a habitual living location in this state, he or she must comply with the registration requirements of both states;

(ix) Inform the defendant that fingerprints, palm prints, a DNA sample if not previously collected, and a photograph will be obtained by any registering entity in order to comply with the registration requirements;

(x) Inform the defendant of registry and verification locations; and

(xi) Inform the defendant of the reduction request requirements, if eligible, under section 29-4005.

(b) The Department of Correctional Services or a city or county correctional or jail facility shall:

(i) Require the person to read and sign the notification form stating that the duty to register under the Sex Offender Registration Act has been explained;

(ii) Retain a signed copy of the written notification to register; and

(iii) Provide a copy of the signed, written notification to register to the person and to the sex offender registration and community notification division of the Nebraska State Patrol.

(4) If a person is convicted of a registrable offense under section 29-4003 and is immediately incarcerated, he or she shall be registered as required under the act prior to discharge, parole, or work release.

(5) The Department of Motor Vehicles shall cause written notification of the duty to register to be provided on the applications for a motor vehicle operator's license and for a commercial driver's license.

(6) All written notification as provided in this section shall be on a form approved by the Attorney General.

Source: Laws 1996, LB 645, § 7; Laws 1998, LB 204, § 1; Laws 2002, LB 564, § 7; Laws 2006, LB 1199, § 22; Laws 2009, LB97, § 27; Laws 2009, LB285, § 8; Laws 2015, LB292, § 7; Laws 2018, LB193, § 63.

(c) DANGEROUS SEX OFFENDERS

29-4019 Offense requiring lifetime community supervision; sentencing court; duties.

(1) When sentencing a person convicted of an offense which requires lifetime community supervision upon release pursuant to section 83-174.03, the sentencing court shall:

(a) Provide written notice to the defendant that he or she shall be subject to lifetime community supervision by the Division of Parole Supervision upon release from incarceration or civil commitment. The written notice shall inform the defendant (i) that he or she shall be subject to lifetime community supervision by the division upon release and that the division shall conduct a risk assessment and evaluation to determine the conditions of community supervision which will minimize, in the least restrictive manner that is compatible with public safety, the risk of the defendant committing additional offenses, (ii) that a violation of any of the conditions of community supervision imposed by the division may result in the revision of existing conditions, the addition of new conditions, a recommendation that civil commitment proceedings should be instituted, or criminal prosecution, and (iii) of his or her right to challenge the

determination of the conditions of community supervision by the division and the right to a periodic review of the conditions of community supervision pursuant to section 83-174.03 to determine if the conditions are still necessary to protect the public;

(b) Require the defendant to read and sign a form stating that the duty of the defendant to comply with the conditions of community supervision and his or her rights to challenge the conditions of community supervision imposed by the division has been explained; and

(c) Retain a copy of the written notification signed by the defendant.

(2) Prior to the release of a person serving a sentence for an offense requiring lifetime community supervision by the Division of Parole Supervision pursuant to section 83-174.03, the Department of Correctional Services, the Department of Health and Human Services, or a city or county correctional or jail facility shall:

(a) Provide written notice to the person that he or she shall be subject to lifetime community supervision by the division upon release from incarceration. The written notice shall inform the person (i) that he or she shall be subject to lifetime community supervision by the division upon release and that the division shall conduct a risk assessment and evaluation of the defendant to determine the conditions of community supervision which will minimize, in the least restrictive manner that is compatible with public safety, the risk of the person committing additional offenses, (ii) that a violation of any of the conditions of community supervision imposed by the division may result in the revision of existing conditions, the addition of new conditions, a recommendation that civil commitment proceedings should be instituted, or criminal prosecution, and (iii) of his or her right to challenge the determination of the conditions of community supervision by the division and the right to a periodic review of the conditions of community supervision pursuant to section 83-174.03 to determine if the conditions are still necessary to protect the public;

(b) Require the defendant to read and sign a form stating that the duty of the defendant to comply with the conditions of community supervision and his or her right to challenge the conditions of community supervision imposed by the division has been explained; and

(c) Retain a copy of the written notification signed by the person.

Source: Laws 2006, LB 1199, § 106; Laws 2018, LB841, § 5.

ARTICLE 41

DNA TESTING

(a) DNA IDENTIFICATION INFORMATION ACT

(a) DNA IDENTIFICATION INFORMATION ACT

29-4108 DNA samples and DNA records; confidentiality.

(1) All DNA samples and DNA records submitted to the State DNA Sample Bank or the State DNA Database are confidential except as otherwise provided in the DNA Identification Information Act. The Nebraska State Patrol shall make DNA records in the State DNA Database available:

(a) To law enforcement agencies and forensic DNA laboratories which serve such agencies and which participate in the Combined DNA Index System; and

(b) Upon written or electronic request and in furtherance of an official investigation of a criminal offense or offender or suspected offender.

(2) The Nebraska State Patrol shall adopt and promulgate rules and regulations governing the methods of obtaining information from the State DNA Database and the Combined DNA Index System and procedures for verification of the identity and authority of the requester.

(3) The Nebraska State Patrol may, for good cause shown, revoke or suspend the right of a forensic DNA laboratory in this state to have access to or submit records to the State DNA Database.

(4) For purposes of this subsection, person means a law enforcement agency, the Federal Bureau of Investigation, any forensic DNA laboratory, or person. No records or DNA samples shall be provided to any person unless such person enters into a written agreement with the Nebraska State Patrol to comply with the provisions of section 29-4109 relative to expungement, when notified by the Nebraska State Patrol that expungement has been granted. Every person shall comply with the provisions of section 29-4109 within ten calendar days of receipt of such notice and certify in writing to the Nebraska State Patrol that such compliance has been effectuated. The Nebraska State Patrol shall provide notice of such certification to the person who was granted expungement.

Source: Laws 1997, LB 278, § 8; Laws 2006, LB 385, § 9; Laws 2020, LB106, § 1.

29-4115.01 State DNA Sample and Database Fund; created; use; investment.

The State DNA Sample and Database Fund is created. The fund shall be maintained by the Nebraska State Patrol and administered by the Superintendent of Law Enforcement and Public Safety. The fund shall consist of any funds transferred to the fund by the Legislature or made available by any department or agency of the United States Government if so directed by such department or agency. The fund shall be used to pay the expenses of the Department of Correctional Services and the Nebraska State Patrol as needed to collect DNA samples as provided in section 29-4106. 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, LB190, § 6; Laws 2017, LB331, § 21.

Cross References

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

ARTICLE 42
AUDIOVISUAL COURT APPEARANCES

Section
29-4205. Audiovisual court appearance; procedures.

29-4205 Audiovisual court appearance; procedures.

In a proceeding in which an audiovisual court appearance is made:

(1) Facsimile signatures or electronically reproduced signatures are acceptable for purposes of releasing the detainee or prisoner from custody; however,

actual signed copies of the release documents must be promptly filed with the court and the detainee or prisoner must promptly be provided with a copy of all documents which the detainee or prisoner signs;

(2) The record of the court reporting personnel shall be the official record of the proceeding; and

(3) On motion of the detainee or prisoner or the prosecuting attorney or in the court's discretion, the court may terminate an audiovisual appearance and require an appearance by the detainee or prisoner.

Source: Laws 1999, LB 623, § 5; Laws 2006, LB 1115, § 24; Laws 2018, LB983, § 1.

ARTICLE 43

SEXUAL ASSAULT, DOMESTIC VIOLENCE, AND SEX TRAFFICKING

(c) SEXUAL ASSAULT EVIDENCE COLLECTION

Section
29-4307. City of the primary or metropolitan class; annual report.

(d) SEXUAL ASSAULT VICTIMS' BILL OF RIGHTS ACT

29-4308. Act, how cited.
29-4309. Terms, defined.
29-4310. Privileged communication; presence of others; effect; prosecutor; duty.
29-4311. Medical evidentiary or physical examinations; rights of victim.
29-4312. Interview or deposition; rights of victim.
29-4313. Sexual assault forensic evidence; rights of victim.
29-4314. Sexual assault forensic evidence; uses prohibited.
29-4315. Explanation of rights; required, when; contents.

(e) VICTIM CONFIDENTIALITY

29-4316. Criminal justice agencies and attorneys; maintain confidentiality of victim of sexual assault or sex trafficking.

(f) DEBT FOR MEDICAL SERVICES

29-4317. Health care provider, emergency medical services provider, laboratory, or pharmacy; provision of certain services related to sexual assault, domestic assault, or child abuse; acts prohibited.

(c) SEXUAL ASSAULT EVIDENCE COLLECTION

29-4307 City of the primary or metropolitan class; annual report.

On or before December 1, 2020, and annually thereafter, each city of the primary class and city of the metropolitan class shall make a report listing the number of untested sexual assault evidence collection kits for such city. The report shall contain aggregate data only and shall not contain any personal identifying information. The report shall be made publicly available on the city's website and shall be electronically submitted to the Attorney General and to the Legislature.

Source: Laws 2020, LB881, § 1.

(d) SEXUAL ASSAULT VICTIMS' BILL OF RIGHTS ACT

29-4308 Act, how cited.

Sections 29-4308 to 29-4315 shall be known and may be cited as the Sexual Assault Victims' Bill of Rights Act.

Source: Laws 2020, LB43, § 1.

29-4309 Terms, defined.

For the purposes of the Sexual Assault Victims' Bill of Rights Act:

(1)(a) Advocate means:

(i) Any employee or supervised volunteer of a domestic violence and sexual assault victim assistance program or of any other agency, business, or organization that is not affiliated with a law enforcement or prosecutor's office, whose primary purpose is assisting domestic violence and sexual assault victims. This includes employees or supervised volunteers of an Indian tribe or a postsecondary educational institution;

(ii) A representative from a victim and witness assistance center as established in sections 81-1845 to 81-1847 or a similar entity affiliated with a law enforcement agency or prosecutor's office; or

(iii) An advocate who is employed by a child advocacy center that meets the requirements of subsection (2) of section 28-728.

(b) If reasonably possible, an advocate shall speak the victim's preferred language or use the services of a qualified interpreter;

(2) Health care provider means any individual who is licensed, certified, or registered to perform specified health services consistent with state law;

(3) Sexual assault means a violation of section 28-319, 28-319.01, 28-320, 28-320.01, 28-320.02, 28-322.01, 28-322.02, 28-322.03, 28-322.04, 28-322.05, 28-703, or 28-1463.03, sex trafficking or sex trafficking of a minor under section 28-831, or subdivision (1)(c) or (g) of section 28-386 or subdivision (1)(d), (e), or (f) of section 28-707;

(4) Sexual assault forensic evidence means evidence collected by a health care provider contained within any sexual assault forensic evidence collection kit, including a toxicology kit, or any forensic evidence collected by law enforcement through the course of an investigation; and

(5)(a) Sexual assault victim or victim means any person who is a victim of sexual assault who reports such sexual assault:

(i) To a health care provider, law enforcement, or an advocate, including anonymous reporting as provided in section 28-902; and

(ii) In the case of a victim who is under eighteen years of age, to the Department of Health and Human Services.

(b) Sexual assault victim or victim also includes, if the victim described in subdivision (5)(a) of this section is incompetent, deceased, or a minor who is unable to consent to counseling services, such victim's parent, guardian, or spouse, unless such person is the reported assailant.

Source: Laws 2020, LB43, § 2.

29-4310 Privileged communication; presence of others; effect; prosecutor; duty.

Notwithstanding any provision of Chapter 27, article 5, any communication with a victim which is privileged, whether by statute, court order, or common law, shall retain such privilege regardless of who is present during the communication so long as the victim has a privilege with respect to each individual present. Nothing in this section shall relieve the prosecutor of the prosecutor's duty to disclose and make known to the defendant or the defendant's attorney

any and all exculpatory material or information suitable for impeachment which is known to the prosecutor.

Source: Laws 2020, LB43, § 3.

29-4311 Medical evidentiary or physical examinations; rights of victim.

(1) A victim has the right to have an advocate of the victim's choosing present during a medical evidentiary or physical examination. The health care provider shall contact the advocate before beginning the medical evidentiary or physical examination, unless declined by the victim. If an advocate cannot appear in a timely manner, the health care provider shall inform the victim of the potential impact of delaying the examination.

(2) A victim retains such right to have an advocate present at any time during any medical evidentiary or physical examination, regardless of whether the victim has previously waived such right.

(3) A victim has the right to a free forensic medical examination as provided in section 81-1429.03 without regard to whether a victim participates in the criminal justice system or cooperates with law enforcement.

(4) A victim has the right to be provided health care in accordance with best practices and established protocols for age-appropriate sexual assault forensic medical examinations as set forth in publications of the Office on Violence Against Women of the United States Department of Justice.

(5) A victim has the protection of confidential communications as provided in sections 29-4301 to 29-4304.

(6) A victim has the right to shower at no cost after the medical evidentiary or physical examination, unless showering facilities are not available.

(7) A victim has the right to anonymous reporting as provided in section 28-902.

Source: Laws 2020, LB43, § 4.

29-4312 Interview or deposition; rights of victim.

(1)(a) A victim has the right to have an advocate present during an interview by a peace officer, prosecutor, or defense attorney, unless no advocate can appear in a reasonably timely manner. In an interview involving a prosecutor, the prosecutor shall inform the victim of the victim's rights under this subsection. The peace officer, prosecutor, or defense attorney shall contact the advocate before beginning the interview, unless declined by the victim.

(b) A victim has the right to have an advocate present during a deposition as provided in sections 29-1917 and 29-1926.

(c) An advocate present at an interview or deposition under this subsection shall not interfere in the interview or deposition or provide legal advice.

(d) Nothing in this subsection shall preclude law enforcement officers or prosecutors from contacting a victim directly to make limited inquiries regarding the sexual assault.

(2) A victim has the right to be interviewed by a peace officer of the gender of the victim's choosing, if such request can be reasonably accommodated by a peace officer that is properly trained to conduct such interviews.

(3) A victim has the right to be interviewed by a peace officer that speaks the victim's preferred language or to have a qualified interpreter available, if such request can be reasonably accommodated.

(4) A peace officer, prosecutor, or defense attorney shall not, for any reason, discourage a victim from receiving a medical evidentiary or physical examination.

(5) A victim has the right to counsel. This subsection does not create a new obligation by the state or a political subdivision to appoint or pay for counsel. Treatment of the victim shall not be affected or altered in any way as a result of the victim's decision to exercise such right to counsel.

(6) A victim who is a child three to eighteen years of age has the right to a forensic interview at a child advocacy center by a professional with specialized training as provided in section 28-728. The right to have an advocate, representative, or attorney present shall not apply during such a forensic interview.

Source: Laws 2020, LB43, § 5.

29-4313 Sexual assault forensic evidence; rights of victim.

(1) A victim has the right to timely analysis of sexual assault forensic evidence.

(2) Subject to section 28-902, a health care provider shall notify the appropriate law enforcement agency of a victim's reported sexual assault and submit to law enforcement the sexual assault forensic evidence, if evidence has been obtained.

(3)(a) A law enforcement agency shall collect the sexual assault forensic evidence upon notification by the health care provider and shall retain the sexual assault forensic evidence for the longer of the statute of limitations applicable to the sexual assault or the retention period set forth in subsection (4) of section 28-902.

(b)(i) Except as provided in subdivision (3)(b)(ii) of this section, no later than sixty days before expiration of the retention period described in subdivision (3)(a) of this section, the law enforcement agency shall notify the victim of any intended destruction or disposal of the sexual assault forensic evidence. Upon request by the victim, the law enforcement agency shall preserve the sexual assault forensic evidence for an additional twenty years.

(ii) Subdivision (3)(b)(i) of this section does not apply to sexual assault forensic evidence which has been provided anonymously.

(c) Each law enforcement agency which stores sexual assault forensic evidence shall have a written policy that details retention periods for sexual assault forensic evidence and methods for carrying out the notifications required by subdivision (3)(b) of this section.

(4) A victim has a right to contact the investigating law enforcement agency and be provided with information on the status of the processing and analysis of the victim's sexual assault forensic evidence, if the victim did not report anonymously.

(5) A victim has the right to have the results of the analysis of the victim's sexual assault forensic evidence uploaded to the appropriate local, state, and federal DNA databases, as allowed by law.

(6) A victim has the right to be informed by the investigating law enforcement agency, upon the victim's request, of the results of analysis of the victim's sexual assault forensic evidence, whether the analysis yielded a DNA profile, and whether the analysis yielded a DNA match, either to the named perpetrator or to a suspect already in the Federal Bureau of Investigation's Combined DNA Index System, so long as the provision of such information would not hinder or interfere with investigation or prosecution of the case associated with such information.

(7) A victim has the right to be informed, upon the victim's request, when there is any change in the status of the victim's case, including if a case has been closed or reopened.

(8) A victim has the right to inspect or request copies of law enforcement reports concerning the sexual assault at the conclusion of the case.

Source: Laws 2020, LB43, § 6; Laws 2024, LB870, § 1.
Effective date July 19, 2024.

29-4314 Sexual assault forensic evidence; uses prohibited.

Sexual assault forensic evidence from a victim shall not be used:

(1) To prosecute such victim for any misdemeanor crime or any crime under the Uniform Controlled Substances Act; or

(2) As a basis to search for further evidence of any misdemeanor crime or any crime under the Uniform Controlled Substances Act that may have been committed by the victim.

Source: Laws 2020, LB43, § 7.

Cross References

Uniform Controlled Substances Act, see section 28-401.01.

29-4315 Explanation of rights; required, when; contents.

(1) Upon an initial interaction with a victim relating to or arising from a sexual assault of such victim, a health care provider or peace officer, and in the case of a victim under eighteen years of age, the Department of Health and Human Services, shall provide the victim with information that explains the rights of victims under the Sexual Assault Victims' Bill of Rights Act and other relevant law. The information shall be presented in clear language that is comprehensible to a person proficient in English at the fifth grade level, accessible to persons with visual disabilities, and available in all major languages spoken in this state. This information shall include, but not be limited to:

(a) A clear statement that a victim is not required to participate in the criminal justice system or to undergo a medical evidentiary or physical examination in order to retain the rights provided by the act and other relevant law;

(b) Contact information for appropriate services provided by professionals in the fields of domestic violence and sexual assault, including advocates;

(c) State and federal relief available to victims of crime;

(d) Law enforcement protection available to the victim, including domestic violence protection orders, harassment protection orders, and sexual assault protection orders and the process to obtain such protection;

(e) Instructions for requesting information regarding the victim's sexual assault forensic evidence as provided in section 29-4313; and

(f) State and federal compensation funds for medical and other costs associated with the sexual assault and information on any municipal, state, or federal right to restitution for a victim in the event of a conviction.

(2) The information to be provided under subsection (1) of this section shall be developed by the Attorney General and the Nebraska Commission on Law Enforcement and Criminal Justice with input from prosecutors, sexual assault victims, and organizations with a statewide presence with expertise on domestic violence, sexual assault, and child sexual assault.

(3) The information to be provided under subsection (1) of this section shall be made available for viewing and download on the websites of the Department of Health and Human Services and the Nebraska Commission on Law Enforcement and Criminal Justice. Other relevant state agencies are also encouraged to make such information available on their websites.

Source: Laws 2020, LB43, § 8.

(e) VICTIM CONFIDENTIALITY

29-4316 Criminal justice agencies and attorneys; maintain confidentiality of victim of sexual assault or sex trafficking.

(1) For purposes of this section:

(a) Criminal justice agency has the same meaning as in section 29-3509;

(b) Sex trafficking means sex trafficking or sex trafficking of a minor in violation of section 28-831; and

(c) Sexual assault means a violation of section 28-319, 28-319.01, 28-320, 28-320.01, 28-320.02, 28-322.01, 28-322.02, 28-322.03, 28-322.04, 28-322.05, 28-703, or 28-1463.03 or subdivision (1)(c) or (g) of section 28-386 or subdivision (1)(d), (e), or (f) of section 28-707.

(2) Except as provided in subsection (3) of this section, and unless otherwise required by statute, a criminal justice agency and any attorney involved in the investigation or prosecution of an alleged sexual assault or sex trafficking violation shall maintain the confidentiality of the identity and personal identifying information of the alleged victim. Such information may be shared by such criminal justice agencies and between such criminal justice agencies and attorneys as necessary to carry out their duties.

(3) The confidentiality required by subsection (2) of this section does not apply:

(a) To the extent waived by the alleged victim;

(b) If criminal charges involving the alleged sexual assault or sex trafficking are filed;

(c) If the victim has died as a result of, or in connection with, the alleged sexual assault or sex trafficking;

(d) In cases where personal identifying information or the identity of the victim are released as part of a child abduction alert system used by law enforcement agencies, such as the AMBER Alert system;

(e) To a person making a report of suspected child abuse or neglect as required in section 28-711;

(f) To the sharing of reports and information regarding child abuse and neglect with a child abuse and neglect investigation team or child abuse and neglect treatment team provided for in section 28-728;

(g) To the Department of Health and Human Services and other assisting agencies as necessary to carry out their duties in investigations of child abuse or neglect;

(h) To communication with an individual that an educational entity, as defined in section 79-1201.01, has designated:

(i) As a Title IX coordinator; or

(ii) To receive reports related to sexual assault or sex trafficking or to provide supportive measures related to such reports; or

(i) To communication with advocates and health care providers as defined in section 29-4309.

Source: Laws 2022, LB1246, § 1.

(f) DEBT FOR MEDICAL SERVICES

29-4317 Health care provider, emergency medical services provider, laboratory, or pharmacy; provision of certain services related to sexual assault, domestic assault, or child abuse; acts prohibited.

(1) A health care provider, an emergency medical services provider, a laboratory, or a pharmacy providing medical services, transportation, medications, or other services related to the examination or treatment of injuries arising out of sexual assault as defined in section 29-4309, domestic assault under section 28-323, or child abuse under section 28-707 shall not:

(a) Refer a bill for such services to a collection agency or an attorney for collection against the victim or the victim's guardian or family;

(b) Distribute information regarding such services and status of payment in any way that would affect the credit rating of the victim or the victim's guardian or family; or

(c) Take any other action adverse to the victim or the victim's guardian or family on account of providing such services.

(2) This section shall not be construed to prevent an entity described in subsection (1) of this section from otherwise seeking payment for such services from the victim or any other source.

(3) If a collection agency or an attorney is referred a debt for a bill described in subsection (1) of this section, then upon notice of the applicability of this section, the collection agency or attorney shall return the debt to the referring health care provider, emergency medical services provider, laboratory, or pharmacy.

(4) No private cause of action shall exist under this section against a debt collector.

Source: Laws 2023, LB157, § 5.

ARTICLE 47
JAILHOUSE INFORMANTS

Section
29-4701. Terms, defined.

Section
29-4702. Applicability.
29-4703. Prosecutor's office; duties.
29-4704. Disclosures required; deadline; redaction of information; prosecutor; duties.
29-4705. Jailhouse informant receiving leniency; notice to victim.
29-4706. Court orders authorized.

29-4701 Terms, defined.

For purposes of sections 29-4701 to 29-4706:

(1) Benefit means any plea bargain, bail consideration, reduction or modification of sentence, or any other leniency, immunity, financial payment, reward, or amelioration of current or future conditions of incarceration that has been requested by the jailhouse informant or that has been offered or may be offered in the future to the jailhouse informant in connection with his or her testimony in the criminal proceeding in which the prosecutor intends to call him or her as a witness; and

(2) Jailhouse informant means a person who offers testimony about statements made by a suspect or defendant while the suspect or defendant and jailhouse informant were in the custody of any jail or correctional institution and who has requested or received or may in the future receive a benefit in connection with such testimony.

Source: Laws 2019, LB352, § 1.

29-4702 Applicability.

Sections 29-4701 to 29-4706 apply to any case in which a suspect or defendant is charged with a felony.

Source: Laws 2019, LB352, § 2.

29-4703 Prosecutor's office; duties.

Each prosecutor's office shall undertake measures to maintain a searchable record of:

(1) Each case in which:

(a) Trial testimony is offered or provided by a jailhouse informant against a suspect's or defendant's interest; or

(b) A statement from a jailhouse informant against a suspect's or defendant's interest is used and a criminal conviction is obtained; and

(2) Any benefit requested by or offered or provided to a jailhouse informant in connection with such statement or trial testimony.

Source: Laws 2019, LB352, § 3.

29-4704 Disclosures required; deadline; redaction of information; prosecutor; duties.

(1) Except as provided in subsection (3) of this section, if a prosecutor intends to use the testimony or statement of a jailhouse informant at a defendant's trial, the prosecutor shall disclose to the defense:

(a) The known criminal history of the jailhouse informant;

(b) Any benefit requested by or offered or provided to a jailhouse informant or that may be offered or provided to the jailhouse informant in the future in connection with such testimony;

(c) The specific statements allegedly made by the defendant against whom the jailhouse informant will testify or provide a statement and the time, place, and manner of the defendant's disclosures;

(d) The case name and jurisdiction of any criminal case known to the prosecutor in which the jailhouse informant testified or a prosecutor intended to have the jailhouse informant testify about statements made by another suspect or criminal defendant that were disclosed to the jailhouse informant and whether the jailhouse informant requested, was offered, or received any benefit in exchange for or subsequent to such testimony; and

(e) Any occasion known to the prosecutor in which the jailhouse informant recanted testimony about statements made by another suspect or defendant that were disclosed to the jailhouse informant and any transcript or copy of such recantation.

(2) The prosecutor shall disclose the information described in subsection (1) of this section to the defense as soon as practicable after discovery, but no later than thirty days before trial. If the prosecutor seeks to introduce the testimony of a jailhouse informant that was not known until after such deadline, or if the information described in subsection (1) of this section could not have been discovered or obtained by the prosecutor with the exercise of due diligence at least thirty days before the trial or other criminal proceeding, the court may permit the prosecutor to disclose the information as soon as is practicable after the thirty-day period.

(3) If the court finds by clear and convincing evidence that disclosing information listed in subsection (1) of this section will result in the possibility of bodily harm to a jailhouse informant or that a jailhouse informant will be coerced, the court may permit the prosecutor to redact some or all of such information.

(4) If, at any time subsequent to the deadline in subsection (2) of this section, the prosecutor discovers additional material required to be disclosed under subsection (1) of this section, the prosecutor shall promptly:

(a) Notify the court of the existence of the additional material; and

(b) Disclose such material to the defense, except as provided in subsection (3) of this section.

Source: Laws 2019, LB352, § 4.

29-4705 Jailhouse informant receiving leniency; notice to victim.

If a jailhouse informant receives leniency related to a pending charge, a conviction, or a sentence for a crime against a victim as defined in section 29-119, in connection with offering or providing testimony against a suspect or defendant, the prosecutor shall notify such victim. Prior to reaching a plea agreement, the prosecutor shall proceed as provided in subsection (1) of section 23-1201. For purposes of this section, leniency means any plea bargain, reduced or dismissed charges, bail consideration, or reduction or modification of sentence.

Source: Laws 2019, LB352, § 5.

29-4706 Court orders authorized.

If, at any time during the course of the proceedings, it is brought to the attention of the court that the prosecutor has failed to comply with section 29-4704, or an order issued pursuant to this section, the court may:

(1) Order the prosecutor to disclose materials not previously disclosed;

(2) Grant a continuance;

(3) Prohibit the prosecutor from calling a witness not disclosed or introducing in evidence the material not disclosed; or

(4) Enter such other order as it deems just under the circumstances.

Source: Laws 2019, LB352, § 6.

ARTICLE 48

VETERAN JUSTICE PROGRAM

Section
29-4801. Terms, defined.
29-4802. Veteran justice program; eligibility; confidential information.
29-4803. Veteran justice program; created; use of deferred judgments; procedure.
29-4804. Veteran justice program; elements; discretionary matters; notice to victim.
29-4805. Veteran status; considerations in sentencing.
29-4806. Law enforcement, court, and correctional personnel; veteran status; verification; training.
29-4807. Supreme Court Administrator; duties.

29-4801 Terms, defined.

For purposes of sections 29-4801 to 29-4807:

(1) Case plan means a set of goals, conditions, and programs that is:

(a) Based on a professional risk and needs assessment;

(b) Tailored to the specific risks and needs of the veteran; and

(c) Developed in collaboration with the veteran;

(2) Condition from military service means substance-use disorder, military sexual trauma, traumatic brain injury, post-traumatic stress disorder, or another mental health condition that is related to an individual's military service in some manner and includes psychological effects from a veteran's time in service as well as from the period of family separation related to deployment;

(3) Intimate partner has the same meaning as in section 28-323;

(4) Serious bodily injury has the same meaning as in section 28-109;

(5) Sexual contact and sexual penetration have the same meanings as in section 28-318;

(6) Veteran means an individual who:

(a) Is serving in the United States Armed Forces, including any reserve component or the National Guard;

(b) Has served in such armed forces and was discharged or released from such service under conditions other than dishonorable; or

(c) Has served in such armed forces and received a dishonorable discharge and such individual has been diagnosed with substance-use disorder, military sexual trauma, traumatic brain injury, post-traumatic stress disorder, or another mental health condition; and

(7) Veteran justice program means the program described in sections 29-4802 to 29-4804 through which a veteran may request a court to defer entry of judgment of conviction for an offense pending completion of the program, and upon successful completion, avoid entry of judgment of conviction.

Source: Laws 2024, LB253, § 1.
Operative date July 1, 2025.

29-4802 Veteran justice program; eligibility; confidential information.

(1) Except as provided in subsection (2) of this section, a defendant is eligible to participate in a veteran justice program if the defendant is a veteran and can show by clear and convincing evidence that a condition from military service contributed to the offense.

(2) A veteran is not eligible for participation in a veteran justice program if:

(a) The veteran is charged with:

(i) An offense that is not eligible for probation;

(ii) An offense that is listed in subdivision (1)(a)(i) of section 29-4003;

(iii) A violation of section 60-6,196 or 60-6,197, or a city or village ordinance enacted in conformance with section 60-6,196 or 60-6,197, following two or more previous convictions for a violation of any such section or ordinance; or

(iv) An offense that resulted in the death of another person; or

(b) Deferring the entry of judgment would be prohibited under section 60-4,147.01.

(3) Any document or materials received by the court pursuant to sections 29-4802 to 29-4804 that contain military or medical records, reports, or evaluations shall be privileged and shall not be disclosed directly or indirectly to anyone other than a judge; attorneys to parties in the case; probation officers to whom a defendant's file is duly transferred; the probation administrator or his or her designee; alcohol and drug counselors, mental health practitioners, psychiatrists, and psychologists licensed or certified under the Uniform Credentialing Act to conduct substance abuse evaluations and treatment; or others entitled by law to receive such information, including personnel affiliated with the veteran justice program.

(4) Upon a court determination of eligibility for participation in a veteran justice program, the court shall provide notice to any victim or alleged victim of the offense committed by the veteran of such determination and the right of the veteran to request participation in a veteran justice program.

Source: Laws 2024, LB253, § 2.
Operative date July 1, 2025.

Cross References

Uniform Credentialing Act, see section 38-101.

29-4803 Veteran justice program; created; use of deferred judgments; procedure.

(1) The probation administrator shall create a veteran justice program as provided in sections 29-4802 to 29-4804 and subject to the Supreme Court's rules. The program shall be available in every district court and county court. A veteran justice program shall not supersede, alter, or otherwise interfere with

the establishment, functioning, participation, or operation of a problem solving court established pursuant to section 24-1302.

(2) A veteran justice program shall be operated by use of deferred judgments as provided in this section.

(3) Upon a finding of guilt for which a judgment of conviction may be rendered, a defendant that is eligible to participate in a veteran justice program may request the court defer the entry of judgment of conviction under this section. Upon such request, the court shall provide notice to any victim of the offense of the request and provide an opportunity for the victim to provide a statement for consideration by the court. After giving the prosecutor and defendant the opportunity to be heard, the court may defer the entry of a judgment of conviction and the imposition of a sentence and place the defendant on probation, upon conditions as the court may require under sections 29-2262 and 29-4804. If the court defers the entry of judgment, the court shall provide notice to victims of the offense.

(4)(a) Whenever a court considers a request to defer judgment under this section, the court shall consider the following:

(i) The factors set forth in subsections (2) and (3) of section 29-2260 and section 29-4802;

(ii) The supervision, treatment, and other programming options available in the community; and

(iii) Any other information the court deems relevant.

(b) Except as provided in subdivision (4)(c) of this section, there shall be a presumption that a veteran eligible under section 29-4802 shall be allowed to participate in a veteran justice program. The presumption shall only be overcome by a judicial finding, based on an individualized assessment of the veteran and consideration of the factors set forth in subdivisions (4)(a)(i), (ii), and (iii) of this section, that entry of judgment of conviction should not be deferred. The fact that a veteran has previously absconded from or violated pretrial release, probation, parole, supervised release, post-release supervision, or another form of court-ordered supervision, including a violation arising from commission of a new offense or an offense committed while previously participating in a veteran justice program, is not, standing alone, a sufficient basis to overcome the presumption.

(c) The presumption provided for in subdivision (4)(b) of this section does not apply to a veteran charged with:

(i) A violation of section 60-6,196 or 60-6,197, or a city or village ordinance enacted in conformance with section 60-6,196 or 60-6,197, following a previous conviction for a violation of any such section or ordinance; or

(ii) An offense that resulted in serious bodily injury to another person.

(5) Except as otherwise provided in this section and sections 29-2293 and 29-2294, the supervision of a defendant on probation pursuant to a deferred judgment shall be governed by the Nebraska Probation Administration Act and sections 29-2270 to 29-2273.

(6) After a hearing providing the prosecutor and defendant an opportunity to be heard and upon a finding that a defendant has violated a condition of his or her probation, the court may enter any order authorized by section 29-2268 or pronounce judgment and impose such new sentence as might have been originally imposed for the offense for which the defendant was convicted.

(7) Upon satisfactory completion of the conditions of probation and the payment or waiver of all administrative and programming fees assessed under section 29-2293, the defendant or prosecutor may file a motion to withdraw any plea entered by the defendant and to dismiss the action without entry of judgment. The court shall not grant such motion until a victim of the offense has received notice and the opportunity to be heard, as required by subsection (4) of section 29-4804.

(8) Sections 29-4802 to 29-4804 apply to offenses committed on or after July 1, 2025. For purposes of this subsection, an offense shall be deemed to have been committed prior to July 1, 2025, if any element of the offense occurred prior to such date.

Source: Laws 2024, LB253, § 3.
Operative date July 1, 2025.

Cross References

Nebraska Probation Administration Act, see section 29-2269.

29-4804 Veteran justice program; elements; discretionary matters; notice to victim.

(1) A veteran justice program shall include the following elements:

(a) Evidence-based treatment tailored to address the specific challenges facing veterans, such as post-traumatic stress disorder, traumatic brain injury, military sexual trauma, or another condition from military service; and

(b) A case plan that meets the requirements set forth in this section. The case plan shall be:

(i) Developed by the court with probation and appropriate experts;

(ii) Based on a professional assessment of the veteran's specific risks and needs. The assessment shall include an assessment of risk of intimate partner violence, regardless of the nature of the offense;

(iii) Created in conjunction with input from the veteran;

(iv) Designed to contain clear and individualized supervision and treatment goals, including guidelines that detail the program rules, consequences for violating the rules, and incentives for compliance; and

(v) Communicated to the veteran at the start of the program.

(2) If the offense includes sexual contact or sexual penetration, the victim of the offense is an intimate partner, or the assessment of the veteran under subdivision (1)(b)(ii) of this section identifies an increased risk of intimate partner violence, the case plan shall include specifically tailored treatment or programming to address sexual assaults and domestic violence. For any veteran required to participate in such treatment or programming, the court shall include conditions of supervision to protect victim safety that include, but are not limited to, requiring the surrender of firearms while participating in the veteran justice program.

(3) In the implementation of a veteran justice program, the district court or county court shall retain discretion in:

(a) Determining eligibility for participation, subject to sections 29-4802 and 29-4803;

(b) Establishing the conditions of the program, including the creation of the case plan;

(c) Setting the terms of successful program completion and release upon that successful completion; and

(d) Determining if the veteran has successfully completed the program at a final hearing.

(4) A victim of the offense shall be entitled to notice of the veteran's participation in the veteran justice program. Upon request of the victim, a victim shall be entitled to updates on the veteran's status and participation in the program. The victim shall be entitled to advance reasonable notice of a final hearing to determine successful program completion and the opportunity to be heard or submit a written statement at such hearing.

(5) Upon successful completion of a veteran justice program, the veteran shall be entitled to the relief provided for a deferred judgment under section 29-4803.

Source: Laws 2024, LB253, § 4.
Operative date July 1, 2025.

29-4805 Veteran status; considerations in sentencing.

(1) When arraigning any defendant, the court shall offer the defendant the ability to communicate his or her veteran status through counsel or by other means. The court shall not require that the defendant self-identify as a veteran in open court.

(2) When sentencing a defendant who is a veteran for any offense, the court shall recognize the defendant's veteran status as a mitigating factor in determining the sentence.

(3) The court shall consider a defendant's veteran status as a mitigating factor in addition to any other mitigating factors provided by law or considered by the court. The fact that a defendant may have suffered trauma unrelated to military service or veteran status shall not be used to deny the impact of any military trauma or condition of military service.

(4) The court may take into consideration individual merit earned during military service, overseas deployment, exposure to danger, and service-connected disability ratings when considering sentencing mitigation. When considering multiple factors, a court should give additional credit for each factor.

(5) If a defendant is a veteran, is eligible for probation, and demonstrates by clear and convincing evidence a connection between the offense and a condition from military service, a sentence of imprisonment is not appropriate unless the court finds, based on the criteria in subsections (2) and (3) of section 29-2260, that imprisonment is necessary for the protection of the public.

(6) The court shall not:

(a) Use veteran status as an aggravating factor; or

(b) Require a connection between the offense and a condition from military service in order to consider veteran status as a mitigating factor.

(7) This section applies regardless of whether a veteran is eligible for participation in a veteran justice program.

Source: Laws 2024, LB253, § 5.
Operative date July 1, 2025.

29-4806 Law enforcement, court, and correctional personnel; veteran status; verification; training.

(1) Law enforcement, court, and correctional personnel shall verify the veteran status of any individual being processed through the criminal justice system in order to identify individuals who may be eligible for participation in a veteran justice program or for sentencing mitigation as provided in section 29-4805.

(2) Law enforcement, court, and correctional personnel shall receive training designed to increase their understanding of cases involving veterans, including veterans' exposure to violence and trauma. Such training shall include attention on issues that disproportionately impact female veterans, such as military sexual trauma.

Source: Laws 2024, LB253, § 6.
Operative date July 1, 2025.

29-4807 Supreme Court Administrator; duties.

(1) The State Court Administrator shall compile information on the number of veterans receiving, successfully completing, declining, and denied participation in a veteran justice program and the sentencing mitigation described in section 29-4805.

(2) The State Court Administrator shall track outcomes among veterans who participate in a veteran justice program, including completion status, recidivism, and housing and employment status.

(3) Data collected under this section shall be disaggregated by race, ethnicity, gender, age, military discharge characterization, and the offense involved.

(4) On or before July 1, 2026, and on or before each July 1 thereafter, the State Court Administrator shall electronically submit a report to the Judiciary Committee of the Legislature. The report shall contain de-identified data collected pursuant to this section and shall analyze the outcomes, successes, and areas for improvement of the veteran justice programs and the sentencing mitigation described in section 29-4805.

Source: Laws 2024, LB253, § 7.
Operative date July 1, 2025.